

STATE OF NEW YORK

1453--B

Cal. No. 116

2021-2022 Regular Sessions

IN SENATE

January 12, 2021

Introduced by Sens. PARKER, GAUGHRAN, HARCKHAM, HINCHEY, HOYLMAN, KAPLAN, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend chapter 108 of the laws of 2020, amending the public service law relating to issuing a moratorium on utility termination of services during periods of pandemics and/or state of emergencies, in relation to extending the effectiveness thereof; to amend the public service law and the general business law, in relation to issuing a moratorium on utility termination of services; and providing for the repeal of certain provisions upon the expiration thereof

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

1 Section 1. Section 5 of chapter 108 of the laws of 2020, amending the
2 public service law relating to issuing a moratorium on utility termi-
3 nation of services during periods of pandemics and/or state of emergen-
4 cies, as amended by section 2 of part B of chapter 126 of the laws of
5 2020, is amended to read as follows:
6 § 5. This act shall take effect immediately and shall expire [~~March~~
7 ~~31, 2021~~] July 1, 2022 when upon such date the provisions of this act
8 shall be deemed repealed.
9 § 2. Subdivisions 6, 7, 8 and 9 of section 32 of the public service
10 law, subdivision 6 as amended and subdivisions 7, 8 and 9 as added by
11 chapter 108 of the laws of 2020, are amended to read as follows:
12 6. No utility corporation or municipality shall terminate or discon-
13 nect services to any residential customer or a small business customer

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

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1 with twenty-five or fewer employees that is not a (a) publicly held
2 company, or a subsidiary thereof, (b) seasonal, short-term, or temporary
3 customer, (c) high energy customer as defined by the commission, or (d)
4 customer that the utility can demonstrate has the resources to pay the
5 bill, provided that the utility notifies the small business customer of
6 its reasons and of the customer's right to contest this determination
7 through the commission's complaint procedures, for the non-payment of an
8 overdue charge for the duration of the state disaster emergency declared
9 pursuant to executive order two hundred two of two thousand twenty
10 (hereinafter "the COVID-19 state of emergency").

11 Utility corporations and municipalities shall have a duty to restore
12 service, to the extent not already required under this chapter, to any
13 residential or small business customer within forty-eight hours if such
14 service has been terminated during the pendency of the COVID-19 state of
15 emergency.

16 7. For a period of one hundred eighty days after either the COVID-19
17 state of emergency is lifted or expires or December thirty-first, two
18 thousand twenty-one, whichever is earlier, no utility corporation or
19 municipality shall terminate or disconnect the service of a residential
20 or small business customer because of defaulted deferred payment agree-
21 ments or arrears owed to the utility corporation or municipality when
22 such customer has experienced a change in financial circumstances due to
23 the COVID-19 state of emergency, as defined by the department. The util-
24 ity corporation or municipality shall provide such residential or small
25 business customer with the right to enter into, or restructure, a
26 deferred payment agreement without the requirement of a down payment,
27 late fees, or penalties, as such is provided for in this article with
28 such prohibition on down payments, late fees, or penalties applicable to
29 all arrears incurred during the duration of the COVID-19 state of emer-
30 gency.

31 8. Every utility corporation or municipality shall provide notice to
32 residential and small business customers, in a writing to be included
33 with a bill statement or, when appropriate, via electronic transmission
34 the provisions of this section and shall further make reasonable efforts
35 to contact customers who have demonstrated a change in financial circum-
36 stances due to the COVID-19 state of emergency for the purpose of offer-
37 ing such customers a deferred payment agreement consistent with the
38 provisions of this article.

39 9. Implementation of the provisions of this section shall not prohibit
40 a utility or municipality from recovering lost or deferred revenues
41 after either the lifting or expiration of the COVID-19 state of emergen-
42 cy or December thirty-first, two thousand twenty-one, whichever is
43 earlier, pursuant to such means for recovery as are provided for in this
44 chapter, and by means not inconsistent with any of the provisions of
45 this article. Nothing in this section shall prohibit a utility corpo-
46 ration or municipality from disconnecting service necessary to protect
47 the health and safety of customers and the public.

