STATE OF NEW YORK

2880

2017-2018 Regular Sessions

IN SENATE

January 18, 2017

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, the public service law, and the executive law, in relation to reforming the telecommunications sector of the New York economy, by creating a broadband authority, authorizing statewide cable franchises for the purposes of competitive cable service, promoting the wide-spread development of high-capacity broadband internet access, and increasing the availability and quality of services in this key economic development area and ensuring the safety, reliability and affordability of telecommunications services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "omnibus telecommunications reform act of 2017".

§ 2. Legislative findings. 1. a. It is and has been the long-standing policy of the state of New York that every resident and business in the state of New York has a right to have equal physical and social access to adequate telecommunications services at just and reasonable rates, because universal access to the benefits of telephony is fundamental to effective communication, quality of life, economic development, public safety and security, and democratic participation. Telecommunications, however, is undergoing dramatic changes with new technologies driving the ways people communicate with one another. No matter the source or vehicle by which people communicate with each other, the people of this state have the right to adequate service at just and reasonable rates. Therefore, all telecommunications services must meet the highest standards of quality, reliability, and safety--including protecting and expanding the system of emergency 911 service--which requires sufficient investment in telecommunications infrastructure and, as many years of

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

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experience have shown, adequate staffing provided by trained, career employees operating under the applicable safety codes and regulations.

b. While the state's long-standing mission has been to provide universal, affordable and reliable service to all New Yorkers, all citizens of the state do not have equal access to communications technologies that are becoming the standard bearers for the 21st century. In fact, the state lags behind in deploying communication networks that are the foundation of modern telecommunications. The lack of deployment of high-capacity telecommunications infrastructure services ("broadband") in rural, underserved, unserved, economically distressed and other areas of the state is affected with a public interest; the rates, services and operations of cable television companies are affected with a public interest and it is imperative that the state fairly regulate cable television services in the interest of the public, and; the public interest is furthered by comprehensive action in the area of telecommunications, and by the state's continued promotion of universally available telecommunications services of adequate service quality and at affordable rates, particularly in rural, high-cost and low income areas, and the state's entry into promoting the universal availability and physical and social access to high-quality broadband and advanced communications services at affordable rates.

c. The deployment of high-capacity broadband telecommunications networks and advanced communications networks throughout New York will promote improvements in healthcare, public safety, education, consumer choice, and the economy.

d. State action and public-private partnerships will be needed to deepen investment in, promote demand for, stimulate adoption of, and remove barriers to the development of universally deployed world-class high-capacity broadband networks, providing services to business and residential consumers in all areas of the state at competitive prices with adequate service quality.

e. Reasonably unfettered access of the citizenry to the maximally diverse Internet is in the public interest, consistent however with the need or company choice of telecommunications providers to block, limit or otherwise restrict the passage of electronic mail messages or other content that transmit, portray, describe, represent or otherwise contain matters such as child pornography or similar obscenity, other unlawful material, threats of serious bodily harm, threats to the public safety and homeland security, threats of death to individuals or groups of individuals, viruses or similar computer generated programs or codes that have the potential to harm computer hardware and/or software and/or networks, excessive unsolicited commercial email that degrades or interferes with or harms the normal operation of broadband networks, and other similar types or forms of material or software (the foregoing examples are illustrative, not exhaustive of such threats to users and/or the network).

2. a. New cable television services regulation is necessary to: (i) promote adequate, affordable and efficient cable television service to the citizens and residents of the state; (ii) encourage the optimum development of the educational, government and community-service potentials of the cable television medium; (iii) provide just and reasonable rates for cable television service without geographic discrimination; (iv) protect the interests of the municipalities of this state in relation to the issuance of municipal consents for the operations of cable television companies in those jurisdictions; (v) to protect the right of consumers to access the lawful internet content of their

choice, to run applications and use services of their choice, subject to the requirements of law enforcement, and to connect their choice of legal devices that do not harm the network; and (vi) cooperate with other states and with the federal government in promoting and coordinating efforts to regulate cable television effectively in the public interest.

b. Competition in the provisioning of cable service is emerging with the convergence of preexisting and new technologies for providing voice, video and data services, which results in increased investment in the state, lower prices and improved service offerings for consumers.

c. Increased investment and the potential for competition in the cable service market through the provisioning of new communications services and deployment of advanced communications infrastructure further enhances economic opportunities, public safety, and the overall health and well-being of the residents of the state.

d. State-issued franchises for the provision of cable service will promote and facilitate the deployment of advanced technologies and new services to all classes of communities and protect New York's ability to compete in the national and international marketplace for industry and jobs.

e. Modifying existing cable service regulation through the enactment of new standards and procedures that provide consumers with access to a competitive facilities-based cable market and also preserves municipalities historic authority to manage public rights-of-way, collect a franchise fee up to five percent of gross revenue, administer public educational and government access channels, enforce consumer protections and ensure competitive cable services are delivered in a nondiscriminatory manner is warranted in this state.

f. Nothing in this act shall be seen to limit or reduce the protection afforded to cable television customers, broadband internet services customers, telephone customers, and customers of advanced communications services generally, and it is in the public interest to ensure that customers continue to be provided a high level of customer protection and customer service in a more competitive market.

3. Therefore, the legislature declares that the state needs to fundamentally reform the three key pillars of its vast telecommunications system--telephone, broadband internet access and cable television--to provide 21st Century technology to all New Yorkers that is safe, reliable and affordable.

§ 3. Article 11 and sections 4000, 4001 and 4002 of the public authorities law, article 11 as renumbered by chapter 168 of the laws of 1975 and sections 4000, 4001 and 4002 as renumbered by chapter 182 of the laws of 2005, are renumbered article 12 and sections 4200, 4201 and 4202 and a new article 11 is added to read as follows:

ARTICLE 11

BROADBAND DEVELOPMENT AUTHORITY

Section 4100. Short title.
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§ 4100. Short title. This article shall be known and may be cited as the "broadband development authority act".

§ 4101. Broadband development authority. 1. The New York state broadband development authority is established in order to encourage the provision of affordable and reliable broadband services and networks that will:

(a) ensure the long term growth of and the enhancement and delivery of services by business, educational, medical, commercial, nonprofit, and governmental entities in unserved, underserved and distressed areas in New York;

(b) benefit residential, commercial, public, governmental, and nonprofit entities in unserved, underserved and distressed areas in New York; and

(c) to advance the availability of, and promote the physical and social access to, broadband and other advanced communications services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in high-density urban areas and/or in the area of the state where such services are most competitively priced; and to increase access to, and the ubiquity of, advanced telecommunications services available to the public in an equitable and nondiscriminatory manner.

2. The authority shall administer the broadband development program, and shall, through the broadband development and deployment council created in section forty-one hundred five of this article, work to build and facilitate local technology and social access planning entities, and partnerships with broadband internet services providers and technology companies, and the private and nonprofit sectors generally, and such other programs as are reasonably calculated to facilitate the authority's achievement of its statutory duties.

§ 4102. Definitions. 1. "Authority" means the New York state broadband development authority created under section forty-one hundred one of this article.

2. "Unserved area" means any part of a municipality without readily and generally available retail consumer access to a facilities-based or fixed wireless broadband services provider. For the purposes of this section, the definition of wireless broadband services providers shall not include subscription satellite service.

3. "Underserved area" means any part of a municipality without readily and generally available retail consumer access to at least two or more nonaffiliated facilities-based or fixed wireless broadband telecommuni-

cations services providers. Wireless shall not include subscription satellite service.

4. "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at minimum rates of transmission of two megabits per second downstream and one megabit per second upstream, or one hundred fifty percent of those transmission rates defined by the Federal Communications Commission as "broadband," or at those synchronous upstream and downstream transmission rates as may be recommended by the broadband council from time to time, whichever is fastest in speed.

5. "Broadband carrier" means any provider of broadband services, except aggregators of broadband services, as defined in section two hundred twenty-six of the nineteen hundred ninety-six telecommunications act.

6. "Broadband infrastructure" means all equipment and facilities, including all changes, modifications, and expansions to existing facilities, as well as the customer premises equipment used to provide broadband, and any software integral to or related to the operations, support, facilitation, or interconnection of such equipment, including upgrades, and any installation, operations and support, maintenance, and other functions required to support the delivery of broadband.

7. "Broadband service" means the offering of broadband for a fee directly to the public, or to such classes of users as to be readily available directly to the public, regardless of the facilities used.

8. "Open network" means any broadband infrastructure which is open to any third party users in a nondiscriminatory manner on a fair and equitable basis using publicly available access tariffs for services.

9. "Open network interfaces" means the technical and operational means, manners, and methods for any third party access to the broadband infrastructure, which shall be provided on the basis of generally acceptable industry standards available at the time of access.

10. "Distressed area" means:

(a) a census tract or tracts or block numbering area or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least one and a quarter times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which:

(i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and

(ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or

(c) an area which was designated an empire zone pursuant to article eighteen-B of the general municipal law.

11. "Dark fiber" means fiber optic cable that is not lighted by lasers or other electronic equipment.

12. "Comptroller" means the comptroller of the state of New York.

13. "Board" means the board of directors created under section forty-one hundred four of this article.

14. "Fund" means the broadband and advanced communications development fund created under section forty-one hundred thirteen of this article.

15. "Broadband council" means the broadband development and deployment council as created under section forty-one hundred five of this article.

16. "Current generation broadband service" means the transmission of signals at a rate of at least one million five hundred thousand bits per second to the subscriber and at least two hundred thousand bits per second from the subscriber.

17. "Next generation broadband service" means the transmission of signals at a rate of at least twenty-two million bits per second to the subscriber and at least ten million bits per second from the subscriber.

18. "Qualified equipment" means equipment capable of providing current generation broadband services or next generation broadband services at any time to each subscriber who is utilizing such services.

19. "Qualified expenditure" means any amount chargeable to the capital account with respect to the purchase and installation of qualified equipment, including any upgrades thereto, for which depreciation is allowable under section 168 of the Internal Revenue Code.

20. "Underserved subscriber" means a retail consumer residing in a dwelling located in an unserved or underserved area.

21. "Underserved structure" means a multi-family housing unit or a multiple-dwelling housing unit located in an unserved or underserved area.

§ 4103. Powers of the authority. 1. The general powers of the authority under this article include all those necessary to carry out and effectuate the purposes of this article, including, but not limited to, the following:

(a) to invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and to name and use depositories for the authority's money;

(b) to receive and distribute federal, state or local funding, including grants, loans, and appropriations;

(c) to make expenditures necessary to carry out the authority's duties under this article, including paying the authority's operating expenses;

(d) to sue and be sued, implead and be impleaded, complain and defend in all courts;

(e) to adopt, use and alter at will a corporate seal;

(f) to acquire, purchase, hold, use, lease or otherwise dispose of any project and property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority, and, without limitation of the foregoing, to lease as lessee, any project and any property, real, personal or mixed, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the board and to lease as lessor to any person, any project and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the board, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the authority on such terms and conditions as may be determined by the board of the authority;

(g) to plan, develop, undertake, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects;

(h) to adopt bylaws for the management and regulation of its affairs consistent with this chapter;

(i) to establish and maintain satellite offices within New York;

(j) to fix, alter, charge, and collect rates, rentals, and other charges for the use of projects of, or for the sale of products of or for the services rendered by, the authority, at rates to be determined by it for the purpose of providing for the payment of the expenses of the authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs accomplishing its tasks;

(k) the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

(l) to borrow money, make and issue bonds, and to secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any interest therein, and to make agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the authority deems advisable, and in general to provide for the security for the bonds and the rights of holders thereof;

(m) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution to its powers under this article, including agreements with any person or federal agency;

(n) to employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the authority;

(o) to pledge or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority; and

(p) to do all acts and things necessary or convenient to carry out the powers granted to it by law.

2. The physical access powers of the authority under this article include all those necessary to carry out and effectuate the purposes of this article, including, but not limited to, the following:

(a) to make loans or grants to broadband developers and broadband operators, and developers and operators of advanced communications, that will acquire, construct, maintain, and operate all or part of the broadband infrastructure serving unserved, underserved and distressed areas;

(b) to set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards;

(c) to investigate, evaluate, and access the current broadband infrastructure and the future broadband infrastructure needs of the state;

(d) to take actions reasonably calculated to result in infrastructure construction, enhancement, exchanges, expansion, leases, swaps and other agreements or arrangements giving rise to service or competitive service to underserved structures and underserved subscribers; and

(e) to do all acts and things necessary or convenient to carry out the powers granted to it by law.

