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:

Section 1. Section 5 of 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, as amended by section 2 of part B of chapter 126 of the laws of 2020, is amended to read as follows:

§ 5. This act shall take effect immediately and shall expire [~~March 31, 2021~~] **July 1, 2022** when upon such date the provisions of this act shall be deemed repealed.

§ 2. Subdivisions 6, 7, 8 and 9 of section 32 of the public service law, subdivision 6 as amended and subdivisions 7, 8 and 9 as added by chapter 108 of the laws of 2020, are amended to read as follows:

6. No utility corporation or municipality shall terminate or disconnect 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.

LBD05968-07-1

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 energy 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").

Utility corporations and municipalities shall have a duty to restore service, to the extent not already required under this chapter, to 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.

7. 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 utility corporation or municipality shall terminate or disconnect the service of a residential or small business customer because of defaulted deferred payment agreements or arrears owed to the utility corporation or municipality when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department. The utility corporation or municipality 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, as such is provided for in this article with such prohibition on down payments, late fees, or penalties applicable to all arrears incurred during the duration of the COVID-19 state of emergency.

8. Every utility corporation or municipality shall provide notice to residential 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 article.

9. Implementation of the provisions of this section shall not prohibit a utility or municipality 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 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 utility corporation or municipality from disconnecting service necessary to protect the health and safety of customers and the public.

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

8. No water-works corporation shall terminate or disconnect the supply of water to residential accounts or the account of 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 energy 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 water rents, rates or charges 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"). Water-works corporations shall have a duty to restore service, to the extent not already required under this chapter, to 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.

9. 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 water-works corporation shall terminate or disconnect the service of a residential **or small business** customer account because of defaulted deferred payment agreements or arrears owed to the water-works 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 water-works 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, as such is provided for in article two of this chapter.

10. Every water-works corporation shall provide notice to residential **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**.

11. Implementation of the provisions of this section shall not prohibit a water-works 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 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 water-works corporation from disconnecting service when it is necessary to protect the health and safety of customers and the public.

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

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

3. No municipality shall terminate or discontinue [~~residential~~] service **to, or place, sell or enforce any lien on the real property of, a residential customer, a non-residential customer whose account serves residential premises, or a small business 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 nonpayment of bills, taxes, or fees, and no bills, taxes, or fees charged to such customers shall otherwise become a lien on real property, 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") or at any time when a customer is in compliance with the terms of a deferred payment agreement entered into pursuant to subdivision four of this section. Every municipality shall have a duty to restore service to any residential customer, non-residential customer whose account serves residential premises, or small business customer within forty-eight hours of the effective date of this subdivision if such service has been terminated during the pendency of the COVID-19 state of emergency.

4. 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 municipality shall terminate or discontinue the service of, or place, sell or enforce any lien on the real property of, a residential customer, a non-residential customer whose account serves residential premises or small business customer because of bill arrears, taxes, or fees owed to the municipality when such customer has experienced a change in financial circumstances due to the COVID-19 state of emergency, as defined by the department. The municipality shall provide a residential customer, a non-residential customer whose account serves residential premises, or small business service customer that has experienced a change in financial circumstances due to the COVID-19 state of emergency with the right to enter into, or restructure, a deferred payment agreement without the requirement of a down payment, late fees, or penalties, as such is provided for in article two of this chapter. The duration of a deferred payment agreement entered into or restructured pursuant to this subdivision shall be determined as such is provided for in article two of this chapter and shall not be limited to the period described in the first sentence of this subdivision. A deferred payment agreement entered into or restructured pursuant to this subdivision shall remain subject to the provisions of article two of this chapter until the termination of the agreement as such is provided in article two of this chapter.

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

5. Every municipality shall provide notice, in the same frequency that the customer receives a regular bill, to residential customers, non-residential customers whose accounts serve residential premises, 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.

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

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 telephone corporation from disconnecting service at the request of a customer. Nothing in this section shall prohibit a telephone corporation from disconnecting service when it is necessary to protect the health and safety of customers and the public.

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

6. No cable television company 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 (a) publicly held company, or a subsidiary thereof, (b) seasonal, short-term, or temporary customer, or (c) customer that the cable television company can demonstrate has the resources to pay the bill, provided that the cable television company 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 a state disaster emergency declared pursuant to executive order two hundred two of two thousand twenty (hereinafter "the COVID-19 state of emergency"). Cable television companies 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, provided, however, that cable television companies 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 subdivision.

7. 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 cable television company 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 the cable television company when such customer has experienced a change in financial circumstances, as defined by the department, due to the COVID-19 state of emergency. The cable television company 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.

8. Every cable television company shall provide notice to residential or small business customers in a writing to be included with a bill statement or, when appropriate, via electronic transmission of 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.

9. Implementation of the provisions of this section shall not prohibit a cable television company 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

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-

tial or small business customer with the right to enter into, or restructure, a deferred payment agreement consistent with the provisions of article two of the public service law 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.

4. Every person, business, corporation, or their agents providing or seeking to provide broadband service in New York state shall provide notice to residential or small business customers in a writing to be included with a bill statement or, when appropriate, via electronic transmission of 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 article two of the public service law.

5. Implementation of the provisions of this section shall not prohibit a person, business, corporation, or their agents providing or seeking to provide broadband service in New York state 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 earlier, pursuant to such means for recovery by means not inconsistent with any of the provisions of this section. Nothing in this section shall prohibit a person, business, corporation, or their agents providing or seeking to provide broadband service in New York state from disconnecting service at the request of a customer. Nothing in this section shall prohibit a person, business, corporation, or their agents providing or seeking to provide broadband service in New York state from disconnecting service when it is necessary to protect the health and safety of customers and the public.

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

§ 8. Severability clause. If any clause, sentence, paragraph, subdivision, section or subpart 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 or subpart thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the

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

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

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

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

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

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

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

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

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