48 § 3. Subdivisions 8, 9, 10 and 11 of section 89-b of the public
49 service law, as added by chapter 108 of the laws of 2020, are amended
50 and a new subdivision 12 is added to read as follows:

51 8. No water-works corporation shall terminate or disconnect the supply
52 of water to residential accounts or the account of a small business
53 customer with twenty-five or fewer employees that is not a (a) publicly
54 held company, or a subsidiary thereof, (b) seasonal, short-term, or
55 temporary customer, (c) high energy customer as defined by the commis-
56 sion, or (d) customer that the utility can demonstrate has the resources

1 to pay the bill, provided that the utility notifies the small business
2 customer of its reasons and of the customer's right to contest this
3 determination through the commission's complaint procedures, for the
4 non-payment of water rents, rates or charges for the duration of the
5 state disaster emergency declared pursuant to executive order two
6 hundred two of two thousand twenty (hereinafter "the COVID-19 state of
7 emergency"). Water-works corporations shall have a duty to restore
8 service, to the extent not already required under this chapter, to any
9 residential or small business customer within forty-eight hours if such
10 service has been terminated during the pendency of the COVID-19 state of
11 emergency.

12 9. For a period of one hundred eighty days after either the COVID-19
13 state of emergency is lifted or expires or December thirty-first, two
14 thousand twenty-one, whichever is earlier, no water-works corporation
15 shall terminate or disconnect the service of a residential or small
16 business customer account because of defaulted deferred payment agree-
17 ments or arrears owed to the water-works corporation when such customer
18 has experienced a change in financial circumstances due to the COVID-19
19 state of emergency as defined by the department. The water-works corpo-
20 ration shall provide such residential or small business customer with
21 the right to enter into, or restructure, a deferred payment agreement
22 without the requirement of a down payment, late fees, or penalties, as
23 such is provided for in article two of this chapter.

24 10. Every water-works corporation shall provide notice to residential
25 and small business customers, in a writing to be included with a bill
26 statement or, when appropriate, via electronic transmission, the
27 provisions of this section and shall further make reasonable efforts to
28 contact customers who have demonstrated a change in financial circum-
29 stances due to the COVID-19 state of emergency for the purpose of offer-
30 ing such customers a deferred payment agreement consistent with the
31 provisions of this section and article two of this chapter.

32 11. Implementation of the provisions of this section shall not prohib-
33 it a water-works corporation from recovering lost or deferred revenues
34 after either the lifting or expiration of the COVID-19 state of emergen-
35 cy or December thirty-first, two thousand twenty-one, whichever is
36 earlier, pursuant to such means for recovery as are provided for in this
37 chapter, and by means not inconsistent with any of the provisions of
38 this article. Nothing in this section shall prohibit a water-works
39 corporation from disconnecting service when it is necessary to protect
40 the health and safety of customers and the public.

41 12. The public service commission shall have the authority to adjudi-
42 cate complaints and conduct investigations for violation of this section
43 in the manner provided by the provisions of this article and shall have
44 the authority to enforce the provisions of this section in accordance
45 with section twenty-six of this chapter.

46 § 4. Subdivisions 3, 4 and 5 of section 89-1 of the public service
47 law, as added by chapter 108 of the laws of 2020, are amended and two
48 new subdivisions 4-a and 5-a are added to read as follows:

49 3. No municipality shall terminate or discontinue [~~residential~~]
50 service to, or place, sell or enforce any lien on the real property of,
51 a residential customer, a non-residential customer whose account serves
52 residential premises, or a small business with twenty-five or fewer
53 employees that is not a (a) publicly held company, or a subsidiary ther-
54 eof, (b) seasonal, short-term, or temporary customer, (c) high usage
55 customer as defined by the commission, or (d) customer that the utility
56 can demonstrate has the resources to pay the bill, provided that the