3. The social access powers of the authority under this article include all those necessary to carry out and effectuate the purposes of this article, including, but not limited to, the following:

(a) to provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers in unserved, underserved and distressed areas, in conjunction with broadband infrastructure financed by the authority;

(b) to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in the state to maximize the interconnectivity and efficiencies of the broadband infrastructure;

(c) to receive and accept from any federal or private agency, foundation, corporation, association or person grants to be expended in accomplishing the objectives of the authority, and to receive and accept from New York or any state, and any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(d) to render advice and assistance, and to provide services, to institutions of higher education and to other persons providing services or facilities for scientific and technological research or graduate education, focused upon development of advanced communications technologies, provided that credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in New York;

(e) to take such other actions it deems necessary or convenient, that are reasonably calculated to result in enhanced, initial or competitive social access to generally available retail broadband services of adequate quality, at affordable prices, for underserved structures and underserved subscribers; and

(f) to do all acts and things necessary or convenient to carry out the powers granted to it by law.

§ 4104. Board of directors. 1. The authority shall be governed by a board of directors consisting of seventeen members, including: the commissioners of the department of economic development, the empire state development corporation, the public service commission and the state office for technology, or their designees, the governor, senate majority leader, speaker of the assembly, and the comptroller or their designees. Two members of the board shall be proposed by the respective unions of the wireline and wireless telecommunications industries of New York. The remaining members of the board shall be appointed by the governor with the advice and consent of the senate, from a list of individuals nominated by the principal established industry groups, technical counsels, or academic professional groups of New York. The appointees shall be the following: one member from each telecommunications industry grouping, to be nominated by the New York-based wireline telephone industry, the New York-based wireless cellular telephone industry, and the New York-based cable television/broadband industry and wireless internet provider industry; the president of the state university system of New York, two presidents of major New York research universities, one of whom shall represent private research universities and one of whom shall represent public research universities; and one member who shall be nominated by New York's financial services community.

2. The government members shall serve on the board for terms coincident with their terms of office. The initial term of the non-governmental members shall expire on December thirty-first, two thousand nineteen, and all subsequent nongovernmental member terms shall be coincident with the term of the governor who appointed such members.

Vacancies in the membership of the board shall be filled by appointment by the governor for the unexpired portion of the term. No nongovernmental member of the board shall be eligible to serve for more than two successive terms, provided however that after the expiration of a four year term, such members may be appointed to and serve up to two additional terms. Members of the board shall be subject to the public officers law, and shall serve at the pleasure of the governor. Immediately after appointment, the members of the board shall enter upon the performance of their duties.

3. The board shall elect annually from among its members a chairperson and vice-chairperson. The board shall also annually elect a secretary, who need not be a board member, and may also elect such other subordinate officers who need not be members of the board as it deems necessary and proper. The chairperson, or in his or her absence, the vice-chairperson, shall preside over all meetings of the board. In the absence of both the chairperson and vice-chairperson, the board shall appoint a chairperson pro tempore, who shall preside at such meetings.

4. The board shall employ a president of the authority, who shall serve at the pleasure of the board, to direct the day-to-day operations and activities of the authority and carry out such duties and powers as may be conferred upon him or her by the board. The president and all employees of the authority shall be compensated in the manner provided by the board, provided however that such compensation shall not exceed the median salaries of employees in equivalent titles of New York "state authorities" as defined in this chapter.

§ 4105. Broadband development and deployment council. 1. The board shall establish, within thirty days of the effective date of this section, a seventeen member technical advisory committee from representatives recommended by technology councils, industry and business associations, and college and university presidents, to be known as the broadband development and deployment council. Five members shall have knowledge, skills and expertise in the needs of industry, five shall have knowledge, skills and expertise in specific telecommunications technology areas, and two shall be community representatives from unserved and/or underserved areas. The chief technical officers for the public service commission, the state office for technology, the state office for emergency management and the state office of science, technology and academic research, and the chief information officer for the state of New York, shall also serve on this committee.

2. (a) Within sixty days of the effective date of this section, the broadband council shall create, coordinate, or liaise with existing, municipal and/or county-level social access councils to study, and subsequently report to the authority upon: (i) the location, size and population of unserved, underserved and distressed areas within the respective municipalities and counties; (ii) a proposed list of social access projects for the municipalities and counties; (iii) the presence of non-governmental organizations and federal 501c3 organizations that could work cooperatively with the authority on social access projects; (iv) such other matters as the broadband council and local broadband development councils believe necessary to effectuating the mission of the authority.

(b) Within ninety days of the effective date of this section, the broadband council shall study and report to the authority upon:

(i) the availability of any existing federal, state and local funds that can be used or re-purposed to fund broadband development and

promote universal access to broadband and advanced communications services in unserved, underserved and distressed areas;

(ii) commercially reasonable investment benchmarks that it believes are necessary to determine between reasonably equally valuable and imperative broadband development projects;

(iii) an appropriate set of metrics by which to determine the quality of a broadband buildout project, and whether such buildout was being completed within the time span upon which the authority conditioned the grant of any funds toward such buildout;

(iv) the availability, desirability and utility of a set of standardized metrics for service quality, speed, and reliability that shall be applied to the networks built with funds from the authority; and

(v) the availability of surplus computers and other broadband telecommunications equipment in the inventories of state and local authorities that might be donated to the authority for use in enhancing physical and social access to broadband in the state.

3. The council shall act as liaison, and binding mediator when requested, between any deployment projects and owners of rights-of-way, easements or infrastructure necessary to promote or establish broadband service in unserved, underserved and distressed areas.

4. The council shall determine and recommend to the board projects for the expenditure of funds from the fund, with special attention to projects using minority and women-owned business enterprises as contractors or sub-contractors, and to projects providing private sector matching funding at ratios of three to one private to public funding or greater.

5. The council shall recommend to the board, on an annual basis, legislation that it determines would be reasonably necessary to further promote broadband development, enhance economic development arising from such broadband development, and protect and enhance access of consumers to E911 and other public safety services and entities by method of broadband and advanced communications services.

6. (a) A member of the board or officer, employee, or agent of the authority shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care and skill that an ordinary prudent person would exercise under similar circumstances in a like position. In discharging the duties of his or her position, a member of the board or an officer, employee, or agent of the authority, when acting in good faith, may rely upon the opinion of counsel for the authority, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the authority represented to the member of the board or officer, employee, or agent of the authority to be correct by the president or the officer of the authority having charge of its books or account, or stated in a written report by a certified public accountant or firm of certified public accountants to fairly reflect the financial condition of the authority.

(b) A member of the broadband development council shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care and skill that an ordinary prudent person would exercise under similar circumstances in a like position.

(c) A member of a social access council shall discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care and skill that an ordinary prudent person would exercise under similar circumstances in a like position.

§ 4106. Applications for broadband deployment financing; responsibilities of the applicant to provide safe, reliable and affordable service. In addition to rules promulgated by the authority as well as the other requirements established in this article, as part of an application for financing under this chapter, a broadband developer or broadband operator must file with the authority:

1. a participation plan for minority and woman-owned businesses;

2. a community wide outreach plan to educate the public with respect to the availability of broadband services;

3. a construction and maintenance plan that shall detail the capacity of any broadband network or networks built with funding from the authority, and whether such networks shall maintain full upload and download speeds when subscribed to one hundred percent of capacity;

4. a detailed plan showing how such buildout funded by the authority shall address or exceed the current aggregate demand for broadband services in the area of proposed buildout as determined by the authority, council, cyber security and critical infrastructure coordination office ("CSCIC") and public service commission's mapping and demand assessment analyses and reports;

5. such other requirements as may be recommended to the authority by the council and the public service commission;

6. a plan for following the principles of neutral networks as required in section forty-one hundred thirteen of this article; and

7. a plan containing detailed metrics setting forth time to completion for each stage of its proposed buildout, the speeds to be offered on and across its network, and such other metrics as the broadband council or board may propose. The authority may not approve an application unless a plan is submitted under this section and unless the requirements of this section are met.

§ 4107. Bonds and notes of the authority. 1. The authority shall have the power and is hereby authorized from time to time to issue negotiable bonds or notes for any of its corporate purposes for up to one hundred fifty million dollars annually for five years to do all of the following:

(a) pay the development costs associated with acquiring, leasing, constructing, maintaining, and operating the broadband infrastructure, in unserved, underserved, and distressed areas;

(b) make loans to persons for development costs;

(c) make loans to persons to make purchases related to the broadband infrastructure;

(d) pay the interest on bonds and notes of the authority;

(e) establish reserves to secure the bonds and notes of the authority; and

(f) make other expenditures necessary to carry out the authority's duties under this article, including the payment of the authority's operating expenses.

The bonds and notes shall be in a form, bear interest at a rate or rates, be in the denominations, carry registration privileges, be payable, and be subject to the terms of redemption as provided in the resolution described in subdivision two of this section. The bonds and notes of the authority may be sold by the authority at public or private sales at prices as the authority determines.

2. A resolution relating to authorizing notes or bonds may contain any of the following provisions, which shall be a part of the contract with the holders of the notes or bonds:

(a) pledging all or any part of the revenues of the authority, and all or any part of the money received in payment of loans and interest on loans, and other money received or to be received to secure the payment of the notes or bonds;

(b) pledging all or any part of the assets of the authority, including mortgages and obligations obtained by the authority in connection with its programs, to secure the payment of the notes or bonds;

(c) pledging any loan, grant, or contribution from a government entity;

(d) the use and disposition of the gross income from contracts and leases of the authority;

(e) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging proceeds to secure the payment of the notes or bonds;

(f) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding or other notes or bonds;

(g) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent to the amendment or abrogation, and the manner in which the consent is to be given;

(h) vesting in a trustee or trustees property, rights, powers, and duties in trust as the authority may determine, which may include any of the rights, powers, and duties of the trustee appointed by the bondholders under this article and limiting or abrogating the right of the bondholders to appoint a trustee under this section or limiting the rights, powers, and duties of the trustee.

3. No more than fifty percent of any payments to the authority for use of rights-of-way under its control or supervision shall be deemed revenues of the authority. Up to seventy-five percent of monies arising from right-of-way use payments may be used to fund social access projects of the authority, or may be contributed to a state fund established to guarantee universal and affordable broadband service to, without limitation, underserved subscribers and structures. Any remaining unexpended monies arising from right-of-way use payments may be pledged by the authority to secure the payment of notes and bonds.

§ 4108. Bonds and notes; personal liability. The members of the board or any person executing the notes or bonds under this article are not liable personally on the notes or bonds or subject to any personal liability or accountability by reason of the issuance.

§ 4109. Rights of authority to fulfill terms of agreement not limited, altered, or impaired. This state pledges and agrees with the holders of any notes or bonds issued under this article, that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders, or in any way impair the rights and remedies of the holders until the notes or bonds, together with earned interest, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of notes or bonds under this article.

§ 4110. Remedies of bondholders and noteholders. 1. If the authority defaults in the payment of principal or interest of any notes or bonds when due, whether at maturity or upon call for redemption, and the default continues for a period of thirty days, or if the authority fails

or refuses to comply with this article, or defaults in any agreement made with the holders of any notes or bonds, the holders of twenty-five percent in aggregate principal amount of the notes or bonds then outstanding may apply to the court of claims for the appointment of a trustee to represent the holders of the notes or bonds.

2. A trustee appointed under this article may, and upon the written request of the holders of twenty-five percent in aggregate principal amount of the notes or bonds shall, do any of the following:

(a) enforce all rights of the noteholders or bondholders, including the right to require the authority to perform its duties under this article;

(b) bring suit upon the notes or bonds;

(c) require the authority to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the notes or bonds; and

(e) declare all the notes or bonds due and payable.

3. Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty days' notice in writing to the governor, to the authority, to the comptroller and to the attorney general.

4. The trustee has all of the powers necessary or appropriate for the general representation of bondholders or noteholders in the enforcement and protection of their rights.

5. An action under this section shall be brought in the court of claims.

§ 4111. Grants or loans of public or private funds or in-kind material. 1. The authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by New York state law.

2. The authority may accept, receive, receipt for, grant or loan computers and other telecommunications equipment or broadband infrastructure equipment made available to it by in-kind donation, grant or loan, to accomplish, in whole or in part, any of the purposes of this article. All such in-kind material shall be accepted and loaned or granted by the authority upon such terms and conditions as are prescribed in applicable sections of the law of the United States and as are consistent with state law.

