

# 48:5A-38

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2008                    **CHAPTER:** 87

**NJSA:** 48:5A-38            (Exempts certain transactions of parent or affiliate companies of telecommunications and cable television companies from BPU review and approval)

**BILL NO:** A2906            (Substituted for S1886)

**SPONSOR(S):** Chivukula

**DATE INTRODUCED:** June 5, 2008

**COMMITTEE:**            **ASSEMBLY:** Telecommunication and Utilities

**SENATE:**

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**            **ASSEMBLY:** June 23, 2008

**SENATE:** June 23, 2008

**DATE OF APPROVAL:** September 15, 2008

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Assembly Substitute enacted)

### A2906

**[SPONSOR'S STATEMENT:](#)** (Begins on page 4 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    **[ASSEMBLY:](#)** [Yes](#)

**[SENATE:](#)** No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

### S1886

**[SPONSOR'S STATEMENT:](#)** (Begins on page 4 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    **[ASSEMBLY:](#)** No

**[SENATE:](#)** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL NOTE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

LAW/IS 1/6/09

P.L. 2008, CHAPTER 87, *approved September 15, 2008*

Assembly Substitute for

Assembly, No. 2906

1 AN ACT concerning the review and approval of certain transactions  
2 of parent or affiliate corporations of telecommunications and  
3 cable television companies and amending various parts of the  
4 statutory law.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8

9 1. Section 1 of P.L.1984, c.2 (C.48:2-51.1) is amended to read  
10 as follows:

11 1. **[No]** a. Except as otherwise provided by subsection b. of  
12 this section, no person shall acquire or seek to acquire control of a  
13 public utility directly or indirectly through the medium of an  
14 affiliated or parent corporation or organization, or through the  
15 purchase of shares, the election of a board of directors, the  
16 acquisition of proxies to vote for the election of directors, or  
17 through any other manner, without requesting and receiving the  
18 written approval of the Board of Public Utilities. Any agreement  
19 reached, or any other action taken, in violation of this act shall be  
20 void. In considering a request for approval of an acquisition of  
21 control, the board shall evaluate the impact of the acquisition on  
22 competition, on the rates of ratepayers affected by the acquisition of  
23 control, on the employees of the affected public utility or utilities,  
24 and on the provision of safe and adequate utility service at just and  
25 reasonable rates. The board shall accompany its decision on a  
26 request for approval of an acquisition of control with a written  
27 report detailing the basis for its decision, including findings of fact  
28 and conclusions of law.

29 b. Nothing herein shall require the review or approval by the  
30 board of any parent or affiliate corporation of a telecommunications  
31 company if such parent or affiliate corporation does not itself  
32 provide regulated telecommunications service or telephone access  
33 line service, in this State, and seeks to combine, merge, or  
34 consolidate with, or acquire or acquire control of, another  
35 corporation or other organization which:

36 (1) does not directly provide regulated telecommunications  
37 services or telephone access line service, in this State; and

38 (2) does not directly or through one or more affiliates, own a  
39 controlling interest in another corporation or other organization  
40 which provides regulated telecommunications service or telephone  
41 access line service, in this State.

42 (cf: P.L.1984, c.2, s.1)

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       2. R.S.48:3-7 is amended to read as follows:

2       48:3-7. a. ~~【No】 Except as otherwise provided by subsection g.~~  
3 ~~of this section, no~~ public utility shall, without the approval of the  
4 board, sell, lease, mortgage<sub>2</sub> or otherwise dispose of or encumber its  
5 property, franchises, privileges<sub>2</sub> or rights, or any part thereof; or  
6 merge or consolidate its property, franchises, privileges<sub>2</sub> or rights,  
7 or any part thereof, with that of any other public utility.

8       Where, by the proposed sale, lease<sub>2</sub> or other disposition of all or  
9 a substantial portion of its property, any franchise or franchises,  
10 privileges<sub>2</sub> or rights, or any part thereof or merger or consolidation  
11 thereof as set forth herein, it appears that the public utility or a  
12 wholly owned subsidiary thereof may be unable to fulfill its  
13 obligation to any employees thereof with respect to pension benefits  
14 previously enjoyed, whether vested or contingent, the board shall  
15 not grant its approval unless the public utility seeking the board's  
16 approval for such sale, lease<sub>2</sub> or other disposition assumes such  
17 responsibility as will be sufficient to provide that all such  
18 obligations to employees will be satisfied as they become due.

19       Every sale, mortgage, lease, disposition, encumbrance, merger<sub>2</sub>  
20 or consolidation made in violation of this section shall be void.

21       Nothing herein shall prevent the sale, lease<sub>2</sub> or other disposition  
22 by any public utility of any of its property in the ordinary course of  
23 business, nor require the approval of the board to any grant,  
24 conveyance<sub>2</sub> or release of any property or interest therein heretofore  
25 made or hereafter to be made by any public utility to the United  
26 States, State or any county or municipality or any agency, authority<sub>2</sub>  
27 or subdivision thereof, for public use.

28       The approval of the board shall not be required to validate the  
29 title of the United States, State<sub>2</sub> or any county or municipality or  
30 any agency, authority<sub>2</sub> or subdivision thereof, to any lands or  
31 interest therein heretofore condemned or hereafter to be condemned  
32 by the United States, State<sub>2</sub> or any county or municipality or any  
33 agency, authority or subdivision thereof for public use.

34       b. Notwithstanding any law, rule, regulation<sub>2</sub> or order to the  
35 contrary, an autobus public utility regulated by and subject to the  
36 provisions of Title 48 of the Revised Statutes may, without the  
37 approval of the Department of Transportation, sell, lease, mortgage<sub>2</sub>  
38 or otherwise dispose of or encumber its property, or any part  
39 thereof, except that approval of the Department of Transportation  
40 shall be required for the following:

41       (1) the sale of 60% or more of its property within a 12-month  
42 period;

43       (2) a merger or consolidation of its property, franchises,  
44 privileges<sub>2</sub> or rights; or

45       (3) the sale of any of its franchises, privileges or rights.

