

# STATE OF NEW YORK

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6390--A

2021-2022 Regular Sessions

## IN ASSEMBLY

March 17, 2021

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Introduced by M. of A. BICHOTTE HERMELYN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the transportation corporations law and the public service law, in relation to authorizing broadband franchises in cities with a population of one million or more

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

1 Section 1. Section 27 of the transportation corporations law, as  
2 amended by chapter 840 of the laws of 1977, is amended to read as  
3 follows:

4 § 27. Construction of lines. 1. Any such corporation may erect,  
5 construct and maintain the necessary fixtures for its lines upon, over  
6 or under any of the public roads, streets and highways; and through,  
7 across or under any of the waters within the limits of this state, and  
8 may erect, construct and maintain its necessary stations, plants, equip-  
9 ment or lines upon, through or over any other land, subject to the right  
10 of the owners thereof to full compensation for the same. If any such  
11 corporation can not agree with such owner or owners upon the compen-  
12 sation to be paid therefor, such compensation shall be ascertained in  
13 the manner provided in the eminent domain procedure law. Any such corpo-  
14 ration is authorized, from time to time, to construct and lay lines of  
15 electrical conductors under ground in any city, village or town within  
16 the limits of this state, subject to all the provisions of law in refer-  
17 ence to such companies not inconsistent with this section; provided that  
18 such corporation shall, before laying any such line in any city, village  
19 or town of this state, first obtain from the common council of cities,  
20 or other body having like jurisdiction therein, the trustees of  
21 villages, or the town superintendents of towns, permission to use the  
22 streets within such city, village or town for the purposes herein set

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

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1 forth. Nothing in this section shall limit, alter, or affect the  
2 provisions or powers relating or granted to telegraph corporations here-  
3 tofore created by special act of the legislature of this state, except  
4 in so far as to confer on any such corporation the right to lay elec-  
5 trical conductors under ground.

6 2. (a) Notwithstanding anything to the contrary in this section,  
7 compensation to cities with a population of one million or more for use  
8 and occupancy of public rights-of-way by lines of any such corporation  
9 (whether of electrical conductors or telecommunications lines which are  
10 not conductors, such as fiber optic lines) heretofore or hereafter  
11 located within such cities shall equal the amount set forth in subdivi-  
12 sion three of section ninety-nine-a of the public service law, except  
13 that with respect to any such city and corporation that enters into a  
14 franchise agreement in accordance with the terms of such city's charter  
15 regarding franchise agreements such compensation shall be as provided in  
16 such franchise agreement during the term of such franchise agreement.

17 (b) To the extent that any entity holds rights preexisting the effec-  
18 tive date of paragraph (a) of this subdivision with respect to the occu-  
19 pancy of public rights-of-way for certain lines of electrical conduc-  
20 tors, and to the extent such preexisting rights would bar the  
21 application of paragraph (a) of this subdivision to such lines, then  
22 paragraph (a) of this subdivision shall not apply to those lines to  
23 which such bar would be applicable.

24 § 2. The public service law is amended by adding a new section 99-a to  
25 read as follows:

26 § 99-a. Franchises in cities with a population of one million or more.

27 1. (a) The owner of communications lines located within the public  
28 rights-of-way in any city with a population of one million or more that  
29 uses such lines for the provision of information services shall pay to  
30 such city the compensation amount, except that with respect to any such  
31 city and owner that have entered into an unexpired franchise agreement  
32 or revocable consent agreement (whichever may be applicable under such  
33 city's charter) for the use of public rights-of-way to provide informa-  
34 tion services in accordance with the terms of such city's charter  
35 regarding such franchise agreements or revocable consent agreements such  
36 compensation shall, for the term of such franchise agreement or revoca-  
37 ble consent agreement, be as provided in such franchise agreement or  
38 revocable consent agreement.

39 (b) Notwithstanding paragraph (a) of this subdivision, to the extent  
40 that with respect to a communications line the owner has paid compen-  
41 sation to the city in accordance with subdivision two of this section  
42 with respect to a particular period, the amount of such payment shall  
43 constitute a credit against the payment due with respect to that period  
44 under this subdivision.

45 2. (a) The owner of communications lines located within the public  
46 rights-of-way in any city with a population of one million or more that  
47 uses such lines for the provision of telecommunications services shall  
48 pay to such city the compensation amount, except that with respect to  
49 any such city and owner that have entered into an unexpired franchise  
50 agreement or revocable consent agreement (whichever may be applicable  
51 under such city's charter) for the use of public rights-of-way to  
52 provide telecommunications services in accordance with the terms of such  
53 city's charter regarding such franchise agreements or revocable consent  
54 agreements such compensation shall be as provided in such franchise  
55 agreement or revocable consent agreement.

(b) Notwithstanding paragraph (a) of this subdivision, to the extent that with respect to a communications line the owner has paid compensation to the city in accordance with subdivision one of this section with respect to a particular period, the amount of such payment shall constitute a credit against the payment due with respect to that period under this subdivision.

3. (a) The compensation amount applicable to each communication line occupying public rights-of-way for each full calendar year of such occupation shall be calculated by multiplying the number of linear feet such line occupies in the public rights-of-way by the per foot fee. The per foot fee with respect to communications lines within any county shall be calculated by dividing the franchise fee paid by the primary cable franchisee in such county to the local franchising authority during calendar year two thousand twelve by the number of linear feet which occupied the public rights-of-way within such county during calendar year two thousand twelve and which were used by such primary cable franchisee for the provision of cable television service. The primary cable franchisee in a county is the entity holding a franchise from the applicable local franchising authority authorizing the provision of cable television service within such county; provided that to the extent that there is more than one such entity in a county then the primary cable franchisee for such county shall be the entity that paid the highest total amount of franchise fees applicable to its cable television service within such county during calendar year two thousand twelve.

(b) Notwithstanding paragraph (a) of this subdivision, with respect to any entity which holds a cable television franchise, the amount of franchise fees paid by such entity with respect to those lines within its applicable franchise area which lines are used for the provision of cable television service shall constitute a credit against the total compensation amount payable with respect to such lines, and further that in no event shall the total compensation amount required to be paid by any entity that holds a cable television franchise agreement exceed the maximum amount, with respect to lines which are used for the provision of cable television service, permitted to be charged under federal law.

4. Cities with a population of one million or more are hereby authorized, to adopt, to the extent not inconsistent with state law, with respect to telecommunications services, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers, as a delegee of the authority described in title 47, section 253(b) of the United States Code or any successor provision thereto. Such requirements may be adopted by local law or rule or pursuant to contracts or agreement, to the extent consistent with the applicable city charter.

5. For the purposes of this section, "communications lines" shall mean cable, wire, fiber or other closed path transmission medium that may be used in lieu of cable, wire or fiber for the same purposes, and related equipment and facilities used for the provision of one or more of the following services: telecommunications services, information services and cable television services (each of which is defined for purposes of this section as it is defined in title 47 of the United States Code).

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section

1 or part thereof directly involved in the controversy in which such judg-  
2 ment shall have been rendered. It is hereby declared to be the intent of  
3 the legislature that this act would have been enacted even if such  
4 invalid provisions had not been included herein.

5 § 4. This act shall take effect on the ninetieth day after it shall  
6 have become a law. Effective immediately, the addition, amendment and/or  
7 repeal of any rule or regulation necessary for the implementation of  
8 this act on its effective date are authorized to be made and completed  
9 on or before such effective date.