§ 4112. Exemption from taxes and assessments. The exercise of the powers granted by this article shall be in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, for the improvement of their health and living conditions, and as the operation and maintenance of projects by the authority and the undertaking of activities in furtherance of the purpose of the authority constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the authority under the provisions of this article or upon the income therefrom, including sales and use taxes on tangible personal property used in the

operations of the authority, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from state and local taxation. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

§ 4113. Broadband and advanced communications development fund. 1. There is created in the joint custody of the comptroller and the commissioner of the department of taxation and finance a special nonreverting, permanent account in the special revenue fund, to be called the advanced communications assistance fund, to be administered by the authority. Moneys in the fund shall be used solely for the purpose of helping unserved, underserved and distressed municipal corporations in New York state take full advantage of broadband and advanced communications services. Loans or grants from the fund shall be used to effectuate physical and social access to broadband in unserved, underserved and distressed localities for:

(a) the internal communication needs of such localities, which may include but are not limited to fiber-optic and wireless communications networks;

(b) help in financing the costs of planning, designing, purchasing, leasing, installing, or maintaining dark fiber to the extent permitted, subject however to all duties and restrictions that exist within this section; or

(c) to advance the physical and social availability of broadband and other advanced communications services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in high-density urban areas and/or in the area of the state where such services are most competitively priced; and to increase physical and social access to, and the ubiquity of, advanced telecommunications services available to the public in an equitable and nondiscriminatory manner.

2. All moneys of the authority from whatever source derived including such funds as may be appropriated and any gifts, grants, donations from public or private sources, or moneys raised from bonds or notes, shall be deposited in the fund.

3. Interest earned on moneys in the fund shall remain in the fund and be credited to it. Any moneys remaining in the fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the fund and expenditures and disbursements from the fund, which may consist of grants or loans, shall be made by the comptroller upon written request bearing the signature of the chair or the vice-chair of the authority, or, if so authorized by the authority, bearing his or her facsimile signature, and the official seal of the authority.

4. The receipt of monies from the fund shall be conditioned upon the acceptance by public and private telecommunications services provider recipients of the important state policy that the reasonably unfettered access of the citizenry to the maximally diverse internet is in the public interest, with the express understanding that telecommunications providers may choose to block, limit or otherwise restrict the passage of electronic mail message or other content that transmit, portray, describe, represent or otherwise contain matters such as child pornography or similar obscenity, other unlawful material, threats of serious bodily harm, threats to the public safety and homeland security, threats of death to individuals or groups of individuals, viruses or similar

computer generated programs or code that have the potential to harm computer hardware and/or software and/or networks, excessive unsolicited commercial email that degrades or interferes with or harms the normal operation of broadband networks, and other similar types or forms of material or software (the foregoing examples are illustrative, not exhaustive of such threats to users and/or the network). Each recipient of monies from the fund shall provide to the authority on an annual basis a written report describing every instance in which such recipient blocks, limits or otherwise restricts subscribers or other purchasers of broadband services from the recipient from accessing any particular internet site or category or type of internet site or any specific electronic mail message or category or type of electronic mail ("neutrality report"). Such neutrality report shall contain detail of a specificity level to be determined by the authority, and shall contain sufficient detail to allow the authority to ascertain the nature of any blocking, limitation or other restrictions, and the reason for the recipient taking such action, but shall be provided in a manner reasonably calculated to protect subscriber and purchaser privacy or the legitimate needs of law enforcement. No recipient of funds shall be responsible or liable for any efforts by or policies, practices or procedures of an unaffiliated telecommunications services provider or internet services provider or internet protocol traffic routing entity to block subscribers from accessing any internet site or any category or type of internet site or any specific electronic mail message or any category or type of electronic mail.

5. Any pledge made by the authority is valid and binding from the date that the pledge is made. The money or property pledged and received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or further act and the lien of the pledge is valid and binding against all parties having claims in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the lien. The resolution or any other instrument by which a pledge is created need not be recorded.

§ 4114. Appropriations by any government or municipal corporation. Any government or municipal corporation may make appropriations for the acquisition, construction, improvement, maintenance or operation of any project acquired, constructed, improved, maintained or operated by the authority.

§ 4115. Conveyance, lease or transfer of property by a city or county to the authority. Any city or county within New York state in order to provide for the construction, reconstruction, improvement, repair or management of any project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the authority any real, personal or mixed property located within such city or county.

§ 4116. Actions against the authority. 1. In every action against the authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

2. An action against the authority for damages for injuries to real or personal property, or for the destruction thereof, or for personal inju-

ries, alleged to have been sustained shall not be commenced more than one year and ninety days after the cause of action therefor shall have accrued, nor unless a notice of intention to commence such action and of the time when and place where the damages were incurred or sustained, together with a verified statement showing in detail the property alleged to have been damaged or destroyed and the value thereof, or the personal injuries alleged to have been sustained and by whom, shall have been filed in the principal office of the authority within ninety days after such cause of action shall have accrued.

3. An action against the authority for wrongful death shall be commenced in accordance with the notice of claim and time limitation provisions of title eleven of article nine of this chapter.

§ 4117. Audit power and contract approval by the comptroller. 1. The comptroller, or his or her legally authorized representatives, shall have the authority to examine the accounts and finances of the authority and to conduct management audits of the staff and board of the authority.

2. The procurement, public work, construction, and revenue contracts of the authority shall be subject to prior review and approval by the comptroller, if the comptroller, in his or her discretion, determines that such review and approval shall be required. If the comptroller determines that any contract or category of contracts of a state authority requires direct supervision in the form of pre-approval of contracts, and the comptroller so notifies such state authority of such determination, then subject to subdivision three of this section, no such contract or agreement by such state authority selected for review by the comptroller shall be a valid enforceable contract unless such contract shall first be approved by the comptroller. In the event that the comptroller notifies the authority that approval shall be required as provided in this section, then the authority shall include a provision in all such contracts selected for review as stated in any such notice informing the other parties to such contracts that the same are not valid and enforceable without the comptroller's approval.

3. Any contract selected by the comptroller for review and approval pursuant to subdivision two of this section shall be a valid enforceable contract only if the comptroller (a) approves the contract, or (b) has not disapproved the contract within forty-five days of the submission of such contract to his or her office, unless the state authority shall agree with the comptroller on an extension for a reasonable period of time.

§ 4118. Annual report. The authority shall submit an annual report no later than March first of each year, including the recommendations made by the broadband development and deployment council under section forty-one hundred five of this article, relating to its activities for the preceding calendar year to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly, the minority leader of the senate, the chair of the assembly standing committee on corporations, authorities and commissions, and the chair of the senate standing committee on energy and telecommunications.

§ 4119. Effect of inconsistent provisions. Insofar as the provisions of this article are inconsistent with the provisions of any other act, general or special, the provisions of this title shall be controlling.

§ 4120. Severability. If any provision of any section of this article or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which

it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this article or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this article are hereby declared to be severable.

§ 4. The public service law is amended by adding a new section 92-h to read as follows:

§ 92-h. Universal, affordable and secure telecommunications services fund. 1. The commission shall establish a mechanism for the support of universal service, also referred to in this section as the "high cost support mechanism", which shall operate in accordance with rules adopted by the commission. The purpose of the high cost support mechanism is to provide financial assistance to telecommunications services providers to help make basic local exchange and broadband services universally available, at just and reasonable rates and allow such providers to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and the price charged for such service, after taking into account any amounts received by such providers under price support mechanisms established by the federal government and by this state. The commission shall ensure that no telecommunications services provider is receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to customers of such provider. The high cost support mechanism shall be supported and distributed equitably and on a nondiscriminatory, competitively neutral basis through a rate element assessed on all telecommunications service providers in New York. A provider that offers basic local exchange service or broadband service throughout an entire support area through use of its own facilities or on a resale basis may be qualified as a provider of last resort or may be eligible to receive universal service support, as determined by the commission. A provider that fails to pay an assessment due and payable under this section shall be subject to the revocation of certificate after notice and the opportunity for a hearing as provided in this chapter. In all relevant geographic areas of the state, as defined by the commission, the commission shall designate at least one provider as the provider of last resort and adopt procedures for changing or terminating such designations. A provider of last resort designation carries the responsibility to offer basic local exchange service and broadband service to all consumers who request it. A person holding a certificate of public convenience and necessity to provide basic service shall be subject to the evolving definition of basic service developed by the commission under this chapter and the system of financial support for universal service established by the commission under this section. If and when additional elements are included in the definition of basic service as a result of review by the commission, prices may increase as is determined by the commission to be reasonably necessary to cover the cost and account for the inclusion of such additional elements.

2. On or before December first of each year, the commission shall submit a written report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chairperson and ranking minority member of the senate energy and telecommunications committee, and the chairperson and ranking minority member of the assembly corporations, authorities and commissions committee, accounting for the operation of the high cost support mech-

anism during the preceding calendar year and containing the following information, at a minimum:

(a) the total amount of money that the commission determined should constitute the high cost support mechanism from which distributions would be made;

(b) the total amount of money ordered to be contributed through a rate element assessment collected by each telecommunications service provider;

(c) the basis on which the contribution of each telecommunications service provider was calculated;

(d) the benchmarks used and the basis on which the benchmarks were determined;

(e) the total amount of money that the commission determined should be distributed from the high cost support mechanism;

(f) the total amount of money distributed to each telecommunications service provider from the high cost support mechanism;

(g) the basis on which the distribution to telecommunications service providers was calculated;

(h) as to each telecommunications service provider receiving a distribution, the amount received by geographic support area and type of customer, the way in which the benefit of the distribution was applied or accounted for;

(i) the proposed benchmarks, the proposed contributions to be collected through a rate element assessment by each telecommunications service provider, and the proposed total amount of the high cost support mechanism from which distributions are to be made for the following calendar year; and

(j) the total amount of distributions made from the high cost fund, directly or indirectly, and how they are balanced by rate reductions by all providers for the same period and a full accounting of and justification for any difference. If the report submitted pursuant to this subdivision contains a proposal for an increase in any of the amounts listed in paragraph (b) of this subdivision, such increase shall be suspended until March thirty-first of the following year.

Such report must also determine what amount of unexpended funds, if any, at the end of each fiscal year, could be refunded to the contributing telecommunications services providers on a basis that is proportional to the amounts contributed by such telecommunications services providers.

3. There is hereby created, in the state treasury, the New York high cost administration fund, referred to in this section as the "fund", which shall be used to reimburse the commission and, if applicable, its contractors, for reasonable expenses incurred in the administration of the high cost support mechanism as determined by rules of the commission, and shall be audited in a manner and frequency to be determined by the comptroller. The moneys in the fund that are to be used for the direct and indirect administrative costs incurred by the commission and its contractors shall be appropriated annually by the legislature. At the end of any fiscal year, all unexpended and unencumbered moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. Based upon the balance remaining in the fund and the amount appropriated annually by the legislature for use by the commission, each year the commission shall determine the nondiscriminatory, competitively neutral assessment on all telecommunications service providers in New York that will be necessary to cover the cost of implementing the high cost support mechanism. Only the

moneys from such assessment shall be transmitted to the state treasurer, who shall credit the same to the fund. All interest derived from the deposit and investment of this fund shall remain in the fund and shall not revert to the general fund.

§ 5. The public service law is amended by adding a new article 11-A to read as follows:

ARTICLE 11-A

STATEWIDE CABLE FRANCHISING AND REGULATION

Section 231. Definitions.
232. Authorization to provide cable service.
233. Public service commission responsibilities.
234. Application for statewide cable franchise.
235. Length of statewide franchise.
236. Termination of a statewide franchise.
237. Abandonment of service.
238. Municipal power and regulation over franchise holders.
239. Payment and remittance of franchise fee.
240. Public, educational and government channels.
241. Cable operator's community commitment.
242. Consumer protection rules.
243. Neutral internet and broadband networks.
244. Deployment requirements for statewide cable franchise.
245. Discrimination in the provisioning of service prohibited.
246. Enforcement.

§ 231. Definitions. The words and phrases used in this article shall have the following meanings unless a different meaning clearly appears in the context.

1. "Cable service" shall mean the one-way transmission to subscribers of video programming; or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, regardless of the technology utilized by a cable television company to enable such selection or use.

2. "Cable operator" shall mean any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system, as set forth in 47 U.S.C. § 522(5).