46       Notice of the sale, purchase or lease of any autobus or other  
47 vehicle subject to regulation under Title 48 of the Revised Statutes

1 shall be provided to the Department of Transportation as the  
2 department shall require.

3 c. Except as otherwise provided in subsection e. of this section,  
4 no solid waste collector as defined in section 3 of P.L.1970, c.40  
5 (C.48:13A-3) shall, without the approval of the Department of  
6 Environmental Protection:

7 (1) sell, lease, mortgage, or otherwise dispose of or encumber its  
8 property, including customer lists; or

9 (2) merge or consolidate its property, including customer lists,  
10 with that of any other person or business concern, whether or not  
11 that person or business concern is engaged in the business of solid  
12 waste collection or solid waste disposal pursuant to the provisions  
13 of P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
14 seq.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

15 d. Any solid waste collector seeking approval for any  
16 transaction enumerated in subsection c. of this section shall file  
17 with the department, on forms and in a manner prescribed by the  
18 department, a notice of intent at least 30 days prior to the  
19 completion of the transaction.

20 (1) The department shall promptly review all notices filed  
21 pursuant to this subsection. The department may, within 30 days of  
22 receipt of a notice of intent, request that the solid waste collector  
23 submit additional information to assist in its review if it deems that  
24 such information is necessary. If no such request is made, the  
25 transaction shall be deemed to have been approved. In the event  
26 that additional information is requested, the department shall  
27 outline, in writing, why it deems such information necessary to  
28 make an informed decision on the impact of the transaction on  
29 effective competition.

30 (2) The department shall approve or deny a transaction within 60  
31 days of receipt of all requested information. In the event that the  
32 department fails to take action on a transaction within the 60-day  
33 period specified herein, then the transaction shall be deemed to  
34 have been approved.

35 (3) The department shall approve a transaction unless it makes a  
36 determination pursuant to the provisions of section 19 of P.L.1991,  
37 c.381 (C.48:13A-7.19) that the proposed sale, lease, mortgage,  
38 disposition, encumbrance, merger, or consolidation would result in  
39 a lack of effective competition.

40 The department shall prescribe and provide upon request all  
41 necessary forms for the implementation of the notification  
42 requirements of this subsection.

43 e. (1) Any solid waste collector may, without the approval of  
44 the department, purchase, finance, or lease any equipment,  
45 including collection or haulage vehicles.

46 (2) Any solid waste collector may, without the approval of the  
47 department, sell or otherwise dispose of its collection or haulage

1 vehicles; except that no solid waste collector shall, without the  
2 approval of the department in the manner provided in subsection d.  
3 of this section, sell or dispose of 33% or more of its collection or  
4 haulage vehicles within a 12-month period.

5 f. (1) The owner or operator of a privately-owned sanitary  
6 landfill facility may, without the approval of the Department of  
7 Environmental Protection, sell or otherwise dispose of its assets  
8 except that the prior approval of the department shall be required;  
9 (a) to sell all assets associated with the sanitary landfill facility or a  
10 portion thereof sufficient to transfer the operation of the sanitary  
11 landfill facility to a new owner or operator; (b) to sell a controlling  
12 ownership interest in the sanitary landfill facility; or (c) to merge or  
13 consolidate its property with that of any other person or business  
14 concern, whether or not that person or business concern is engaged  
15 in the business of solid waste disposal pursuant to the provisions of  
16 P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et  
17 seq.) or any other act.

18 (2) Any owner or operator seeking approval for any transaction  
19 enumerated in this subsection shall file with the department an  
20 application therefor, on forms and in a manner prescribed by the  
21 department. The department shall promptly review all applications  
22 filed pursuant to this subsection and shall serve requests for  
23 information regarding any transaction within 30 days following the  
24 filing of an application if the department deems that such  
25 information is necessary. The department shall approve or deny the  
26 transaction within 60 days of receipt of all requested information.  
27 In the event that the department fails to take action on a transaction  
28 within the 60-day period specified herein, then the transaction shall  
29 be deemed to have been approved.

30 As used in this section, "business concern" means any  
31 corporation, association, firm, partnership, sole proprietorship,  
32 trust, or other form of commercial organization; and "privately-  
33 owned sanitary landfill facility" means a commercial sanitary  
34 landfill facility which is owned and operated by a private person,  
35 corporation, or other organization and includes all appurtenances  
36 and related improvements used at the site for the transfer,  
37 processing, or disposal of solid waste.

38 g. Nothing herein shall require the review or approval by the  
39 board of any parent or affiliate corporation of a telecommunications  
40 company if such parent or affiliate corporation does not itself  
41 provide regulated telecommunications service or the provision of  
42 telephone access line service, in this State, and such parent or  
43 affiliate corporation seeks to sell, lease, mortgage, or otherwise to  
44 dispose of or to permit the encumbrance of any of its property,  
45 franchises, privileges or rights, or any part thereof; or to merge, or  
46 consolidate its property, franchises, privileges or rights, or any part

1 thereof, with that or those of another corporation or other  
2 organization which:

3 (1) does not directly provide regulated telecommunications  
4 services or telephone access line service, in this State; and

5 (2) does not directly or through one or more affiliates, own a  
6 controlling interest in another corporation or other organization  
7 which provides regulated telecommunications service or telephone  
8 access line service, in this State.