1 utility notifies the small business customer of its reasons and of the
2 customer's right to contest this determination through the commission's
3 complaint procedures, for the nonpayment of bills, taxes, or fees, and
4 no bills, taxes, or fees charged to such customers shall otherwise
5 become a lien on real property, for the duration of the state disaster
6 emergency declared pursuant to executive order two hundred two of two
7 thousand twenty (hereinafter the "COVID-19 state of emergency") or at
8 any time when a customer is in compliance with the terms of a deferred
9 payment agreement entered into pursuant to subdivision four of this
10 section. Every municipality shall have a duty to restore service to any
11 residential customer, non-residential customer whose account serves
12 residential premises, or small business customer within forty-eight
13 hours of the effective date of this subdivision if such service has been
14 terminated during the pendency of the COVID-19 state of emergency.

15 4. For a period of one hundred eighty days after either the COVID-19
16 state of emergency is lifted or expires or December thirty-first, two
17 thousand twenty-one, whichever is earlier, no municipality shall termi-
18 nate or discontinue the service of, or place, sell or enforce any lien
19 on the real property of, a residential customer, a non-residential
20 customer whose account serves residential premises or small business
21 customer because of bill arrears, taxes, or fees owed to the munici-
22 pality when such customer has experienced a change in financial circum-
23 stances due to the COVID-19 state of emergency, as defined by the
24 department. The municipality shall provide a residential customer, a
25 non-residential customer whose account serves residential premises, or
26 small business service customer that has experienced a change in finan-
27 cial circumstances due to the COVID-19 state of emergency with the right
28 to enter into, or restructure, a deferred payment agreement without the
29 requirement of a down payment, late fees, or penalties, as such is
30 provided for in article two of this chapter. The duration of a deferred
31 payment agreement entered into or restructured pursuant to this subdivi-
32 sion shall be determined as such is provided for in article two of this
33 chapter and shall not be limited to the period described in the first
34 sentence of this subdivision. A deferred payment agreement entered into
35 or restructured pursuant to this subdivision shall remain subject to the
36 provisions of article two of this chapter until the termination of the
37 agreement as such is provided in article two of this chapter.

38 4-a. No municipality shall terminate or discontinue service to, or
39 place, sell or enforce any lien on the real property of any residential
40 customer, non-residential customer which serves residential premises, or
41 a small business customer for the nonpayment of bill arrears, taxes, or
42 fees after either the COVID-19 state of emergency is lifted or expires
43 or December thirty-first, two thousand twenty-one, whichever is earlier,
44 unless at least thirty days previously it sent to that customer a notice
45 of its intention to do so together with a notice of rights under this
46 section in the form set forth in subdivision five of this section

47 5. Every municipality shall provide notice, in the same frequency that
48 the customer receives a regular bill, to residential customers, non-re-
49 sidential customers whose accounts serve residential premises, and small
50 business customers in a writing to be included with a bill statement or,
51 when appropriate, via electronic transmission the provisions of this
52 section and shall further make reasonable efforts to contact customers
53 who have demonstrated a change in financial circumstances due to the
54 COVID-19 state of emergency for the purpose of offering such customers a
55 deferred payment agreement consistent with the provisions of this
56 section and article two of this chapter.

5-a. Notwithstanding the provisions of subdivision one of this section, for the purposes of subdivisions three, four, five and six of this section, a "municipality" shall also include a public water authority established pursuant to article five of the public authorities law. Every municipality shall be subject to the jurisdiction of the commission for the purposes of enforcing the provisions of subdivisions three, four, four-a, five, five-a and six of this section pursuant to sections twenty-four, twenty-five and twenty-six of this chapter.