3. "Cable system" shall mean any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming, without regard to the technology used to deliver such video programming, including internet protocol technology or any successor technology and which is provided to multiple subscribers within a community, as set forth in 47 U.S.C. § 522(7), but such term does not include:

(a) a facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) a facility that serves subscribers without using any public right-of-way;

(c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming

directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(d) an open video system that complies with 47 U.S.C. § 573; or

(e) any facilities of any electric utility used solely for operating its electric utility system.

4. "CATV company" shall mean any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

5. "CATV system" shall mean any facility which receives and amplifies the signals broadcast by one or more television stations and redistributes such signals by wire, cable or other means, or which distributes signals it originates or which are originated by another for viewing by subscribers, whether the wire, cable or other facilities are owned or leased. A "CATV system" shall not include:

(a) the poles or other facilities of any telephone corporation used to provide channel service as a common carrier,

(b) a system serving not more than two hundred fifty subscribers, or

(c) a master antenna system servicing subscribers situated on property under common ownership.

6. "Commission" shall mean the public service commission or any successor agency.

7. "Franchise" shall mean an initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system in the public rights-of-way.

8. "Franchise holder" or "holder" shall mean a person who has received a state-wide franchise, but has not transferred or terminated such franchise authorization, in accordance with the provisions of this article.

9. "Franchising authority" shall mean the public service commission and municipalities which are entitled to require franchises and impose fees in accordance with 47 U.S.C. §§ 522(10) and 542, respectively.

10. "Gross revenues" shall mean any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly from the operation of the franchisee's cable system (including the studios and other facilities associated therewith) to provide cable services. Gross revenues include, by way of illustration and not limitation, monthly fees charged subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees, payments, or other consideration received from programmers for carriage of programming on the system; revenues from rentals or sales of converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable services; and revenues from home shopping channels and other revenue sharing arrangements. Gross revenues shall include revenues received by any entity other than the franchisee, an affiliate, or another entity that operates the system where necessary to prevent evasion or avoidance of the obligation under this statute to pay the franchise fee. Gross revenues shall not include:

(a) amounts not actually received, even if billed, such as bad debt; refunds, rebates or discounts to subscribers or third parties; or revenue imputed from the provision of cable services for free or at reduced rates to any person as required or allowed by law, including, without limitation, the provision of such services to public institutions, public schools, governmental entities, or employees, other than forgone revenue chosen not to be received in exchange for trades, barters, services, or other items of value; or

(b) any revenue from any charges or fees derived from services classified as non-cable services and information services and any other revenues attributed by the holder of a certificate of approval or systemwide franchise to non-cable services in accordance with federal communications commissions rules, regulations, standards, or orders.

In the case of cable service that may be bundled or integrated functionally with other services, capabilities or applications, the gross revenues shall only include those charges or fees derived from or attributable to the provision of cable service, as reflected on the books and records of the holder of a certificate of approval or a systemwide franchise, as the case may be, in accordance with the rules, regulations, standards and orders of the federal communications commission.

11. "Incumbent cable operator" shall mean the cable operator serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this article.

12. "Municipality" shall mean a city or town within the state.

13. "Person" shall mean an individual, partnership, association, joint stock company, trust, corporation, government entity, limited liability company or any other entity.

14. "Public right-of-way" shall mean the area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

15. "Video programming" shall mean programming provided by, or generally considered comparable to, programming provided by a television broadcast station, as set forth in 47 U.S.C. § 522(20).

§ 232. Authorization to provide cable service. 1. Notwithstanding any other law to the contrary and subject to the provisions of this article, a person seeking to provide cable service in the state after the effective date of this article may file an application for a statewide franchise with the commission as required by this section. This article does not preclude cable operators from filing individual applications under article eleven of this chapter, provided however that a person filing an application for a statewide franchise with the commission shall be required upon receipt of such franchise to comply with sections two hundred forty-two and two hundred forty-three of this article with regard to all in-state broadband and broadband-capable facilities and lines built during the initial build-out period pursuant to the authorization provided by such franchise, and for the period of the initial build-out period with regard to such person's in-state broadband and broadband-capable facilities and lines in existence when such franchise becomes effective.

2. A person, including an incumbent cable operator, providing cable service under a franchise agreement with a franchising authority which existed prior to the effective date of this article is not subject to this section until the franchise agreement expires at the end of its original or any mutually agreeable renewal term, or unless and until the

franchising authority and entity providing cable service mutually agree to terminate the existing franchise agreement.

3. Nothing in this section shall restrict a cable operator from applying to the commission for a statewide franchise to provision cable services in territories of the state for which it does not have an existing franchise agreement with a franchising authority. For purposes of this section, a cable operator will be deemed to have a franchise to provide cable service in the jurisdiction of a specific franchising authority if any affiliate, predecessor or successor entity of the cable operator maintains a franchise granted by that franchising authority. The terms "affiliate, predecessor or successor entity" in this section shall include but not be limited to any entity receiving, obtaining or operating under a franchise from a franchising entity for cable service through the grant of a franchise, merger, sale, assignment, restructuring, or any other type of transaction.

4. The commission shall have the franchising authority to issue statewide franchises for the provisioning of cable service under this article. Neither the commission nor any municipality in the state may require the franchise holder to obtain any separate or additional franchise or otherwise impose any fee or other requirement, including but not limited to the regulation of cable service rates, on any franchise holder as a condition of providing cable service, except as provided in this article.

5. 16 NYCRR § 895.3, as amended from time to time, shall not apply to this article.

§ 233. Public service commission responsibilities. 1. The commission shall assign existing permanent staff of such legal, technical and other employees of the commission as may be required for the proper conduct of its cable franchising responsibilities under this article. The powers and duties of the public service commission with respect to statewide franchises shall not exceed those prescribed in this article.

2. The commission shall be responsible for establishing additional administrative procedures and regulations not explicitly granted in this article for the issuance of statewide franchises in accordance with the provisions of this article. The commission's administrative powers and duties shall be limited to the provision found in section two hundred thirty-four of this article and additional powers including the:

(a) Development of procedures to submit, review and document applications filed with the commission;

(b) Review of the initial submission and any updates of the general description of the service area footprint to be served or expanded, including, if applicable, any area within a municipality to be served by an applicant;

(c) Determination and notice of incomplete applications;

(d) Approval of applications and amended applications, or denial of such applications, within the periods designated under the provisions of this article;

(e) Issuance to applicants whose applications are approved for statewide franchises to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, and to use and occupy the public rights-of-way in the delivery of that service;

(f) Development of procedures to review and document the transfer or termination of a statewide franchise;

(g) Establish guidelines in addition to those developed by municipalities under section two hundred thirty-eight of this article, to deal

with any consumer complaints or complaints alleging violations of any provisions of this article. Such guidelines shall be easily accessible to residents of the state and shall be posted on the internet. The commission shall also provide consumer complaint forms on the internet even if municipalities establish their own complaint forms. In such cases, municipalities and the commission will work cooperatively to address consumer complaints.

§ 234. Application for statewide cable franchise. 1. Any person wishing to provide cable service in the state after the effective date of this article may file an application for a statewide franchise with the commission as required by this section. A statewide franchise application shall be accompanied by an application fee of ten thousand dollars that shall be used by the commission to carry out the purposes of this article. Nothing in this section requires that any person or entity file an application for a statewide franchise.

2. Applications for a statewide franchise shall contain but not be limited to:

(a) A statement that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service in this state;

(b) A statement that the applicant agrees to comply with all other applicable federal, state statutes and regulations and all generally applicable municipal ordinances and regulations, including without limitation municipal ordinances and regulations regarding the time, place and manner of using and occupying public rights-of-way adopted in accordance with state and federal law;

(c) A general description of the service area footprint to be served, including, if applicable, any area within a municipality to be served by the applicant. Such description may be set forth on one or more maps. If the applicant is a telephone corporation or an affiliate of a telephone corporation, the service area will include a description of the territory in which the company provides telephone service. Descriptions of service area footprints shall be updated by the applicant prior to the expansion of cable service to a previously undesignated service area and, upon such expansion, written notice shall be given to the commission of the new service area to be served by the applicant. The state-issued franchise area and any service area within the franchise area may extend beyond the area or areas where the applicant has pre-existing authority to occupy the public rights-of-way;

(d) The location of the applicant's principal place of business, the names of the applicant's principal executive officers, and the name, address and telephone number of an officer, general partner or other employee of the applicant who will be responsible for ongoing communications with the commission;

(e) The name and location of the principal place of business of the applicant's parent company, if any;

(f) The signature of an officer or general partner of the applicant verifying the information set forth in the application;

(g) Demonstrate the financial, technical, managerial and legal character and other qualifications needed to construct, operate, and maintain the necessary plant and to provide service in a safe, adequate and proper manner;

(h) Provide a record of compliance with local, state and federal laws; and

(i) Provide additional information as needed by the commission.

3. Upon filing an application with the commission for a systemwide franchise agreement pursuant to subdivision two of this section, the applicant shall include a list of the specific municipalities to which CATV service will be provided or extended, the anticipated construction and deployment dates, and the anticipated date on which service will be offered and a certified statement that such deployment will meet the requirements of section two hundred forty-four of this article. The applicant will concurrently provide a copy of the application to each affected municipality.

4. Within fifteen business days after it receives the application, the commission shall:

(a) determine whether an application submitted is incomplete; and

(b) if so, the commission shall notify the applicant that the application is incomplete and identify the information that the commission must receive from the applicant to make the application complete.

5. Within sixty business days after it receives the completed application, the commission shall approve the application and issue a statewide franchise to the applicant, or deny the application. Within sixty days of the receipt thereof, the commission shall schedule three public hearings to be held in different geographical areas of the state to gain public comment in consideration of the application. On or before the expiration of the sixty-day period, the commission shall issue an order in writing approving the application if the applicant has complied with the requirements for a statewide franchise, or the commission shall disapprove the application in writing citing the reasons for disapproval if the board determines that the application for a statewide franchise does not comply with the requirements for a statewide franchise. The commission may deny the application if the applicant has failed to state in the application the information and representations required by subdivision two of this section. If the commission denies the application, it must specify with particularity the reason or reasons for the denial, and the applicant may amend its application to cure any deficiency. The commission shall decide such amended application within ten business days of its submission to the commission by the applicant. If the commission denies the application, the commission shall schedule a public meeting with the applicant to explain to the applicant the reasons for the commission's disapproval. Such meeting shall be scheduled no later than thirty days following the expiration of the sixty-day review period as required by this section. The applicant shall have thirty days following the date of the meeting with the commission to file an appeal of the board's decision. The commission shall thereafter schedule an administrative hearing not later than the thirtieth day following the date of the filing of the applicant's appeal in order to consider the applicant's appeal. The commission shall issue a final decision in written form on the applicant's appeal not later than the sixtieth day following the administrative hearing, required by this subdivision, on the applicant's appeal. After an administrative period an applicant may challenge a denial of its application or amended application in any court of competent jurisdiction.

6. A statewide franchise authorization issued by the commission shall contain:

(a) A grant of a franchise to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, except where this grant is not required and to use and occupy the public rights-of-way in the delivery of that service; and

(b) A statement that the franchise grant in subdivision one of this section is subject to lawful operation of the cable service by the applicant or its successor in interest.

7. An applicant having pre-existing authority to utilize the public rights-of-way is required to obtain a statewide franchise prior to the actual provision of cable service on a commercial basis directly to subscribers. However, such an applicant is not required to obtain a statewide franchise or any municipality authorization, except for being subject to municipality right-of-way requirements, in order to construct, upgrade, operate or maintain a network that is capable of providing cable service.

8. A system-wide franchise issued by the board shall be nontransferable, except by written consent of the board.

§ 235. Length of statewide franchise. A statewide franchise issued by the commission shall be valid for ten years from the date of issuance. Renewal of a systemwide franchise shall be valid for a period of fifteen years from the date of the renewal issuance, and the commission shall establish rules governing the renewal of a systemwide franchise.

§ 236. Termination of a statewide franchise. 1. A franchise shall terminate at the expiration of its term or otherwise in accordance with the provisions thereof, unless, prior thereto, the commission otherwise orders. The commission may so order only if it finds, after public notice and opportunity for a hearing, that the franchisee:

(a) has committed a material breach of its franchise or any applicable provision of this article or of the regulations promulgated hereunder and has failed, without reasonable justification, to cure said breach within sixty days after having received written notice thereof from the commission; or

(b) has not met the requirements of sections two hundred forty-three and two hundred forty-four of this article;

(c) has engaged in blocking of lawful content on web sites or services of competitors, or refused to interconnect its facilities with the facilities of another provider of broadband network services on reasonable and nondiscriminatory terms or conditions; or

(d) has been adjudicated a bankrupt or has filed a voluntary petition for bankruptcy or reorganization or for an order protecting its assets from the claims of creditors and the commission finds that termination of the franchise or certificate of confirmation under such conditions is in the best interest of the public.