9 (cf: P.L.2003, c.169, s.17)

10

11 3. R.S.48:3-9 is amended to read as follows:

12 48:3-9. **【No】** a. Except as otherwise provided by subsection b. of  
13 this section, no public utility shall, unless it shall have first obtained  
14 authority from the board so to do:

15 **【(a)】** (1) Issue any stocks, or any bonds, notes, or other  
16 evidence of indebtedness payable more than 12 months after the  
17 date or dates thereof, or extend or renew any bond, note, or any  
18 other evidence of indebtedness so that any extension or renewal  
19 thereof shall be payable later than 12 months after the date of the  
20 original instrument**【,】** ; or

21 **【(b)】** (2) Permit any demand note to remain unpaid for a  
22 period of more than 12 months after the date thereof.

23 The board shall approve any such proposed issue, with or  
24 without hearing at its discretion, when satisfied that such issue is to  
25 be made in accordance with law and the purpose thereof is  
26 approved by the board.

27 The provisions of this **【section】** subsection shall not apply to any  
28 public utility operating, managing, or controlling a railroad or a  
29 railway express which is subject to the rules and regulations from  
30 time to time issued by the **【Interstate Commerce Commission】**  
31 federal Surface Transportation Board or any successor agency.

32 The provisions of this **【section】** subsection shall not apply to  
33 autobus public utilities under the jurisdiction of the Department of  
34 Transportation.

35 The provisions of this **【section】** subsection shall not apply to any  
36 solid waste collector as defined in section 3 of P.L.1970, c.40  
37 (C.48:13A-3).

38 The provisions of this **【section】** subsection shall not apply to any  
39 privately-owned sanitary landfill facility as defined in section 3 of  
40 P.L.2003, c.169 (C.48:13A-7.26).

41 b. Nothing herein shall require the review or approval by the  
42 board of any parent or affiliate corporation of a telecommunications  
43 company if such parent or affiliate corporation seeks to issue any  
44 stocks, bonds, notes, or other evidence of indebtedness payable  
45 more than 12 months after the date or dates thereof, or to extend or  
46 renew any bond, note, or other evidence of indebtedness so that any  
47 extension or renewal thereof shall be payable later than 12 months

1 after the date of the original instrument, or to permit any demand  
2 note to remain unpaid for a period of more than 12 months after the  
3 date thereof, if the parent or affiliate corporation of the  
4 telecommunications company which seeks to engage in any of the  
5 aforementioned transactions does not itself provide regulated  
6 telecommunications services over a telecommunications network or  
7 telephone access line service, but does directly or through one or  
8 more affiliates own a controlling interest in a telecommunications  
9 network or does otherwise control or exercise responsibility for,  
10 through any arrangement, the management and operation of such a  
11 telecommunications network, or owns a controlling interest in a  
12 telecommunications company that provides regulated  
13 telecommunications service or telephone access line service.  
14 (cf: P.L.2003, c.169, s.18)

15

16 4. R.S.48:3-10 is amended to read as follows:

17 48:3-10. **[No]** a. Except as otherwise provided by subsection b.  
18 of this section, no public utility incorporated under the laws of this  
19 State shall sell, nor shall any such public utility make or permit to  
20 be made upon its books any transfer of any share or shares of its  
21 capital stock, to any other public utility, unless authorized to do so  
22 by the board. Nor shall any public utility incorporated under the  
23 laws of this State sell any share or shares of its capital stock or  
24 make or permit any transfer thereof to be made upon its books, to  
25 any corporation, domestic or foreign, or any person, the result of  
26 which sale or transfer in itself or in connection with other previous  
27 sales or transfers shall be to vest in such corporation or person a  
28 majority in interest of the outstanding capital stock of such public  
29 utility corporation unless authorized to do so by the board.

30 Every assignment, transfer, contract, or agreement for  
31 assignment or transfer, by or through any person or corporation to  
32 any corporation or person in violation of any of the provisions  
33 hereof shall be void and of no effect, and no such transfer shall be  
34 made on the books of any public utility corporation. Nothing herein  
35 contained shall be construed to prevent the holding of stock  
36 lawfully acquired before March 5, 1935.

37 Where, by the proposed assignment, transfer, contract, or  
38 agreement for assignment or transfer of capital stock as set forth  
39 herein, it appears that the public utility or a wholly owned  
40 subsidiary thereof may be unable to fulfill its obligation to any  
41 employees thereof with respect to pension benefits previously  
42 enjoyed, whether vested or contingent, the board shall not grant its  
43 authorization unless the public utility seeking the board's  
44 authorization assumes such responsibility as will be sufficient to  
45 provide that all such obligations to employees will be satisfied as  
46 they become due.



1 Nothing herein shall require the approval of the Department of  
2 Transportation to any sale or transfer by any public utility of any  
3 share or shares of its capital stock to the New Jersey Transit  
4 Corporation or any subsidiary thereof for public use.

5 b. Nothing herein shall require the review and approval by the  
6 board of any parent or affiliate corporation of a telecommunications  
7 company if such parent or affiliate corporation seeks to sell, or to  
8 make or permit to be made upon its books any transfer of any share  
9 or shares of its capital stock, to any other public utility, if the  
10 telecommunications company which seeks to engage in any of the  
11 aforementioned transactions does not itself provide regulated  
12 telecommunications services over a telecommunications network or  
13 telephone access line service, but does directly or through one or  
14 more affiliates own a controlling interest in such a  
15 telecommunications network or does otherwise control or exercise  
16 responsibility for, through any arrangement, the management and  
17 operation of such a telecommunications network, or owns a  
18 controlling interest in a telecommunications company that provides  
19 regulated telecommunications service or telephone access line  
20 service.

21 (cf: P.L.1979, c.150, s.27)

22

23 5. Section 38 of P.L.1972, c.186 (C.48:5A-38) is amended to  
24 read as follows:

25 38. a. **[No]** Except as otherwise provided by subsection b. of  
26 this section, no CATV company shall combine, merge, or  
27 consolidate with, or acquire control of, another organization without  
28 first obtaining the approval of the board, which shall be granted  
29 only after an investigation and finding that such proposed  
30 combination, merger, consolidation, or acquisition is in the public  
31 interest.