§ 5. Subdivisions 9, 10, 11 and 12 of section 91 of the public service law, subdivisions 9, 10 and 12 as amended by section 1 of part B of chapter 126 of the laws of 2020, subdivision 11 as added by chapter 108 of the laws of 2020, are amended to read as follows:

9. No telephone corporation shall terminate or disconnect any services provided by its infrastructure to a residential service customer or a small business customer with twenty-five or fewer employees that is not a (a) publicly held company, or a subsidiary thereof, (b) seasonal, short-term, or temporary customer, (c) high usage customer as defined by the commission, or (d) customer that the utility can demonstrate has the resources to pay the bill, provided that the utility notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures, for the non-payment of an overdue charge for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency"). Telephone corporations shall have a duty to restore service, to the extent not already required under this chapter, at the request of any residential or small business customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency and disconnection of such service was due to non-payment of an overdue charge.

10. For a period of one hundred eighty days after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twenty-one, whichever is earlier, no telephone corporation shall terminate or disconnect [~~the service~~] any services provided by its infrastructure of a residential or small business customer account because of defaulted deferred payment agreements or arrears then owed to the telephone corporation when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department. The telephone corporation shall provide such residential or small business customer with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, with such prohibition on down payments, late fees, or penalties applicable to all arrears incurred during the pendency of the COVID-19 state of emergency.

11. Every telephone corporation shall provide notice to residential customers and small business customers, in a writing to be included with a bill statement or, when appropriate, via electronic transmission the provisions of this section and shall further make reasonable efforts to contact customers who have demonstrated a change in financial circumstances due to the COVID-19 state of emergency for the purpose of offering such customers a deferred payment agreement consistent with the provisions of this section and article two of this chapter.

12. Implementation of the provisions of this section shall not prohibit a telephone corporation from recovering lost or deferred revenues after either the lifting or expiration of the COVID-19 state of emergency or December thirty-first, two thousand twenty-one, whichever is

1 earlier, pursuant to such means for recovery as are provided for in this
2 chapter, and by means not inconsistent with any of the provisions of
3 this article. Nothing in this section shall prohibit a telephone corpo-
4 ration from disconnecting service at the request of a customer. Nothing
5 in this section shall prohibit a telephone corporation from disconnect-
6 ing service when it is necessary to protect the health and safety of
7 customers and the public.

8 § 6. Section 216 of the public service law is amended by adding five
9 new subdivisions 6, 7, 8, 9 and 10 to read as follows:

10 6. No cable television company shall terminate or disconnect services
11 provided over their infrastructure to a residential service customer or
12 a small business customer with twenty-five or fewer employees that is
13 not a (a) publicly held company, or a subsidiary thereof, (b) seasonal,
14 short-term, or temporary customer, or (c) customer that the cable tele-
15 vision company can demonstrate has the resources to pay the bill,
16 provided that the cable television company notifies the small business
17 customer of its reasons and of the customer's right to contest this
18 determination through the commission's complaint procedures, for the
19 non-payment of an overdue charge for the duration of a state disaster
20 emergency declared pursuant to executive order two hundred two of two
21 thousand twenty (hereinafter "the COVID-19 state of emergency"). Cable
22 television companies shall have a duty to restore service, to the extent
23 not already required under this chapter, at the request of any residen-
24 tial or small business customer within forty-eight hours if such service
25 has been terminated during the pendency of the COVID-19 state of emer-
26 gency and disconnection of such service was due to non-payment of an
27 overdue charge, provided, however, that cable television companies shall
28 not be required to restore service to any residential or small business
29 customer if such service had been terminated prior to the effective date
30 of this subdivision.

31 7. For a period of one hundred eighty days after either the COVID-19
32 state of emergency is lifted or expires or December thirty-first, two
33 thousand twenty-one, whichever is earlier, no cable television company
34 shall terminate or disconnect services provided over their infrastruc-
35 ture to a residential or small business customer account because of
36 defaulted deferred payment agreements or arrears then owed to the cable
37 television company when such customer has experienced a change in finan-
38 cial circumstances, as defined by the department, due to the COVID-19
39 state of emergency. The cable television company shall provide such
40 residential or small business customer with the right to enter into, or
41 restructure, a deferred payment agreement without the requirement of a
42 down payment, late fees, or penalties, with such prohibition on down
43 payments, late fees, or penalties applicable to all arrears incurred
44 during the pendency of the COVID-19 state of emergency.