2. Upon termination of a franchise or certificate of confirmation, the cable operator shall dispose of its facilities in accordance with the provisions of the franchise or certificate. However, on motion of any interested party or upon its own motion, and after public notice and opportunity for hearing, if the commission finds that the continued presence of the facilities in any public thoroughfare would pose a nuisance to the municipality or its residents, the operator shall remove its facilities within such period as the commission shall order. In the absence of any applicable franchise or certificate provision or order by the commission to the contrary, the cable television company may abandon its facilities.

§ 237. Abandonment of service. 1. No cable operator may abandon any service or portion thereof without giving six months' prior written notice to the commission and to the franchisor, if any, and to the municipalities it serves.

2. When abandonment of any service is prohibited by a franchise, no cable operator may abandon such service without written consent of the

commission. In granting such consent, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest.

§ 238. Municipal power and regulation over franchise holders. A municipality may:

1. Exercise its public rights-of-way authority over franchise holders, including requiring franchise holders to follow municipal ordinances as well as all applicable local, state and federal laws;

2. Receive, mediate, and resolve cable service quality complaints from a franchise holder's customers within the municipality;

3. Require a franchise holder who is providing cable service within the municipality to register with the municipality, maintain a point of contact, and provide notice of any franchise authorization transfer to the municipality within fourteen business days after the completion of the transfer;

4. Establish reasonable guidelines regarding the use of public, educational, and governmental access channels within the municipality in addition to those established in section two hundred forty-one of this article.

§ 239. Payment and remittance of franchise fee. 1. The franchise holder who offers cable service within the jurisdiction of a municipality shall calculate and remit to the municipality at the end of each calendar year quarter a franchise fee, as provided in this section. The obligation to calculate and remit the franchise fee to a municipality begins immediately upon provision of cable service within that municipality's jurisdiction, but the first remittance shall not be due until the end of the first calendar year quarter that is later than one hundred eighty days after the provision of cable service began.

2. The franchise fee shall be calculated as a percentage of the holder's gross revenues, as defined in section two hundred thirty-one of this article and shall be five percent. A municipality may, by ordinance, change the percentage applied to the gross revenues of the holder.

3. No fee under this section will become due until the municipality certifies and provides documentation to the franchise holder supporting the percentage paid by any incumbent cable operator serving the area within the municipality's jurisdiction.

4. No municipality or any other political subdivision of this state may assess any additional fees or charges or require other remuneration of any kind from the franchise holder other than as set forth in this section, provided, however, that the provision of in-kind services or support, personnel and funding dedicated to public, educational and government facilities and services shall not be considered additional fees, charges or remuneration.

5. For purposes of this section, in the case of a cable service that may be bundled or integrated functionally with other services, capabilities or applications, the franchise fee shall be applied only to the gross revenues, as defined in this article, attributable to cable service or the use of the cable system and facilities, as reflected on the books and records of the holder in accordance with generally accepted accounting principles and Federal Communications Commission rules, regulations, standards or orders, as applicable.

6. The franchise fee shall be remitted to the applicable municipality quarterly, within forty-five days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee.

Not more than once annually, a municipality may examine the franchise holder's business records to the extent reasonably necessary to ensure compensation in accordance with this section. Each party shall bear the party's own costs of the examination. Any claims by a municipality that compensation is not in accordance with this section, and any claims for refunds or other corrections to the remittance of the franchise holder, must be made within three years and forty-five days of the end of the quarter for which compensation is remitted, or three years from the date of remittance, whichever is later. Either a municipality or the franchise holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

§ 240. Public, educational and government channels. 1. In addition to the requirements set forth in 16 NYCRR Sec. 894.4 (as may be amended from time to time), the franchise holder shall provide the municipality with capacity in its cable system to allow public, educational, and governmental (PEG) access channels for noncommercial programming. For the purposes of this section, PEG channels shall be defined as analog channels of six megahertz bandwidth or the same as any other channel on the basic tier, whichever is greater. In addition to the requirements set forth in this section, the commission may issue additional rules or guidelines regarding PEG access channels. The holder shall provide the same ancillary services to the PEG channels and entities as the incumbent provider.

2. The franchise holder shall designate a sufficient amount of capacity on its cable system to allow the provision of a comparable number of PEG channels or hours of programming that the incumbent cable operator has activated and provided within the municipality under the terms of its franchise agreement as of the effective date of this article. If a municipality did not have PEG access channels as of that date, the cable operator shall furnish to the municipality upon request up to three PEG channels for a municipality with a population of at least fifty thousand and up to two PEG channels for a municipality with a population of less than fifty thousand. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day and if such programming is not broadcast more than once in every eight hours. The holder shall have twelve months from the date the municipality requests such PEG channels to designate the capacity; provided, however, that the twelve-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section. In cities with a population of one million or more persons, if a system has total activated bandwidth in excess of eight hundred sixty-two megahertz then at least two additional PEG channels shall be set aside by the holder, including one for public access.

3. The franchise holder may submit to the commission an application to cease providing any PEG channel provided pursuant to this section that is not utilized by the municipality for at least eight hours per day, and except as provided herein, the channel may thereafter be programmed at the franchise holder's discretion. The commission may hold a hearing in the municipality to aid in making its determination whether to approve the application. The commission shall issue a decision within thirty business days of the franchisee's application. If the municipality subsequently certifies to the commission and holder a schedule

for at least eight hours of daily non-repeat PEG channel programming per channel, the holder shall restore the PEG channel or channels for the use of the municipality for as long as the municipality uses the channel or channels for at least eight hours a day.

4. The content and operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality, receiving the benefit of such channel, and the franchise holder bears only the responsibility for the transmission of such channel, subject to reasonable technological constraints. The franchise holder shall be responsible for providing the connectivity, as well as other equipment necessary, to each PEG access channel programming distribution location and for doing so without charge for up to the first two hundred feet of the holder's connecting facilities.

5. The municipality, or its designees, must ensure that all transmissions, content, or programming to be transmitted over a PEG access channel or facility by a franchise holder are provided or submitted to the cable operator in a manner or form that is capable of being accepted and transmitted by the cable operator, without requirement for additional alteration or change in the content by the cable operator, over the cable system of the cable operator. The municipality's, or its designees' provision of PEG content to the holder shall constitute authorization for the holder to carry such content including, at the holder's option, beyond the jurisdictional boundaries of the municipality.

6. The franchise holder and an incumbent cable operator shall use reasonable efforts to interconnect their cable systems for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Franchise holders and incumbent cable operators shall negotiate in good faith and incumbent cable operators may not withhold interconnection of PEG channels. In the event a franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, then the duty of the holder shall be discharged if the holder makes interconnection available to the channel originator at a point on the holder's network determined by the holder.

7. The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a national television system committee (NTSC) television signal.

8. The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

9. The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

10. After January first, two thousand eighteen, and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity or its designee any cash payments for the ongoing costs of public, educational, and government access channel facilities, the local entity, or its designee for the public access channels, shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity or its designee community access organization for the costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

11. A local entity shall establish a payment for the ongoing support of the cost of PEG facilities and services that would become effective subsequent to the expiration of any fee imposed by this article, provided, however, that no such fee shall be allocated such that any community access organization is receiving anything less than what it is receiving from the cable operator on the effective date of this legislation, and provided, however, that every local entity shall be entitled to a payment of not less than two percent from the holder of a state franchise for the ongoing support of the cost of PEG facilities and services. If, on December thirty-first, two thousand seventeen, a local entity or its designee was imposing a separate fee to support PEG channel facilities that is in excess of two percent, that entity or its designee may establish a fee no greater than that separate fee, and in no event greater than three percent, to support PEG activities. If the PEG support fee imposed by a local entity or its designee is expressed in a manner other than as a percentage of gross revenues, the local entity or its designee community access organization may convert that fee to a currently equivalent percentage of gross revenues at any time. The local entity or its designee may adopt requirements for the provision of PEG-related in-kind resources by all cable and video service providers.

12. Rules and regulations adopted by the community access organization shall govern the use of any channel time on the public channels as well as the equipment, facilities and services related to the public channels.

13. The commission, through an administrative proceeding shall have the original jurisdiction to enforce any requirements under this section to resolve any dispute regarding the requirements set forth in this section. After the administrative process is exhausted, a court of competent jurisdiction shall have jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no cable operator may be barred from the provision of cable service or be required to terminate cable service as a result of such dispute or enforcement action.

§ 241. Cable operator's community commitment. 1. Cable operators shall install and retain or provide, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries and other such buildings used for municipal purposes.

2. Cable operators shall provide internet service, without charge, through one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such building used for municipal purposes.

§ 242. Consumer protection rules. 1. Every cable operator shall provide safe, adequate and reliable service in accordance with applicable laws, regulations, and franchise requirements. Cable operators with a statewide franchise are subject to the requirements under sections two hundred twenty-four and two hundred twenty-four-a of this chapter and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the legislature. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of these standards.

2. In addition, cable operators:

(a) shall clearly and conspicuously disclose to users, in plain language, accurate information concerning any terms, conditions, or limitations on the broadband network service they offer, the speeds of the download and uploading speeds of the provider's internet service;

(b) provide their broadband network services on reasonable and nondiscriminatory terms and conditions such that any person can offer or provide content, applications, or services to or over the network in a manner that is at least equal to the manner in which the provider or its affiliates offer content, applications, and services, free of any surcharge on the basis of the content, application, or service;

(c) interconnect their facilities with the facilities of other providers of broadband network services on reasonable and nondiscriminatory terms or conditions.

§ 243. Neutral internet and broadband networks. 1. Cable operators shall not:

(a) block, impair, discriminate against, or interfere with the ability of any person to use internet based traffic based on the source, destination, or ownership of the internet traffic that carries video service, in a manner that degrades or otherwise negatively impacts the access to, or the quality of services received by an end user;

(b) engage in any exclusive or preferential dealings regarding the carriage and treatment of internet traffic, including, but not limited to, traffic that carries video programming or video service, with an affiliate or third party provider of internet applications, services, content, or video services;

(c) impose an additional charge to avoid any conduct that is prohibited by this section;

(d) prohibit a user from attaching or using a device on the provider's internet or broadband network that does not physically damage or materially degrade other users' utilization of the network.

2. Nothing in this section shall be construed to prevent a broadband or internet network provider from taking reasonable and nondiscriminatory measures:

(a) to manage the functioning of its network to protect the security and to offer parental controls and other consumer protection measures of

such network and broadband or internet network services if such management does not result in discrimination among the content, applications, or services on the network;

(b) to give priority to emergency communications; or

(c) to prevent a violation of a federal or state law, or to comply with an order of a court to enforce such law, or such other action against network threats as may be authorized in section two hundred fifteen of this chapter.

§ 244. Deployment requirements for statewide cable franchise. 1. As part of any franchise issued by the commission in this article, a cable operator shall be required to:

(a) Begin providing cable service on a commercial basis, within three years of issuance of the system-wide franchise, in:

(i) each county seat that is within the CATV company's service area; and

(ii) each municipality within the CATV company's service area that has a population density greater than seventy-one hundred eleven persons per square mile of land area, as determined by the most recent federal decennial census, provided, however, that if such county seats are not located within or contiguous to such municipalities, each such county seat shall be interconnected to the nearest municipality with a population density greater than persons per square mile of land area by the cable operator; and

(b) Make cable television service available throughout the residential areas on a commercial basis, before the beginning of the sixth year after the issuance of the system-wide franchise, in:

(i) each municipality within the state that has a population density greater than five hundred one persons per square mile of land area, as determined by the most recent federal decennial census; and

(ii) throughout the residential areas of any municipalities served by central offices located within a county seat within the franchisee's service area, subject to the cable operator's line extension policy; provided, however, a CATV company may apply to the commission for an exemption from this requirement if the board finds, after conducting a hearing with full notice and opportunity to be heard, that the areas in question are areas in which the CATV company is unable to access the public rights-of-way under reasonable terms and conditions.