32 b. Nothing herein shall require the review or approval by the  
33 board of any parent or affiliate corporation of a company that  
34 provides cable television service over a cable television system if  
35 such parent or affiliate corporation does not itself provide cable  
36 television service in this State and seeks to combine, merge, or  
37 consolidate with, or to acquire control of, another corporation or  
38 other organization that:

39 (1) does not directly provide cable television service in this  
40 State; and

41 (2) does not directly or through one or more affiliates, own a  
42 controlling interest in another corporation or other organization that  
43 provides cable television service in this State.

44 (cf: P.L.1972, c.186, s.38)

45

46 6. Section 40 of P.L.1972, c.186 (C.48:5A-40) is amended to  
47 read as follows:

1       40. a. [No] Except as otherwise provided by subsections b.  
2 and c. of this section, no CATV company shall, without the  
3 approval of the board, sell, lease, mortgage or otherwise dispose of  
4 or encumber its property, franchises, privileges or rights, or any part  
5 thereof; or merge or consolidate its property, franchises, privileges  
6 or rights, or any part thereof, with that of any other CATV  
7 company. Every sale, mortgage, lease, disposition, encumbrance,  
8 merger or consolidation made in violation of this section shall be  
9 void.

10       b. Nothing herein shall prevent the sale, lease or other  
11 disposition by any CATV company of any of its property in the  
12 ordinary course of business, nor require the approval of the board  
13 to any grant, conveyance or release or any property or interest  
14 therein heretofore made or hereafter to be made by any CATV  
15 company to the United States, the State or any county or  
16 municipality or any agency, authority or subdivision thereof, for  
17 public use. The approval of the board shall not be required to  
18 validate the title of the United States, the State or any county or  
19 municipality or any agency, authority or subdivision thereof, to any  
20 lands or interest therein heretofore condemned or hereafter to be  
21 condemned by the United States, the State or any county or  
22 municipality or any agency, authority or subdivision thereof for  
23 public use.

24       c. Nothing herein shall require the review or approval by the  
25 board of any parent or affiliate corporation of a company that  
26 provides cable television service over a cable television system if  
27 such parent or affiliate corporation does not itself provide cable  
28 television service in this State and seeks to sell, lease, mortgage, or  
29 otherwise to dispose of or to permit the encumbrance of any of its  
30 property, franchises, privileges, or rights, or any part thereof; or to  
31 merge or consolidate its property, franchises, privileges, or rights,  
32 or any part thereof, with that or those of another corporation or  
33 other organization which:

34       (1) does not directly provide cable television service in this  
35 State; and

36       (2) does not directly or through one or more affiliates own a  
37 controlling interest in another corporation or other organization  
38 which provides cable television service in this State.

39 (cf: P.L.1972, c.186, s.40)

40

41       7. Section 42 of P.L.1972, c.186 (C.48:5A-42) is amended to  
42 read as follows:

43       42. [No] Except as otherwise provided by subsection c. of this  
44 section, no CATV company shall, unless it shall have first obtained  
45 authority from the board to do so:

46       a. Issue any stocks, bonds, notes or other evidence of  
47 indebtedness payable more than 12 months after the date or dates

1 thereof, or extend or renew any bond, note or other evidence of  
2 indebtedness so that any extension or renewal thereof shall be  
3 payable later than 12 months after the date of the original  
4 instrument; or

5 b. Permit any demand note to remain unpaid for a period of  
6 more than 12 months after the date thereof.

7 The board shall approve any such proposed issue, with or  
8 without hearing at its discretion, when satisfied that such issue is to  
9 be made in accordance with law and the purpose thereof is  
10 approved by the board.

11 c. Nothing herein shall require the review or approval by the  
12 board of any parent or affiliate corporation of a company that  
13 provides cable television service over a cable television system if  
14 such parent or affiliate corporation seeks to issue any stocks, bonds,  
15 notes, or other evidence of indebtedness payable more than 12  
16 months after the date or dates thereof, or to extend or renew any  
17 bond, note, or other evidence of indebtedness so that any extension  
18 or renewal thereof shall be payable later than 12 months after the  
19 date of the original instrument, or to permit any demand note to  
20 remain unpaid for a period of more than 12 months after the date  
21 thereof, if the company which seeks to engage in any of the  
22 aforementioned transactions does not itself provide cable television  
23 service over a cable television system but does directly or through  
24 one or more affiliates own a controlling interest in such a cable  
25 television system or does otherwise control or exercise  
26 responsibility for, through any arrangement, the management and  
27 operation of such a cable television system.

28 (cf: P.L.1972, c.186, s.42)

29

30 8. This act shall take effect immediately.

31

32

33

STATEMENT

34

35 This substitute bill would permit certain parent or affiliate  
36 corporations of telecommunications and cable television ("CATV")  
37 companies, without review or approval by the Board of Public  
38 Utilities ("BPU"), to engage in various types of corporate  
39 transactions, including combining, merging, or consolidating with,  
40 or acquiring control of, another organization which: 1) does not  
41 directly provide regulated telecommunications service or telephone  
42 access line service, or CATV services, as appropriate, in this State;  
43 and 2) does not directly or through one or more affiliates, own a  
44 controlling interest in another corporation or other organization  
45 which provides such regulated telecommunications service or  
46 telephone access line service, or CATV services, as appropriate, in  
47 this State.