45 8. Every cable television company shall provide notice to residential
46 or small business customers in a writing to be included with a bill
47 statement or, when appropriate, via electronic transmission of the
48 provisions of this section and shall further make reasonable efforts to
49 contact customers who have demonstrated a change in financial circum-
50 stances due to the COVID-19 state of emergency for the purpose of offer-
51 ing such customers a deferred payment agreement consistent with the
52 provisions of this section and article two of this chapter.

53 9. Implementation of the provisions of this section shall not prohibit
54 a cable television company from recovering lost or deferred revenues
55 after either the lifting or expiration of the COVID-19 state of emergen-
56 cy or December thirty-first, two thousand twenty-one, whichever is

earlier, pursuant to such means for recovery as are provided for in this chapter, and by means not inconsistent with any of the provisions of this article. Nothing in this section shall prohibit a cable television company from disconnecting service at the request of a customer. Nothing in this section shall prohibit a cable television company from disconnecting service when it is necessary to protect the health and safety of customers and the public.

10. Every cable television company shall be subject to the jurisdiction of the commission for the purposes of enforcing the provisions of subdivisions six, seven, eight and nine of this section pursuant to sections twenty-four, twenty-five and twenty-six of this chapter, and any other applicable provision of this chapter.

§ 7. The general business law is amended by adding a new section 399-zzzzz to read as follows:

§ 399-zzzzz. Prohibition of certain broadband terminations or disconnections. 1. For the purposes of this section, the term "broadband service" shall mean a mass-market retail service that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, and shall include service provided by commercial mobile telephone service providers, but shall not include dial-up service.

2. No person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall terminate or disconnect services provided over their infrastructure to a residential service customer or a small business customer with twenty-five or fewer employees that is not a (i) publicly held company, or a subsidiary thereof, (ii) seasonal, short-term, or temporary customer, or (iii) customer that the broadband service provider can demonstrate has the resources to pay the bill, provided that the broadband service provider notifies the small business customer of its reasons and of the customer's right to contest this determination through the commission's complaint procedures, for the non-payment of an overdue charge for the duration of the state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency"). Such persons or entities shall have a duty to restore service, to the extent not already required, at the request of any residential or small business customer within forty-eight hours if such service has been terminated during the pendency of the COVID-19 state of emergency and disconnection of such service was due to non-payment of an overdue charge, provided, however, that such persons or entities shall not be required to restore service to any residential or small business customer if such service had been terminated prior to the effective date of this section.

3. For a period of one hundred eighty days after either the COVID-19 state of emergency is lifted or expires or December thirty-first, two thousand twenty-one, whichever is earlier, no person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall terminate or disconnect services provided over their infrastructure to a residential or small business customer account because of defaulted deferred payment agreements or arrears then owed to such persons or entities when such customer has experienced a change in financial circumstances, as defined by the department of public service due to the COVID-19 state of emergency. The person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall provide such residen-

1 tial or small business customer with the right to enter into, or
2 restructure, a deferred payment agreement consistent with the provisions
3 of article two of the public service law without the requirement of a
4 down payment, late fees, or penalties, with such prohibition on down
5 payments, late fees, or penalties applicable to all arrears incurred
6 during the pendency of the COVID-19 state of emergency.

7 4. Every person, business, corporation, or their agents providing or
8 seeking to provide broadband service in New York state shall provide
9 notice to residential or small business customers in a writing to be
10 included with a bill statement or, when appropriate, via electronic
11 transmission of the provisions of this section and shall further make
12 reasonable efforts to contact customers who have demonstrated a change
13 in financial circumstances due to the COVID-19 state of emergency for
14 the purpose of offering such customers a deferred payment agreement
15 consistent with the provisions of article two of the public service law.