2. The requirements of subdivision one of this section shall only apply to cable operators that on the date of the issuance of the system-wide franchise provide more than forty percent of the local exchange telephone service market in this state; and to cable operators that on the date of the issuance of the system-wide franchise provide two hundred fifty thousand or more local exchange telephone lines in this state;

3. Incumbent cable companies that become statewide franchise holders shall not reduce the number or percentage of households served; will build out to all residential households subject to the operator's line extension policy within three years; and will upgrade their facilities to the entire service area within three years of the date the cable operator upgrades any part of its facilities.

4. Within three years of the issuance of the system-wide franchise all other statewide franchise holders shall fully complete a system capable of providing cable service to all households within the cable operator's service area, subject to the cable operator's line extension policy.

§ 245. Discrimination in the provisioning of service prohibited. 1. The franchise holder shall become capable of providing cable service to

all households within the designated service area footprint. A cable operator that has been granted a statewide franchise under this article shall not deny access to cable service to any group of potential residential subscribers because of the income or race of the residents in the local area in which such group resides. A franchisee must submit to the commission a deployment schedule, setting forth the municipalities to be served, the date service shall begin in each proposed municipality, and a date certain by which each community will be able to receive cable service. The commission will ensure that the build-out process is not discriminatory based on an area's class or race. If deployment of cable services under a statewide franchise is scheduled for deployment in a given area, the cable operator must offer service to all residents within the geographic area or the commission may terminate the franchise pursuant to section two hundred thirty-six of this article.

2. Notwithstanding any other provision of law, the franchise holder shall comply with customer service requirements set forth in article eleven of this chapter, at 47 C.F.R. § 76.309(c) and any other customer service standards pertaining to the provision of video service established by federal law or regulation or by subsequent enactment of the legislature. All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of these standards.

3. If the commission determines that a cable operator has denied access of cable service to a group of potential residential subscribers because of the income levels of the residents of the local area in which such group resides or has failed to meet the requirements of the section, the commission is authorized to, after conducting a hearing with full notice and opportunity to be heard, impose monetary penalties of not less than fifty thousand dollars, nor more than one hundred thousand dollars per municipality, not to exceed a total of three million six hundred fifty thousand dollars per year for all violations. A municipality in which the provider offers cable service shall be an appropriate party in any such proceeding.

§ 246. Enforcement. The exclusive remedy for enforcing the provisions of this article, notwithstanding specific sections of this article, shall be an action in a court of competent jurisdiction brought by either the municipality, the attorney general on behalf of the commission or other injured party. At least sixty days before bringing such an action, the municipality or attorney general shall serve the franchise holder with a notice setting out the alleged violation and stating that an action may be brought unless the holder corrects the alleged violation or enters into a binding agreement to correct the violation within the sixty-day notice period. The notice shall contain a sufficiently detailed description of the alleged violation to enable the franchise holder to make a specific response.

§ 6. Section 215 of the public service law is amended by adding a new subdivision 14 to read as follows:

14. Require that cable television franchises contain, upon submission for certificates of confirmation, provisions requiring that the cable television services franchisee deliver to the franchisor and the commission, on an annual basis, a written report describing every instance in which such franchisee blocks, limits or otherwise restricts subscribers or other purchasers of broadband services from the franchisee from accessing any particular internet site or category or type of internet

site or any specific electronic mail message or category or type of electronic mail ("neutrality report"). Such neutrality report shall contain detail of a specificity level to be determined by the commission, and shall contain sufficient detail to allow the commission or the franchisor to ascertain the nature of any blocking, limitation or other restrictions, and the reason for the franchisee for taking such action, but shall be provided in a manner reasonably calculated to protect subscriber privacy or the legitimate needs of law enforcement. Nothing in this subdivision shall be interpreted to restrict the rights of franchisees, if they so choose, to block, limit or otherwise restrict the passage of electronic mail messages or other content that transmit, portray, describe, represent or otherwise contain matters such as child pornography or similar obscenity, other unlawful material, threats of serious bodily harm, threats to the public safety and homeland security, threats of death to individuals or groups of individuals, viruses or similar computer generated programs or code that have the potential to harm computer hardware and/or software and/or networks, excessive unsolicited commercial email that degrades or interferes with or harms the normal operation of broadband networks, and other similar types or forms of material or software (the foregoing examples are illustrative, not exhaustive of such threats to users and/or the network, collectively hereafter "network threats"). Blocking or limitation of subscriber access to the maximally diverse internet, if not predicated upon the franchisee's right to defend its network and subscribers against "network threats", shall presumptively be a breach of the franchise. No franchisee shall be responsible or liable for any efforts by or policies, practices or procedures of an unaffiliated telecommunications services provider or internet services provider or internet protocol traffic routing entity to block subscribers from accessing any internet site or any category or type of internet site or any specific electronic mail message or any category or type of electronic mail.

§ 7. Section 99 of the public service law is amended by adding a new subdivision 4 to read as follows:

4. No building owner may discriminate against a telephone company, broadband services or advanced communications company or their ability to provide services to one or more tenants of a multi-tenant property that is owned or controlled by the building owner, including discriminatory terms and conditions by which the telephone company, broadband services or advanced communications company gain physical access to the property to place its facilities and provide telecommunications services to the property's tenants. The commission shall have jurisdiction to implement the provisions of this subdivision by appropriate rules and regulations and to administratively adjudicate disputes arising under this subdivision. In no event may the lack of agreement over terms and conditions of access delay the ability of a requesting telecommunications company to obtain access for more than thirty days following an initial request therefor.

§ 8. Subdivision 2 of section 99 of the public service law, as amended by chapter 383 of the laws of 1996, is amended to read as follows:

2. (a) No franchise nor any right to or under any franchise to own or operate a telegraph line or telephone line shall be assigned, transferred, or leased, nor shall any contract or agreement hereafter made with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever[~~,~~] unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission.

(b) No telephone corporation shall transfer or lease its works or system or any part of such works or system to any other person or corporation or contract for the operation of its works or system[~~,~~] without the written consent of the commission. [~~Notwithstanding the foregoing, any such transfer or lease between affiliated corporations with an original cost of (a) less than one hundred thousand dollars proposed by a telephone corporation having annual gross revenues in excess of two hundred million dollars, (b) less than twenty-five thousand dollars proposed by a telephone corporation having annual gross revenues of less than two hundred million but more than ten million dollars or (c) less than ten thousand dollars proposed by a telephone corporation having annual gross revenues of less than ten million dollars and any other transfer or lease between non-affiliates regardless of cost shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete such transfer or lease and submits a description of the transfer or lease, unless the commission, or its designee, determines within such ninety days that the public interest requires the commission's review and written consent.~~]

(c) (1) No consent shall be given by the commission to the assignment, transfer, or lease of any right or franchise to operate a telegraph line or telephone line unless it shall have been shown that such assignment, transfer, or lease is in the public interest.

(2) No consent shall be given by the commission to the assignment, transfer, or lease of any right or franchise to operate any part of a telephone corporation's works or system, or to a contract for the operation of such entity's works or system, unless it shall have been shown that such assignment, transfer, or lease or contract is in the public interest.

(d) Before authorizing the merger, acquisition, assignment, lease, or transfer of control of any telephone corporation organized and doing business in this state, where any of the entities that are parties to the proposed transaction has gross annual New York revenues exceeding two hundred million dollars, the commission shall find that the proposal does all of the following:

(1) Provides short-term and long-term economic benefits to ratepayers.

(2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control between shareholders and ratepayers. Ratepayers shall receive not less than forty percent of such benefits.

(3) Maintains or improves the financial condition of the resulting telephone corporations doing business in the state and does not unreasonably allocate a telephone corporation's debt to a divestiture entity created from an existing telephone corporation. For the purpose of this section, a divestiture entity is a business entity created by the assignment, exchange, sale, or other transfer of some or all of an existing telephone corporation's lines, system, or works to a new telephone corporation.

(4) Maintains or improves the quality of service to telephone corporation ratepayers in the state.

(5) Maintains or improves the quality of management of the resulting telephone corporation doing business in the state.

(6) Is fair and reasonable to affected telephone corporation employees, including both union and nonunion employees.

(7) Is fair and reasonable to the majority of all affected telephone corporations.

(8) Is beneficial on an overall basis to state and local economies and to the communities in the area served by the resulting entity and does not allocate substantially unfunded pension or health care obligations or other employee benefits to a resulting telephone corporation.

(9) Preserves the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit telephone corporation operations in the state.

(10) Provides mitigation measures to prevent significant adverse consequences which may result.

(11) Does not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the attorney general regarding whether or not competition will be adversely affected and what mitigatory measures could be adopted to avoid any such adverse effect.

(e) When reviewing a merger, acquisition, or transfer of control proposal, the commission shall consider reasonable alternatives or modifications to the proposal recommended by other parties, including no merger, acquisition, or control, to determine whether or not comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.

(f) The person or corporation seeking acquisition or control of a telephone corporation organized and doing business in this state shall have before the commission the burden of proving by a preponderance of the evidence that the requirements of paragraph (d) of this subdivision are met.

(g) In determining whether or not an acquiring telephone corporation has gross annual revenues exceeding the amount specified in paragraph (d) of this subdivision, the revenues of that telephone corporation's affiliates shall not be considered, unless the affiliate is to be utilized for the purpose of effecting such merger, acquisition, or control.

(h) Subparagraphs one and two of paragraph (d) of this subdivision shall not apply to the formation of a holding company.

(i) Subparagraphs one and two of paragraph (d) of this subdivision shall not apply to acquisitions or changes in control that are mandated by either the commission or the legislature.

§ 9. Section 100 of the public service law, as amended by chapter 226 of the laws of 2009, is amended to read as follows:

§ 100. Transfer and ownership of stock. 1. No telegraph corporation or telephone corporation, domestic or foreign, shall hereafter purchase [~~or~~], acquire, take, or hold any part of the capital stock of any telegraph corporation or telephone corporation organized or existing under the laws of this state unless authorized so to do by the commission.

2. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, company, including, but not limited to, a limited liability company, association, including a joint stock association, partnership, including a limited liability partnership, or person, other than a telegraph corporation or telephone corporation, shall, without the consent of the commission, purchase [~~or~~], acquire, take, or hold more than ten [~~per centum~~] percent of the voting capital stock issued by any telegraph corporation or telephone corporation organized or existing under or by virtue of the laws of this state. Any corporation now lawfully holding a majority of the voting capital stock of any telegraph corporation or telephone corpo-

ration may, without the consent of the commission, acquire and hold the remainder of the voting capital stock of such telegraph corporation or telephone corporation[~~,~~] or any portion thereof.

3. **(a)** No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest[~~; provided, however, that any~~], **which the commission shall determine by finding that the proposal does all of the following, to the extent determined to be applicable:**

(i) Provides short-term and long-term economic benefits to ratepayers.

(ii) Equitably allocates, where applicable and where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed acquisition, purchase, sale, transfer, or retention between shareholders and ratepayers. Ratepayers shall receive not less than forty percent of those benefits.

(iii) Maintains or improves the financial condition of the resulting telephone corporations doing business in the state and does not unreasonably allocate a telephone corporation's debt to a divestiture entity created from an existing telephone corporation. For the purpose of this section, a divestiture entity is a business entity created by the assignment, exchange, sale, or other transfer of some or all of an existing telephone corporation's lines, system, or works to a new telephone corporation.

(iv) Maintains or improves the quality of service to telephone corporation ratepayers in the state.

(v) Maintains or improves the quality of management of the resulting telephone corporation doing business in the state.

(vi) Is fair and reasonable to affected telephone corporation employees, including both union and non-union employees.

(vii) Is fair and reasonable to the majority of all affected telephone corporations.

(viii) Is beneficial, on an overall basis, to state and local economies, and to the communities in the area served by the resulting entity and does not allocate substantially unfunded pension or health care obligations or other employee benefits to a resulting telephone corporation.

(ix) Preserves the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit telephone corporation operations in the state.

(x) Provides mitigation measures to prevent significantly adverse consequences which may result from such acquisition.

(xi) Does not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the attorney general regarding whether or not competition will be adversely affected and what mitigatory measures could be adopted to avoid any such adverse effect.

(b) Any such consent**, however,** shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for its consent, unless the commission, or its designee, determines and informs the applicant in writing within such ninety day period that the public interest requires the commission's review and its written consent. Nothing [~~herein~~] contained **in this section** shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a

proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale the property of any corporation whose stock has been thus surrendered or exchanged[~~:~~], but the proportion of the voting capital stock of the new corporation held by a stock corporation, company, association, partnership or person and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

4. Every contract, assignment, transfer, or agreement for transfer of any stock by or through any person or corporation to any corporation, company, association, partnership or person, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such telegraph corporation or telephone corporation[~~,~~] or shall be recognized as effective for any purpose.