1 The substitute bill would also permit, without review or approval  
2 of the BPU, certain parent or affiliated corporations of companies  
3 which do not provide regulated telecommunications service over a  
4 telecommunications network or telephone access line service, or  
5 which do not provide CATV service over a CATV system, and  
6 which do not themselves provide such telecommunications services  
7 or CATV services, as appropriate, to sell, lease, mortgage, or  
8 otherwise dispose of or encumber their property, franchises,  
9 privileges, or rights, or any part thereof; or to merge or consolidate  
10 their property, franchises, privileges, or rights, or any part thereof,  
11 with that or those of another organization which: 1) does not  
12 directly provide such regulated telecommunications or telephone  
13 access line services, or CATV services, as appropriate, in this State;  
14 and 2) does not directly or through one or more affiliates, own a  
15 controlling interest in another corporation or other organization that  
16 provides such regulated telecommunications services, telephone  
17 access line services, or CATV services, as appropriate, in this State.

18 The substitute bill would also permit, without review or approval  
19 by the BPU, parent or affiliated corporations of companies which  
20 do not provide regulated telecommunications service over a  
21 telecommunications network or telephone access line service, or  
22 which do not provide CATV service over a CATV system, as  
23 appropriate, to issue any stocks, bonds, notes, or other evidence of  
24 indebtedness payable more than 12 months after the date or dates  
25 thereof, or extend or renew any bond, note, or other evidence of  
26 indebtedness so that any extension or renewal thereof shall be  
27 payable later than 12 months after the date of the original  
28 instrument, or permit any demand note to remain unpaid for a  
29 period of more than 12 months after the date thereof, if such parent  
30 or affiliate company which seeks to engage in any of the  
31 aforementioned transactions does not itself provide such  
32 telecommunications services or CATV service over a CATV  
33 system, as appropriate, but does directly or through one or more  
34 affiliates own a controlling interest in, as appropriate, a  
35 telecommunications company that provides such  
36 telecommunications services, or CATV service over a CATV  
37 system or does otherwise control or exercise responsibility for,  
38 through any arrangement, the management and operation of such a  
39 CATV system.

40 The sponsor's intent of this substitute bill is to only prohibit the  
41 BPU's review or approval of those aforementioned transactions  
42 which involve parent or affiliated corporations of companies, if  
43 such companies: 1) do not themselves or directly provide, regulated  
44 telecommunications service over a telecommunications network or  
45 telephone access line service in this State, or CATV service over a  
46 CATV system in this State, as appropriate; and 2) do not  
47 themselves provide or directly or through one or more affiliates,

1 own a controlling interest in another corporation or other  
2 organization that provides, as appropriate, such telecommunications  
3 services in this State, or CATV services in this State. The BPU's  
4 review and approval of other transactions as provided by law would  
5 not be affected by this bill.

6

7

8

9

10 Exempts certain transactions of parent or affiliate companies of  
11 telecommunications and cable television companies from BPU  
12 review and approval.

# ASSEMBLY, No. 2906

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 5, 2008

**Sponsored by:**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**SYNOPSIS**

Exempts certain transactions of parent companies of cable television companies from BPU review and approval.

**CURRENT VERSION OF TEXT**

As introduced.



A2906 CHIVUKULA

2

1 AN ACT concerning the review and approval of certain cable  
2 television company transactions and amending P.L.1972, c.186.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 38 of P.L.1972, c.186 (C.48:5A-38) is amended to  
8 read as follows:

9 38. a. **[No]** Except as otherwise provided by subsection b. of  
10 this section, no CATV company shall combine, merge or  
11 consolidate with, or acquire control of, another organization without  
12 first obtaining the approval of the board, which shall be granted  
13 only after an investigation and finding that such proposed  
14 combination, merger, consolidation or acquisition is in the public  
15 interest.

16 b. Nothing herein shall require the review or approval by the  
17 board of any CATV company's combination, merger or  
18 consolidation with, or acquisition or control of, another  
19 organization, if the CATV company which seeks to engage in any  
20 of the aforementioned transactions does not itself provide cable  
21 television service over a cable television system but does directly or  
22 through one or more affiliates own a significant interest in such a  
23 cable television system or does otherwise control or exercise  
24 responsibility for, through any arrangement, the management and  
25 operation of such a cable television system.

26 (cf: P.L.1972, c.186, s.38)

27

28 2. Section 40 of P.L.1972, c.186 (C.48:5A-40) is amended to  
29 read as follows:

30 40. a. **[No]** Except as otherwise provided by subsections b.  
31 and c. of this section, no CATV company shall, without the  
32 approval of the board, sell, lease, mortgage or otherwise dispose of  
33 or encumber its property, franchises, privileges or rights, or any part  
34 thereof; or merge or consolidate its property, franchises, privileges  
35 or rights, or any part thereof, with that of any other CATV  
36 company. Every sale, mortgage, lease, disposition, encumbrance,  
37 merger or consolidation made in violation of this section shall be  
38 void.

39 b. Nothing herein shall prevent the sale, lease or other  
40 disposition by any CATV company of any of its property in the  
41 ordinary course of business, nor require the approval of the board  
42 to any grant, conveyance or release of any property or interest  
43 therein heretofore made or hereafter to be made by any CATV  
44 company to the United States, the State or any county or  
45 municipality or any agency, authority or subdivision thereof, for

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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1 public use. The approval of the board shall not be required to  
2 validate the title of the United States, the State or any county or  
3 municipality or any agency, authority or subdivision thereof, to any  
4 lands or interest therein heretofore condemned or hereafter to be  
5 condemned by the United States, the State or any county or  
6 municipality or any agency, authority or subdivision thereof for  
7 public use.

8 c. Nothing herein shall require the review or approval by the  
9 board of any CATV company's sale, lease, mortgage or other  
10 disposition or encumbrance of any of its property, franchises,  
11 privileges or rights, or any part thereof; or the merger, or  
12 consolidation of its property, franchises, privileges or rights, or any  
13 part thereof, with that or those of any other CATV company, if the  
14 CATV company which seeks to engage in any of the  
15 aforementioned transactions does not itself provide cable television  
16 service over a cable television system but does directly or through  
17 one or more affiliates own a significant interest in such a cable  
18 television system or does otherwise control or exercise  
19 responsibility for, through any arrangement, the management and  
20 operation of such a cable television system.