16 5. Implementation of the provisions of this section shall not prohibit
17 a person, business, corporation, or their agents providing or seeking to
18 provide broadband service in New York state from recovering lost or
19 deferred revenues after either the lifting or expiration of the COVID-19
20 state of emergency or December thirty-first, two thousand twenty-one,
21 whichever is earlier, pursuant to such means for recovery by means not
22 inconsistent with any of the provisions of this section. Nothing in this
23 section shall prohibit a person, business, corporation, or their agents
24 providing or seeking to provide broadband service in New York state from
25 disconnecting service at the request of a customer. Nothing in this
26 section shall prohibit a person, business, corporation, or their agents
27 providing or seeking to provide broadband service in New York state from
28 disconnecting service when it is necessary to protect the health and
29 safety of customers and the public.

30 6. Whenever there shall be a violation of this section, an application
31 may be made by the attorney general in the name of the people of the
32 state of New York to a court or justice having jurisdiction by a special
33 proceeding to issue an injunction, and upon notice to the defendant of
34 not less than five days, to enjoin and restrain the continuance of such
35 violation; and if it shall appear to the satisfaction of the court or
36 justice that the defendant has, in fact, violated this section, an
37 injunction may be issued by the court or justice, enjoining and
38 restraining any further violations, without requiring proof that any
39 person has, in fact, been injured or damaged thereby. In any such
40 proceeding, the court may make allowances to the attorney general as
41 provided in paragraph six of subdivision (a) of section eighty-three
42 hundred three of the civil practice law and rules, and direct restitu-
43 tion. Whenever the court shall determine that a violation of this
44 section has occurred, the court may impose a civil penalty of not more
45 than one thousand dollars per violation. In connection with any such
46 proposed application, the attorney general is authorized to take proof
47 and make a determination of the relevant facts and to issue subpoenas in
48 accordance with the civil practice law and rules.

49 § 8. Severability clause. If any clause, sentence, paragraph, subdivi-
50 sion, section or subpart of this act shall be adjudged by any court of
51 competent jurisdiction to be invalid, such judgment shall not affect,
52 impair, or invalidate the remainder thereof, but shall be confined in
53 its operation to the clause, sentence, paragraph, subdivision, section
54 or subpart thereof directly involved in the controversy in which such
55 judgment shall have been rendered. It is hereby declared to be the

1 intent of the legislature that this act would have been enacted even if
2 such invalid provisions had not been included herein.

3 § 9. This act shall take effect immediately; provided, however, that
4 sections six and seven of this act shall expire and be deemed repealed
5 on the same date and in the same manner as chapter 108 of the laws of
6 2020; and provided that:

7 (a) the amendments to subdivisions 7, 8, and 9 of section 32 of the
8 public service law made by section two of this act shall not affect the
9 repeal of such subdivisions and shall be deemed repealed therewith;

10 (b) the amendments to subdivision 6 of section 32 of the public
11 service law made by section two of this act shall not affect the expira-
12 tion of such subdivision and shall be deemed to expire therewith;

13 (c) the amendments to subdivisions 8, 9, 10 and 11 of section 89-b of
14 the public service law made by section three of this act shall not
15 affect the repeal of such subdivisions and shall be deemed repealed
16 therewith;

17 (d) subdivision 12 of section 89-b of the public service law as added
18 by section three of this act shall be repealed on the same date and in
19 the same manner as chapter 108 of the laws of 2020, as amended;

20 (e) the amendments to subdivisions 3, 4 and 5 of section 89-1 of the
21 public service law made by section four of this act shall not affect the
22 repeal of such subdivisions and shall be deemed repealed therewith;

23 (f) subdivisions 4-a and 5-a of section 89-1 of the public service law
24 as added by section four of this act shall be repealed on the same date
25 and in the same manner as chapter 108 of the laws of 2020, as amended;
26 and

27 (g) the amendments to subdivisions 9, 10, 11 and 12 of section 91 of
28 the public service law made by section five of this act shall not affect
29 the repeal of such subdivisions and shall be deemed repealed therewith.