§ 10. The executive law is amended by adding a new section 32-a to read as follows:

§ 32-a. State agency telecommunications resource management. 1. Within ninety days of the effective date of this section, all state agencies, as such are defined in subdivision one of section thirty-two of this article, shall study and report upon the physical location and/or frequency, and amount of all excess capacity, within the telecommunications infrastructure and radio frequency bandwidth owned, licensed or otherwise controlled by such agencies. Telecommunications infrastructure is herein defined for the purposes of this article to include conduits, ducts, poles, wires, fiber optic cable and/or lines, coaxial cable, copper twisted pair telephone lines, receivers, transmitters, broadcast radio frequency bandwidth, lasers and multiplexers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used and/or operated by state agencies.

2. All state agencies shall, within one hundred fifty days of the effective date of this section, identify the excess capacity and bandwidth reported upon which may be leased on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas. Such excess capacity and bandwidth so identified shall be reported upon.

3. All state agencies shall, within one hundred eighty days of the effective date of this section, identify and report upon all telecommunications services purchased, leased or otherwise used by the agencies that may be used in a telecommunications demand aggregation program administered by the state broadband development and deployment council pursuant to section four thousand one hundred five of the public authorities law.

4. (a) All state agencies shall, within ninety days of the effective date of this section, install telecommunications-grade conduit and antenna attachment points in and/or on all infrastructure projects newly constructed or upgraded by such agencies, for lease on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas. State agencies may, however, exempt from this requirement infrastructure where such installations could pose a threat to public safety or otherwise be unreasonable. Such conduit and antenna attachment point installations shall be reported on a semi-annual basis.

(b) The state office of general services shall, within ninety days of the effective date of this section, make wireless internet access available to the public in publicly accessible and highly-trafficked areas of the state capitol and the legislative office building, and such other publicly accessible and highly-trafficked office of general services managed state buildings as is reasonable and prudent.

5. All reports provided for in this section shall be delivered initially, and thereafter on an annual basis, to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chair of the public service commission, commissioner of the department of economic development, commissioner of the empire state development corporation and the chairpersons of the broadband development and deployment council and broadband development authority.

§ 11. The public authorities law is amended by adding a new section 2807 to read as follows:

§ 2807. Annual telecommunications resources reports by authorities. 1. State authorities. (a) For the purpose of furnishing the state with systematic information regarding the existing, newly constructed and planned telecommunications infrastructure resources of public authorities, every state authority continued or created by this chapter or any other chapter of the laws of the state of New York shall:

(i) within ninety days of the effective date of this section, submit to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chair of the public service commission, commissioner of the department of economic development, commissioner of the empire state development corporation and the chairs of the broadband development and deployment council and broadband development authority, a complete and detailed report or reports upon the physical location and/or frequency, and amount of all excess capacity, within the telecommunications infrastructure and radio frequency bandwidth owned, licensed or otherwise controlled by state authorities;

(ii) within one hundred fifty days of the effective date of this section, submit to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chairperson of the public service commission, commissioner of the department of economic development, commissioner of the empire state development corporation and the chairpersons of the broadband development and deployment council and broadband development authority, a complete and detailed report or reports identifying the excess capacity and bandwidth possessed or controlled by state authorities which may be leased on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas;

(iii) within one hundred eighty days of the effective date of this section, identify and report upon all telecommunications services purchased, leased or otherwise used by the authorities that may be used

in a telecommunications demand aggregation program administered by the state broadband development and deployment council.

(b) All state authorities shall, from the effective date of this section, install telecommunications-grade conduit and antenna attachment points in and/or on all infrastructure projects newly constructed or upgraded by such agencies, for lease on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas. State authorities may, however, exempt from this requirement infrastructure where such installations could pose a threat to public safety or otherwise be unreasonable. Such conduit and antenna attachment point installations shall be reported on a semi-annual basis.

(c) All state authority reports provided for in this section shall be delivered initially, and thereafter on an annual basis unless otherwise specified, to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chair of the public service commission, commissioner of the empire state development corporation and the chairpersons of the broadband development and deployment council and broadband development authority.

(d) Telecommunications infrastructure is defined for the purposes of this article to include conduits, ducts, poles, wires, fiber optic cable and/or lines, coaxial cable, copper twisted pair telephone lines, receivers, transmitters, broadcast radio frequency bandwidth, lasers and multiplexers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used and/or operated by state authorities and local authorities.

2. Local authorities. (a) For the purpose of furnishing the state with systematic information regarding the existing, newly constructed and planned telecommunications infrastructure resources of public authorities, every local authority continued or created by this chapter or any other chapter of the laws of the state of New York shall:

(i) within ninety days of the effective date of this section, submit to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chair of the public service commission, commissioner of the empire state development corporation and the chairs of the broadband development and deployment council and broadband development authority, a complete and detailed report or reports upon the physical location and/or frequency, and amount of all excess capacity, within the telecommunications infrastructure and radio frequency bandwidth owned, licensed or otherwise controlled by state authorities;

(ii) within one hundred fifty days of the effective date of this section, submit to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chair of the public service commission, commissioner of the empire state development corporation and the chairs of the broadband development and deploy-

ment council and broadband development authority, a complete and detailed report or reports identifying the excess capacity and bandwidth possessed or controlled by local authorities which may be leased on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas;

(iii) within one hundred eighty days of the effective date of this section, identify and report upon all telecommunications services purchased, leased or otherwise used by the authorities that may be used in a telecommunications demand aggregation program administered by the state broadband development and deployment council.

(b) All local authorities shall, from the effective date of this section, install telecommunications-grade conduit and antenna attachment points in and/or on all infrastructure projects newly constructed or upgraded by such agencies, for lease on a non-discriminatory and commercially reasonable basis to public entities or certified telecommunications carriers that need such capacity to provide broadband services to unserved, underserved and distressed areas. Local authorities may, however, exempt from this requirement infrastructure where such installations could pose a threat to public safety or otherwise be unreasonable. Such conduit and antenna attachment point installations shall be reported on a semi-annual basis.

(c) All local authority reports provided for in this section shall be delivered initially, and thereafter on an annual basis unless otherwise specified, to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee, chairperson of the public service commission, commissioner of the empire state development corporation and the chairpersons of the broadband development council and broadband authority.

3. State and local authorities. To the extent practicable, and consistent with applicable directives or guidelines by the emergency preparedness commission, state emergency management office and state office of homeland security, each state and local authority shall make accessible to the public via its official internet web site documentation pertaining to the telecommunications infrastructure resources owned by, leased by, used by or otherwise controlled by such state and local authorities.

§ 12. The public service law is amended by adding a new section 90-a to read as follows:

§ 90-a. Statement of policy. 1. The state of New York's long-standing policy, codified in this section, is that certain communications tools, and particularly telephone services, i.e. essential services, are so fundamental that it is not in the public interest to leave their provision to the vagaries of the marketplace alone. Furthermore, the legislature declares that it is in the public interest that such essential services be made and maintained universally across New York. Such tools and services have, over time, and increasingly now, shaped citizens' ability to participate in civic affairs, to acquire learning skills needed for their economic success and that of the state, and to enjoy the rich and unparalleled social and cultural life that is a vital part of New York state's economy. The state's goals for universal service are to further and protect the public interest by promoting the

availability of quality services at just, reasonable, and affordable rates; to advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in high-density urban areas; and to increase access to, and the ubiquity of, advanced telecommunications services available to the public in an equitable and nondiscriminatory manner. All telephone corporations and providers and resellers of telecommunications services should contribute to core public safety and public interest goals to the extent allowable by law. At a minimum, these include equivalent universal service support, provision and support for E911, disability access, consumer protections, and equitable taxation. Effective public programs must be made available where competitive forces do not result in the deployment, maintenance, or reconstruction of affordable, high-quality, and reliable advance telecommunications capability across all geographic regions and demographic segments of the state. Telecommunications networks must be inter-operable, based on open standards, reliable, survivable, diversely pathed, as widely interconnected as is reasonable, accessible for all users as provided for by law, including but not limited to the Americans with Disabilities Act, and all applicable federal, state, and local regulations, and must meet basic requirements concerning public safety, consumer protection, and relevant social and moral obligations.

2. For the purposes of this section:

(a) The term "universal service" means that certain basic telephone facilities, services, and instrumentalities, known as "essential services", shall be accessible to any person, corporation, or locality in New York state at costs reasonably comparable to rates charged in urban areas and low-cost areas, so that there shall not be any undue or unreasonable preference or advantage to any person, corporation, or locality.

(b) The term "essential services" means the provision by telephone corporations of voice grade access to and across the public switched telephone network, with the ability to place and receive calls; touch-tone service; single-party service; access to emergency services, including 911 and E911 (which identifies a caller's location); access to operator services; access to inter-exchange services; access to directory assistance; access to "lifeline" services, or other services equivalent in price and quality for qualifying low-income consumers; and access to all of such other services as may be mandated by federal, state, and local law.

3. Within thirty days of the date on which the commission had actual knowledge, or should reasonably have known or been informed, of the occurrence, or appearance of the proximate occurrence, of a purchase, acquisition, taking, or other transfer of control or ownership of the capital stock of a telegraph or telephone corporation organized or existing under the laws of this state within the contemplation of section one hundred of this article or paragraph (b) of this subdivision, the commission shall compile and publish a report on the effect, if any, of such transfer of control upon universal service in the state. Such report shall be known as the "universal service impact analysis", and shall be issued before the commission may vote upon the approval of such occurrence. If, on the effective date of this subdivision, there is a proceeding before the commission within the contemplation of subdivision one of this section, then the commission shall have thirty days from such effective date to issue its universal service impact analysis

report. Such universal service impact analysis report shall include, but not be limited to:

(a) an analysis of the effects upon pricing of telephone services in high-cost and rural and low-income areas affected by such transfer of control;

(b) an analysis of the actual or potential effects of such transfer of control upon network reliability and service quality in the area affected by such transfer of control;

(c) an analysis of the actual or potential effects upon new service provision in rural and high-cost and low-income areas within the area affected by such transfer of control.

For the purposes of triggering such reporting requirement by the commission, there shall be a rebuttable presumption of a transfer of control or ownership upon the acquisition or accumulation by any person or group of persons of ten percent or more of the shares of, or of comparable ownership interest in, a telegraph or telephone corporation. Such transfer of control or acquisition or accumulation of ownership interests shall also be deemed to occur upon the sale, assignment, transfer, divestiture of a portion of a business entity, lease or other disposal, either in whole or part, either by involuntary sale or by voluntary sale, merger, or consolidation, or bankruptcy, of any title to such telegraph or telephone corporation, either legal or equitable, or of the lines or other network elements of such telegraph or telephone corporation within three or more local access and transport areas (LATAs) or counties.

4. Upon the completion of the report under subdivision three of this section the commission shall have power and the duty to establish by rule or regulation, within ninety days of the effective date of this section, such charges, exchanges of funds, fees, methodologies, and modalities as are necessary and convenient to promote and ensure the statewide universal availability of high-quality essential services at just, reasonable, and affordable rates; to advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in low cost and urban areas; and to increase access to, and the ubiquity of, advanced telecommunications services available to the public in an equitable and nondiscriminatory manner. The commission shall have power and the duty to promulgate such rules or regulations as are necessary and convenient to effectuate the state policies set forth in this section.

§ 13. The public service law is amended by adding a new section 90-b to read as follows:

§ 90-b. Reports, hearings and investigations studying matters in the public interest. The legislature finds that universal access to affordable telephone service has been a long-standing tradition and policy of the state. However, this policy has come into question with proposals by incumbent carriers to sell significant portions of the upstate telephone network to companies with little or no background in the provision of telephone service. Universal service, long taken for granted, must now be reevaluated to ensure that any future upstate telephone carriers will maintain this policy. Therefore, the department shall prepare and submit, on or before August first, two thousand nineteen, a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations,

authorities and commissions committee. The report shall evaluate the implications of a sale of a portion of the upstate telephone network for the policy of universal access to affordable service. The report shall further evaluate the standards by which the department will analyze a proposed sale.