21 (cf: P.L.1972, c.186, s.40)

22

23 3. Section 42 of P.L.1972, c.186 (C.48:5A-42) is amended to  
24 read as follows:

25 42. **[No]** Except as otherwise provided by subsection c. of this  
26 section, no CATV company shall, unless it shall have first obtained  
27 authority from the board to do so:

28 a. Issue any stocks, bonds, notes or other evidence of  
29 indebtedness payable more than 12 months after the date or dates  
30 thereof, or extend or renew any bond, note or other evidence of  
31 indebtedness so that any extension or renewal thereof shall be  
32 payable later than 12 months after the date of the original  
33 instrument; or

34 b. Permit any demand note to remain unpaid for a period of  
35 more than 12 months after the date thereof.

36 The board shall approve any such proposed issue, with or  
37 without hearing at its discretion, when satisfied that such issue is to  
38 be made in accordance with law and the purpose thereof is  
39 approved by the board.

40 c. Nothing herein shall require the review or approval by the  
41 board of any CATV company's issuance of any stocks, bonds, notes  
42 or other evidence of indebtedness payable more than 12 months  
43 after the date or dates thereof, or extension or renewal of any bond,  
44 note or other evidence of indebtedness so that any extension or  
45 renewal thereof shall be payable later than 12 months after the date  
46 of the original instrument, or permission for any demand note to  
47 remain unpaid for a period of more than 12 months after the date  
48 thereof, if the CATV company which seeks to engage in any of the



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1 aforementioned transactions does not itself provide cable television  
2 service over a cable television system but does directly or through  
3 one or more affiliates own a significant interest in such a cable  
4 television system or does otherwise control or exercise  
5 responsibility for, through any arrangement, the management and  
6 operation of such a cable television system.  
7 (cf: P.L.1972, c.186, s.42)

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9 4. This act shall take effect immediately.

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STATEMENT

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14 This bill would permit certain parent companies which do not  
15 themselves provide cable television service but which own a  
16 significant interest in cable television systems or otherwise control  
17 or are responsible for cable television systems, to engage in various  
18 types of corporate transactions, including combining, merging or  
19 consolidating with, or acquiring control of, another organization,  
20 without review or approval by the Board of Public Utilities  
21 (“BPU”).

22 The bill would also permit certain parent companies which do  
23 not themselves provide cable television service but which own a  
24 significant interest in cable television systems or which otherwise  
25 control or are responsible for cable television systems, to sell, lease,  
26 mortgage or otherwise dispose of or encumber their property,  
27 franchises, privileges or rights, or any part thereof; or to merge or  
28 consolidate their property, franchises, privileges or rights, or any  
29 part thereof, with that or those of any other cable television  
30 company, without review or approval of the BPU.

31 The bill would also permit certain parent companies which do  
32 not themselves provide cable television service but which own a  
33 significant interest in cable television systems or which otherwise  
34 control or are responsible for cable television systems, to issue any  
35 stocks, bonds, notes or other evidence of indebtedness payable  
36 more than 12 months after the date or dates thereof, or extend or  
37 renew any bond, note or other evidence of indebtedness so that any  
38 extension or renewal thereof shall be payable later than 12 months  
39 after the date of the original instrument, or permit any demand note  
40 to remain unpaid for a period of more than 12 months after the date  
41 thereof, without review or approval by the BPU.

42 Under a recent decision, the BPU has asserted jurisdiction over  
43 parent companies of cable television subsidiaries, based upon the  
44 definition of cable television company under P.L.1972, c.186  
45 (C.48:5A-1 et seq.). As a result, parent company transactions  
46 unrelated to the activities of a subsidiary cable television company  
47 may be subject to review or approval by the BPU. This bill would

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5

- 1 exempt various corporate transactions of such parent companies
- 2 from the requirement for BPU review or approval.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 2906**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 5, 2008

The Assembly Telecommunications and Utilities reports favorably Assembly Bill No. 2906 with committee amendments.

As amended, this bill would permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network or cable television service over a cable television system but which own a significant interest in such a telecommunications network or cable television system or otherwise control or are responsible for such a telecommunications network or cable television system, to engage in various types of corporate transactions, including combining, merging or consolidating with, or acquiring control of, another organization, without review or approval by the Board of Public Utilities (“BPU”).

The bill would also permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network or cable television service over a cable television system but which own a significant interest in such a telecommunications network or cable television system or which otherwise control or are responsible for telecommunications networks or cable television systems, to sell, lease, mortgage or otherwise dispose of or encumber their property, franchises, privileges or rights, or any part thereof; or to merge or consolidate their property, franchises, privileges or rights, or any part thereof, with that or those of any other telecommunications or cable television company, without review or approval of the BPU.

The bill would also permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network or cable television service over a cable television system but which own a significant interest in such a telecommunications network or cable television system or which otherwise control or are responsible for such a telecommunications network or cable television system, to issue any stocks, bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or other

evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or permit any demand note to remain unpaid for a period of more than 12 months after the date thereof, without review or approval by the BPU.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill incorporate the provisions concerning telecommunications companies.

The committee adopted amendments to permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network but which own a significant interest in such a telecommunications network or otherwise control or are responsible for such a telecommunications network, to engage in various types of corporate transactions, including combining, merging or consolidating with, or acquiring control of, another organization, without review or approval by the Board of Public Utilities (“BPU”).

The bill would also permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network but which own a significant interest in such a telecommunications network or which otherwise control or are responsible for such a telecommunications network, to sell, lease, mortgage or otherwise dispose of or encumber their property, franchises, privileges or rights, or any part thereof; or to merge or consolidate their property, franchises, privileges or rights, or any part thereof, with that or those of any other telecommunications company, without review or approval of the BPU.

