Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1415 (Delegate Fisher)
Economic Matters

Cable Service - Broadband Connection Requirement - Enforcement

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This bill requires a franchise agreement between a governing body of a county or municipality and a cable television system to include a service connection requirement for "wired broadband service" that a subscriber or property owner requests to be installed, subject to specified conditions. The failure of a cable television system to install wired broadband service on request constitutes a breach of the service connection requirement of the franchise agreement. A county or municipality may seek to enforce a service connection requirement of the franchise agreement. In the case of a *repeated* breach of a service connection requirement of the franchise agreement, the county or municipality may request the Public Service Commission (PSC) to enforce the service connection requirement of the franchise agreement, subject to specified requirements. The bill must be construed to apply to any cable television franchise agreement or wired broadband agreement entered into or renewed on or after the bill's effective date. However, a presently existing obligation or contract right may not be impaired in any way by the bill.

Fiscal Summary

State Effect: Special fund expenditures from the Public Utility Regulation Fund (PURF) increase by $157,400 in FY 2017 for PSC staff needed to handle the anticipated enforcement activities related to cable franchise agreements. Future year expenditures reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. The imposition of new and existing penalties is not anticipated to materially affect State finances.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	$157,400	$199,000	$206,500	$214,300	$222,400
SF Expenditure	$157,400	$199,000	$206,500	$214,300	$222,400
Net Effect	$0	$0	$0	$0	$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Meaningful, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

"Cable television system," in addition to the definition in current law, also means a specified type of nonbroadcast facility that distributes or is designed to distribute to subscribers the signals of "wired broadband service."

"Wired broadband" means a high-capacity transmission technique that uses a cable to transmit a wide range of frequencies to a residence or business. It includes wired broadband service provided by digital subscriber line, cable modem, or fiber optics. It does not include wired broadband service provided by satellite or wireless technology.

"Service connection requirement" means a requirement under a franchise agreement to provide a connection to a cable television system or wired broadband service in the franchise service territory on request of a subscriber or property owner.

Franchise Agreements to Include Wired Broadband Service

A franchise agreement between a governing body of a county or municipality and a cable television system (1) must include a schedule for phasing in the availability of wired broadband service throughout the franchise service territory as a service connection requirement and (2) may include conditions and circumstances under which the cable television system is not required to install wired broadband service on request as a service connection requirement.

A county or municipality is explicitly authorized to establish penalties for failure by the cable television system to comply with the franchise agreement. A county or municipality may seek to enforce a service connection requirement of the franchise agreement, including criminal or civil actions and the imposition of penalties in accordance with local law adopted by the county or municipality.

PSC Enforcement of Service Connection Requirement

As noted above, in the case of a *repeated* breach of a service connection requirement of the franchise agreement by repeated failure to install wired broadband service on request in accordance with the service connection requirement, the county or municipality may request PSC to enforce the service connection requirement of the franchise agreement. That remedy is in addition to and not in place of any direct action a county or municipality may take to enforce any requirement of the franchise agreement.

On request of a county or a municipality, PSC may begin proceedings to enforce a service connection requirement under a franchise agreement. PSC may enforce a service connection requirement of a franchise agreement by administrative proceedings, specified enforcement activities, or through criminal or civil action in a court of competent jurisdiction with PSC acting as a party on behalf of the local jurisdiction. To the extent authorized under federal law, PSC may adopt regulations and issue orders for enforcement of service connection requirements of franchise agreements, as specified.

A cable television system or other wired broadband service provider is deemed to be a public service company for purposes of proceedings and enforcement by PSC.

Bill Supplemental to Existing Local Authority

The bill must be construed as supplemental to and not in derogation of any existing authority of a county or municipality to grant a franchise for wired broadband service within its jurisdiction.

Current Law/Background: Unless otherwise defined by local law, "cable television system" means a nonbroadcast facility that consists of a set of transmission paths and associated signal generation, reception, and central equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations.

The federal Cable Act (47 U.S.C. § 542) prohibits a cable television system from providing cable service without a franchise. Under State law, the governing body of a county or municipality may (1) grant a franchise for a cable television system that uses a public right-of-way; (2) impose franchise fees; (3) establish rates applicable to a franchise; and (4) adopt rules and regulations for the operation of a franchise.

The Cable Act limits franchise fees to 5% of annual gross revenue received from the provision of cable service. Additional fees may be collected to support public, educational, and government channels or the use of such channels, as negotiated in the franchise agreement. County governments collected approximately $77.3 million in local revenues from cable television franchise fees in fiscal 2015.

Public Service Commission

PSC regulates gas, electric, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC is authorized to hear and decide matters relating to (1) rate adjustments; (2) applications to exercise or abandon franchises; (3) approval of issuance of securities; (4) promulgation of new rules and regulations; and (5) quality of utility and common carrier service. PSC sets utility rates, collects and maintains records and reports of public service companies, reviews plans for service, inspects equipment, audits financial records, handles consumer complaints, and promulgates and enforces rules and regulations.

Public Service Commission Civil and Criminal Penalties and Enforcement Actions

In addition to any other penalty authorized, PSC may impose a civil penalty of up to $25,000 against a person who violates specified provisions or an outstanding direction, order, rule, or regulation of PSC. Each day or part of a day the violation continues is a separate offense.

Public service companies that violate PSC provisions relating to safety are subject to a civil penalty of up to $25,000 per violation for each day that the violation persists. Civil penalties collected by PSC are paid into the general fund.

An individual who knowingly aids or abets a public service company in violating PSC rules, orders, and regulations is guilty of a misdemeanor and unless a different punishment is specified, on conviction is subject to a fine of up to $1,000 for a first offense and up to $5,000 for a subsequent offense.

In addition to any otherwise available remedy, subject to specified conditions, PSC may summarily order a person who is subject to PSC's jurisdiction to cease and desist from an act or practice if PSC determines from specific facts shown by affidavit or other statement made under oath that:

- the person has engaged in an act or practice that constitutes a violation of any provision of the relevant division of the Public Utilities Article or any order or regulation adopted under the division that directly concerns consumer protection or public safety;

- immediate, substantial, and irreparable harm will result before the affected person could have an opportunity to respond to the facts alleged;

- the need for the immediate issuance of a summary cease and desist order outweighs the affected person's right to receive notice and be heard before issuance of the order; and

- issuance of the summary cease and desist order is in the public interest.

State Fiscal Effect: The bill likely causes requests for PSC to enforce service connection requirements in franchise agreements between local governments and cable television systems. PSC may enforce a service connection requirement of a franchise agreement by administrative proceedings, specified enforcement activities, or through criminal or civil action in a court of competent jurisdiction with PSC acting as a party on behalf of the local jurisdiction. PSC staff resources are constrained by the current volume of ongoing cases and enforcement activities. Therefore, PURF special fund expenditures increase by $157,440 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one staff attorney and one regulatory economist to enforce service connection requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$144,511
Other Operating Expenses	12,929
Total FY 2017 PSC Expenditures	**$157,440**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies.

The imposition of new and existing penalties is not anticipated to materially affect State finances.

Local Fiscal Effect: As noted above, county governments collected approximately $77.3 million in local revenues from cable television franchise fees in fiscal 2015. Local governments that collect franchise fees and other fees based on a percentage of a franchisee's gross revenue realize additional revenue to the extent that the bill increases the gross revenues associated with services provided through franchise agreements. The amount cannot be reliably estimated at this time, but is potentially significant.

The imposition of new and existing penalties is not anticipated to materially affect local government finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission, Judiciary (Administrative Office of the Courts), Office of People's Counsel, Charles County, Maryland Association of Counties, Department of Legislative Services

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