§ 14. The public service law is amended by adding a new section 90-c to read as follows:

§ 90-c. Legislative findings. 1. The legislature finds that deploying broadband networks and advanced communications services throughout New York will enable continued improvements in healthcare, public safety, education, economic development and the creation of jobs, and will facilitate the free exchange of ideas that is vital to democracy. The legislature further finds that New York's financial services community, publishing community, higher education community, high-technology community and other world-class business communities have placed New York at the forefront of numerous vital industries, but that to continue to be a world-class leader, New York must adopt policies and practices that promote the roll-out and further development of broadband. Finally, the legislature finds that rural areas of New York lack the multiple telecommunications connections necessary to link to outside resources during times of emergency, that broadband networks are necessary to create or facilitate sustainable telemedicine networks that connect rural health clinics to urban medical centers, and that increased government use of broadband networks and advanced communications services will enhance government operations through telemedicine for healthcare, distance learning for education, redundant and diversely-pathed communications networks for public safety communications and to generally protect the health and welfare of the state and its citizens.

2. The department shall prepare and submit, within ninety days of the effective date of this section, a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee. The report shall study in detail the actual retail availability of wireline, wireless cellular and fixed-wireless broadband communications modalities across the state of New York, and shall organize the data of such availability by census tract.

3. The department, acting together with the empire state development corporation, shall prepare and submit, within ninety days of the effective date of this section, a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee. The report shall list all federal, state, local, foundation, private sector and other funds, grants, loans and other funding mechanisms that can be applied for and used by the broadband development authority, by the state, by municipal corporations, by nonprofit corporations and by private sector businesses to fund broadband deployment in New York.

4. The department, acting together with the office for technology and the office of cyber security and critical infrastructure coordination ("CSCIC") shall prepare and submit, within ninety days of the effective date of this section, a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and

telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee. The report shall determine the location of all areas of the state, by census tract, that do not have generally and readily commercially available retail access to broadband wireline facilities and/or fixed-wireless broadband facilities ("unserved areas"); the report shall also determine all areas of the state, by census tract, that do not have generally and readily commercially available retail access to broadband wireline facilities and/or fixed-wireless broadband facilities from two or more telecommunications or advanced communications services providers ("underserved areas"); the report shall also determine the location of all areas of the state, by census tract, that qualify as "distressed areas" under this chapter, and either do or do not have generally and readily commercially available retail access to broadband wireline facilities and/or fixed-wireless broadband facilities; the report shall, furthermore, assess and set forth with specificity the aggregate unmet demand for broadband services in unserved, underserved and distressed areas by census tract and by block, lot or other uniquely identifiable administrative characteristic, and shall estimate the amount of broadband connectivity that would need to be built or offered in such areas to meet the unmet demand. Such report shall, in addition to being submitted to the government offices and officials set forth above, be used to create a map in standard format to be determined by the New York geographic information systems clearinghouse and CSCIC, and consistent with the legitimate security concerns that may be expressed by CSCIC, such map shall be a fully three-dimensional representation of all broadband resources within the state.

§ 15. The public service law is amended by adding a new section 90-d to read as follows:

§ 90-d. Legislative purpose. 1. The legislature finds that:

(a) the public interest is furthered and protected by ensuring that New York's existing Enhanced 9-1-1 ("E911") system for wireline telephone service and wireless cellular telephone service provide all the automatic number identification ("ANI") and automatic location identification ("ALI") necessary to protect public safety and respond to homeland security concerns, and particularly so in rural areas and on or near New York's coastlines;

(b) existing emergency services systems can isolate emergency response agencies that need inter-connectivity in meeting homeland security and public safety crises;

(c) all 9-1-1 callers in New York, and the first responders who receive and act upon such calls, would be better able to enhance the public safety with flexible E911 networks that could be interconnected with local, regional and national Internet Protocol based networks, and that could be flexibly adapted and scaled to meet the challenges new communications technology place upon E911 networks; and

(d) clear lines of authority and organization in the deployment and administration of public safety answering points should be a goal of state E911 policy.

2. The department shall prepare and submit, within ninety days of the date this section becomes law a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee. The report shall study in detail the technical chal-

lenges facing and potentially degrading the effectiveness of New York's existing E911 networks, and shall study and report upon in detail the next-generation technological solutions, and national standards, and potentially ameliorative systems and procedures proposed by national public safety expert associations such as, but not limited to, the National Emergency Numbering Association ("NENA"), the Association of Public-Safety Communications Officials ("APCO"), and the National Public Safety Telecommunications Council.

3. The department, acting together with the state emergency management office, the state office of fire prevention and control, and the state police, shall prepare and submit, within ninety days of the effective date of this section, a report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee. The report shall examine the current E911 systems funding mechanisms, statewide, regional, county and local administration of E911 facilities, the extent or lack thereof of the commission's existing regulatory authority of E911 issues in New York, and such other public safety issues directly arising from the current E911 implementations in New York as is necessary and convenient to protect the public interest.

4. Within sixty days after the submission of the reports required by subdivisions two and three of this section, the commission shall convene a series of public hearings to discuss New York's existing E911 systems and networks and the findings of such reports in New York to clarify the public policy issues involved that might require legislative attention.

§ 16. The public service law is amended by adding a new section 90-e to read as follows:

§ 90-e. Wireless telephone quality, reliability and affordability study. 1. Within one hundred eighty days of the effective date of this section, the commission shall study and report on the quality, reliability, and affordability, of wireless telephone service, including why subdivision six of section five of this chapter should not be repealed. The commission shall also, as part of such study, determine what rules and regulations shall be necessary:

(a) to enhance consumer protections currently offered to wireless telephone services consumers;

(b) to establish and safeguard wireless telephone service quality so that it is reasonably comparable to the wireline service quality necessary to safeguard citizen access to E911; and

(c) to protect the public interest, public safety and health and welfare.

2. The study shall include a detailed analysis examining whether the wireless telephone service providers' policies include adequate consumer protections including whether:

(a) there is sufficient written disclosure in the company's consumer service contract with respect to the calling area for the plan, the monthly access fee or base charge; the number of airtime minutes included in the plan; any night and weekend minutes included in the plan or other differing charges for differing time periods and the time periods when night and weekend minutes or other charges apply; the charges for excess or additional minutes; whether or not, and the extent to which, per-minute domestic or international long distance charges are included in other rates, and, to the extent not included, the applicable per-minute long distance rates; per-minute roaming or off-network charg-

es; the amount of any additional taxes, fees, or surcharges that will be collected or retained by the wireless telephone service provider; if the plan requires a fixed-term contract, the duration of such contract; the amount of any early termination fee and the conditions under which any such early termination fee would apply, including the length of any trial period during which no early termination fee would apply;

(b) the first bill rendered by the wireless telephone service provider to the customer shall include notice of the terms on and the period of time during which such service may be terminated without penalty; a statement notifying the customer that the service includes basic wireless 911 service; the information which is included in the educational plan for informing the public about the enhanced wireless 911 service in New York state required by subdivision eight of section three hundred twenty-eight of the county law and which is an explanation of the enhanced wireless 911 system and a progress report on the county-by-county implementation of the statewide system; website information to permit the consumer to access such information via the internet in accordance with subdivision eight of section three hundred twenty-eight of the county law; the toll-free hotline number by which such information may be accessed by the consumer in accordance with subdivision eight of section three hundred twenty-eight of the county law; and based upon customer supplied information regarding anticipated usage patterns and upon such customer's request, a good faith estimate of the monthly fixed and usage charges and additional taxes, fees, or surcharges and of the anticipated total monthly bill for such customer under such plan;

(c) wireless telephone service providers have adequately established procedures for disclosure at any point of sale or of contact with potential or existing residential customers of maps displaying the wireless telephone service provider's outside coverage within the state and within each county of the state in which such provider provides service;

(d) wireless telephone service providers clearly describe in plain language the products and services for which charges are imposed, and shall conform to format standards established by the board in the customer's monthly bill;

(e) wireless telephone service providers offer customers a trial period which after the first bill is rendered to such customer for monthly service following service activation and during which period such customer may, after payment for services used, terminate such service without incurring any termination fees or charges or any other penalty of any kind and may, upon the return of any handset bought or leased in connection with such service, receive a pro rata refund of any amounts paid for such handset;

(f) wireless telephone service providers have established procedures for the notification of residential customers at least thirty days in advance of any change in rates, charges, terms, or conditions of service for such customers; and

(g) wireless telephone service providers have established procedures for the timely prior notice to residential customers of the wireless telephone service provider's intent to terminate such customer's service such that, at a minimum, such customer is fully advised of the amount which must be paid to maintain service, the procedures available to make such payments so that the termination may be avoided and the board's complaint handling procedures.

3. The commission shall deliver the report to the governor, temporary president of the senate, speaker of the assembly, minority leaders of the senate and assembly, chair and ranking minority member of the senate

energy and telecommunications committee, and the chair and ranking minority member of the assembly corporations, authorities and commissions committee.

4. The commission shall, at the completion of the study and simultaneously with the delivery of the report, begin a rulemaking proceeding to implement such rules as may be determined during the study to be necessary and convenient to effectuate the requirements of subdivision one of this section.

§ 17. The public service law is amended by adding a new section 90-f to read as follows:

§ 90-f. Legislative findings and declaration. 1. It is hereby found and declared that universal, affordable and high quality telecommunications services that meet the needs of individuals and businesses in the state are necessary and vital to the welfare and development of our society. It is, and has been the goal of the state to ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state and to ensure that providers of telecommunications services in the state provide high quality customer service and high quality technical service. All New York residents should be able to expect to receive a similar level of high quality service regardless of where they live or who provides their service. The commission must make use of its maximum authority to protect the public health, safety and welfare by ensuring that telephone service quality does not erode to the point that E-911 service is endangered by persistent, extended, or chronic loss of dial tone, or by the failure of intermodal carriers to provide E-911 services, or by such other erosion of service quality that would tend to undermine the ability of the various citizens of New York to engage in protected speech over the telephone networks and lines and facilities and equipment under the jurisdiction of the commission.

2. The commission shall commence a study to survey service quality practices and standards of providers of telecommunications services that will lead to legislative and regulatory recommendations. For the purposes of this section, "telecommunications service provider" or "provider of telecommunications services" shall mean a telephone corporation, or other provider of telephone services, certified in the state with the authority to provide intrastate toll and local exchange service using either its own or leased facilities. The commission shall also, as part of such study, determine what rules and regulations shall be necessary:

(a) to enhance consumer protections currently offered to wireline telephone services consumers;

(b) to establish and safeguard wireline telephone service quality so that it is reasonably comparable to the wireline service quality necessary to safeguard citizen access to E911; and

(c) to protect the public interest, public safety and health and welfare.

3. The commission shall specifically study service and reliability issues including, but not limited to, areas of the state that experience chronic telecommunications outages, customer service providers of telecommunication services, installation of telecommunication services issues, network performance, data collection by providers of telecommunications services, the previous effect of performance-based incentive plans upon service quality provided by wireline providers, whether and how the commission's pre-two thousand one service quality and consumer protection rules and regulations can be expanded to be equally applica-

ble to all telecommunications providers that provide E911 and in any marketing materials present their company or product as a replacement for primary line telephone service used by consumers in New York, and issues concerning reporting upon service quality and other consumer protection related issues, provided however that such reporting requirements shall be examined by the commission for methods that might decrease the cost of compliance by such telecommunications providers.

4. The commission shall issue a report of its findings including legislative and regulatory recommendations to enhance reliability of providers of telephone service to the governor, temporary president of the senate, speaker of the assembly, chair of the senate committee on energy and telecommunications and chair of the assembly committee on corporations, authorities and commissions within one hundred eighty days.

5. The commission shall, at the completion of the study and simultaneously with the delivery of the report, begin a rulemaking proceeding to implement such rules as may be determined during the study to be necessary and convenient to effectuate the requirements of subdivision two of this section.

§ 18. Applicability of other laws. The provisions of section seven of this act are intended to be consistent with the Federal Cable Act, 47 U.S.C. §521, et. seq., and nothing in this act shall be interpreted to prevent a voice provider, cable operator or municipality from seeking clarification of its rights and obligations under federal law. In the event that any cable operator obtains relief through judicial, administrative, or executive action from any obligation imposed under this act, or from any obligation in a franchise agreement that gives rise to an obligation of another cable operator under this act, all other cable operators shall be deemed to be relieved of their obligations under this act within the same geographic area and to the same extent.

§ 19. Severability. If any provision of this act or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 20. This act shall take effect immediately.