The bill would also permit certain companies which do not themselves provide regulated telecommunications service over a telecommunications network but which own a significant interest in such a telecommunications network or which otherwise control or are responsible for such a telecommunications network, to issue any stocks, bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or permit any demand note to remain unpaid for a period of more than 12 months after the date thereof, without review or approval by the BPU.

**SENATE, No. 1886**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED JUNE 5, 2008

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Exempts certain transactions of parent companies of cable television companies from BPU review and approval.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/6/2008)**

1 AN ACT concerning the review and approval of certain cable  
2 television company transactions and amending P.L.1972, c. 186.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 38 of P.L.1972, c.186 (C.48:5A-38) is amended to  
8 read as follows:

9 38. a. **[No]** Except as otherwise provided by subsection b. of  
10 this section, no CATV company shall combine, merge or  
11 consolidate with, or acquire control of, another organization without  
12 first obtaining the approval of the board, which shall be granted  
13 only after an investigation and finding that such proposed  
14 combination, merger, consolidation or acquisition is in the public  
15 interest.

16 b. Nothing herein shall require the review or approval by the  
17 board of any CATV company's combination, merger or  
18 consolidation with, or acquisition or control of, another  
19 organization, if the CATV company which seeks to engage in any  
20 of the aforementioned transactions does not itself provide cable  
21 television service over a cable television system but does directly or  
22 through one or more affiliates own a significant interest in such a  
23 cable television system or does otherwise control or exercise  
24 responsibility for, through any arrangement, the management and  
25 operation of such a cable television system.

26 (cf: P.L.1972, c.186, s.38)

27

28 2. Section 40 of P.L.1972, c.186 (C.48:5A-40) is amended to  
29 read as follows:

30 40. a. **[No]** Except as otherwise provided by subsections b.  
31 and c. of this section, no CATV company shall, without the  
32 approval of the board, sell, lease, mortgage or otherwise dispose of  
33 or encumber its property, franchises, privileges or rights, or any part  
34 thereof; or merge or consolidate its property, franchises, privileges  
35 or rights, or any part thereof, with that of any other CATV  
36 company. Every sale, mortgage, lease, disposition, encumbrance,  
37 merger or consolidation made in violation of this section shall be  
38 void.

39 b. Nothing herein shall prevent the sale, lease or other  
40 disposition by any CATV company of any of its property in the  
41 ordinary course of business, nor require the approval of the board  
42 to any grant, conveyance or release or any property or interest  
43 therein heretofore made or hereafter to be made by any CATV  
44 company to the United States, the State or any county or  
45 municipality or any agency, authority or subdivision thereof, for

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 public use. The approval of the board shall not be required to  
2 validate the title of the United States, the State or any county or  
3 municipality or any agency, authority or subdivision thereof, to any  
4 lands or interest therein heretofore condemned or hereafter to be  
5 condemned by the United States, the State or any county or  
6 municipality or any agency, authority or subdivision thereof for  
7 public use.

8 c. Nothing herein shall require the review or approval by the  
9 board of any CATV company's sale, lease, mortgage or other  
10 disposition or encumbrance of any of its property, franchises,  
11 privileges or rights, or any part thereof; or the merger, or  
12 consolidation of its property, franchises, privileges or rights, or any  
13 part thereof, with that or those of any other CATV company, if the  
14 CATV company which seeks to engage in any of the  
15 aforementioned transactions does not itself provide cable television  
16 service over a cable television system but does directly or through  
17 one or more affiliates own a significant interest in such a cable  
18 television system or does otherwise control or exercise  
19 responsibility for, through any arrangement, the management and  
20 operation of such a cable television system.

21 (cf: P.L.1972, c.186, s.40)

22

23 3. Section 42 of P.L.1972, c.186 (C.48:5A-42) is amended to  
24 read as follows:

25 42. **[No]** Except as otherwise provided by subsection c. of this  
26 section, no CATV company shall, unless it shall have first obtained  
27 authority from the board to do so:

28 a. Issue any stocks, bonds, notes or other evidence of  
29 indebtedness payable more than 12 months after the date or dates  
30 thereof, or extend or renew any bond, note or other evidence of  
31 indebtedness so that any extension or renewal thereof shall be  
32 payable later than 12 months after the date of the original  
33 instrument; or

34 b. Permit any demand note to remain unpaid for a period of  
35 more than 12 months after the date thereof.

36 The board shall approve any such proposed issue, with or  
37 without hearing at its discretion, when satisfied that such issue is to  
38 be made in accordance with law and the purpose thereof is  
39 approved by the board.

40 c. Nothing herein shall require the review or approval by the  
41 board of any CATV company's issuance of any stocks, bonds, notes  
42 or other evidence of indebtedness payable more than 12 months  
43 after the date or dates thereof, or extension or renewal of any bond,  
44 note or other evidence of indebtedness so that any extension or  
45 renewal thereof shall be payable later than 12 months after the date  
46 of the original instrument, or permission for any demand note to  
47 remain unpaid for a period of more than 12 months after the date  
48 thereof, if the CATV company which seeks to engage in any of the

1 aforementioned transactions does not itself provide cable television  
2 service over a cable television system but does directly or through  
3 one or more affiliates own a significant interest in such a cable  
4 television system or does otherwise control or exercise  
5 responsibility for, through any arrangement, the management and  
6 operation of such a cable television system.

7 (cf: P.L.1972, c.186, s.42)

8

9 4. This act shall take effect immediately.

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11

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#### STATEMENT

13

14 This bill would permit certain parent companies which do not  
15 themselves provide cable television service but which own a  
16 significant interest in cable television systems or otherwise control  
17 or are responsible for cable television systems, to engage in various  
18 types of corporate transactions, including combining, merging or  
19 consolidating with, or acquiring control of, another organization,  
20 without review or approval by the Board of Public Utilities  
21 (“BPU”).

