

STATE OF NEW YORK

6390--C

2021-2022 Regular Sessions

IN ASSEMBLY

March 17, 2021

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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,

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

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1 or other body having like jurisdiction therein, the trustees of
2 villages, or the town superintendents of towns, permission to use the
3 streets within such city, village or town for the purposes herein set
4 forth. Nothing in this section shall limit, alter, or affect the
5 provisions or powers relating or granted to telegraph corporations here-
6 tofore created by special act of the legislature of this state, except
7 in so far as to confer on any such corporation the right to lay elec-
8 trical conductors under ground.

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

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

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

29 § 99-a. Franchises in cities with a population of one million or more.
30 1. (a) The owner of communications lines located within the public
31 rights-of-way in any city with a population of one million or more that
32 are used for the provision of information services shall pay to such
33 city the compensation amount, except that with respect to any such city
34 and owner that have entered into an unexpired franchise agreement or
35 revocable consent agreement (whichever may be applicable under such
36 city's charter) for the use of public rights-of-way to provide informa-
37 tion services in accordance with the terms of such city's charter
38 regarding such franchise agreements or revocable consent agreements such
39 compensation shall, for the term of such franchise agreement or revoca-
40 ble consent agreement, be as provided in such franchise agreement or
41 revocable consent agreement.

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

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

1 compensation shall be as provided in such franchise agreement or revoca-
2 ble consent agreement.

3 (b) Notwithstanding paragraph (a) of this subdivision, to the extent
4 that with respect to a communications line the owner has paid compen-
5 sation to the city in accordance with subdivision one of this section
6 with respect to a particular period, the amount of such payment shall
7 constitute a credit against the payment due with respect to that period
8 under this subdivision.

9 3. (a) The compensation amount applicable to each communication line
10 occupying public rights-of-way for each full calendar year of such occu-
11 ption shall be calculated by multiplying the number of linear feet such
12 line occupies in the public rights-of-way by the per foot fee. The per
13 foot fee with respect to communications lines within any county shall be
14 calculated by dividing the franchise fee paid by the primary cable fran-
15 chisee in such county to the local franchising authority during calendar
16 year two thousand twelve by the number of linear feet which occupied the
17 public rights-of-way within such county during calendar year two thou-
18 sand twelve and which were used by such primary cable franchisee for the
19 provision of cable television service. The primary cable franchisee in a
20 county is the entity holding a franchise from the applicable local fran-
21 chising authority authorizing the provision of cable television service
22 within such county; provided that to the extent that there is more than
23 one such entity in a county then the primary cable franchisee for such
24 county shall be the entity that paid the highest total amount of fran-
25 chise fees applicable to its cable television service within such county
26 during calendar year two thousand twelve.

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

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

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

54 6. Any fee or compensation for use or occupancy of communications
55 lines within the public rights-of-way under a franchise agreement with a
56 city pursuant to this section, shall not be passed through in whole or

1 in part as a fee, charge, increased service cost, or by any other means
2 to any consumers residing outside of such city.

3 § 3. Severability clause. If any clause, sentence, paragraph, subdivi-
4 sion, section or part of this act shall be adjudged by any court of
5 competent jurisdiction to be invalid, such judgment shall not affect,
6 impair, or invalidate the remainder thereof, but shall be confined in
7 its operation to the clause, sentence, paragraph, subdivision, section
8 or part thereof directly involved in the controversy in which such judg-
9 ment shall have been rendered. It is hereby declared to be the intent of
10 the legislature that this act would have been enacted even if such
11 invalid provisions had not been included herein.

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