22 The bill would also permit certain parent companies which do  
23 not themselves provide cable television service but which own a  
24 significant interest in cable television systems or which otherwise  
25 control or are responsible for cable television systems, to sell, lease,  
26 mortgage or otherwise dispose of or encumber their property,  
27 franchises, privileges or rights, or any part thereof; or to merge or  
28 consolidate their property, franchises, privileges or rights, or any  
29 part thereof, with that or those of any other cable television  
30 company, without review or approval of the BPU.

31 The bill would also permit certain parent companies which do  
32 not themselves provide cable television service but which own a  
33 significant interest in cable television systems or which otherwise  
34 control or are responsible for cable television systems, to issue any  
35 stocks, bonds, notes or other evidence of indebtedness payable  
36 more than 12 months after the date or dates thereof, or extend or  
37 renew any bond, note or other evidence of indebtedness so that any  
38 extension or renewal thereof shall be payable later than 12 months  
39 after the date of the original instrument, or permit any demand note  
40 to remain unpaid for a period of more than 12 months after the date  
41 thereof, without review or approval by the BPU.

42 Under a recent decision, the BPU has asserted jurisdiction over  
43 parent companies of cable television subsidiaries, based upon the  
44 definition of cable television company under P.L.1972, c.186  
45 (C.48:5A-1 et seq.). As a result, parent company transactions  
46 unrelated to the activities of a subsidiary cable television company  
47 may be subject to review or approval by the BPU. This bill would



- 1 exempt various corporate transactions of such parent companies
- 2 from the requirement for BPU review or approval.

# SENATE ECONOMIC GROWTH COMMITTEE

## STATEMENT TO

### **SENATE, No. 1886**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 16, 2008

The Senate Economic Growth Committee reports favorably Senate Bill No. 1886 with committee amendments.

As amended, this bill would permit certain parent or affiliate corporations of telecommunications and cable television ("CATV") companies, without review or approval by the Board of Public Utilities ("BPU"), to engage in various types of corporate transactions, including combining, merging, or consolidating with, or acquiring control of, another organization which: 1) does not directly provide regulated telecommunications service or telephone access line service, or CATV services, as appropriate, in this State; and 2) does not directly or through one or more affiliates, own a controlling interest in another corporation or other organization which provides such regulated telecommunications service or telephone access line service, or CATV services, as appropriate, in this State.

The amended bill would also permit, without review or approval of the BPU, certain parent or affiliated corporations of companies which do not provide regulated telecommunications service over a telecommunications network or telephone access line service, or which do not provide CATV service over a CATV system, and which do not themselves provide such telecommunications services or CATV services, as appropriate, to sell, lease, mortgage, or otherwise dispose of or encumber their property, franchises, privileges, or rights, or any part thereof; or to merge or consolidate their property, franchises, privileges, or rights, or any part thereof, with that or those of another organization which: 1) does not directly provide such regulated telecommunications or telephone access line services, or CATV services, as appropriate, in this State; and 2) does not directly or through one or more affiliates, own a controlling interest in another corporation or other organization that provides such regulated telecommunications services, telephone access line services, or CATV services, as appropriate, in this State.

The amended bill would also permit, without review or approval by the BPU, parent or affiliated corporations of companies which do not provide regulated telecommunications service over a telecommunications network or telephone access line service, or which

do not provide CATV service over a CATV system, as appropriate, to issue any stocks, bonds, notes, or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note, or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or permit any demand note to remain unpaid for a period of more than 12 months after the date thereof, if such parent or affiliate company which seeks to engage in any of the aforementioned transactions does not itself provide such telecommunications services or CATV service over a CATV system, as appropriate, but does directly or through one or more affiliates own a controlling interest in, as appropriate, a telecommunications company that provides such telecommunications services, or CATV service over a CATV system or does otherwise control or exercise responsibility for, through any arrangement, the management and operation of such a CATV system.

The sponsor's intent of this bill is to only prohibit the BPU's review or approval of those aforementioned transactions which involve parent or affiliated corporations of companies, if such companies: 1) do not themselves or directly provide, regulated telecommunications service over a telecommunications network or telephone access line service in this State, or CATV service over a CATV system in this State, as appropriate; and 2) do not themselves provide or directly or through one or more affiliates, own a controlling interest in another corporation or other organization that provides, as appropriate, such telecommunications services in this State, or CATV services in this State. The BPU's review and approval of other transactions as provided by law would not be affected by this bill.

#### COMMITTEE AMENDMENTS

Committee amendments to this bill:

1) incorporate the aforementioned provisions concerning telecommunications companies;

2) permit, without review or approval by the BPU, parent or affiliated corporations of telecommunications companies if such parent or affiliated corporations seek to sell, lease, mortgage or otherwise dispose of or encumber their property, franchises, privileges or rights, or any part thereof; or to merge or consolidate their property, franchises, privileges or rights, or any part thereof, with that or those of any other public utility, if the telecommunications company which seeks to engage in any of the aforementioned transactions does not itself provide regulated telecommunications services over a telecommunications network or telephone access line service, but does directly or through one or more affiliates own a controlling interest in such a telecommunications network or does otherwise control or exercise responsibility for, through any arrangement, the management and operation of such a telecommunications network, or owns a

controlling interest in a telecommunications company that provides such telecommunications services; and

3) regarding the aforementioned transactions of parent or affiliated corporations of CATV companies that provide CATV service over a CATV system, clarify that the transactions not requiring BPU review and approval apply to such parent or affiliated corporations if those corporations do not directly provide CATV service in this State and do not directly or through one or more affiliates, own a controlling interest in another corporation or other organization that provides CATV service in this State.