

Department of Legislative Services
Maryland General Assembly
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FISCAL NOTE

House Bill 571 (Delegate Kagan. *et al.*)

Commerce and Government Matters

Internet Consumers' Bill of Rights

This bill provides that, unless otherwise determined by the local governmental franchising authority, a cable operator with a franchise shall provide access to broadband Internet services to any requesting Internet service provider (ISP). The cable operator must provide the service: (1) separate from other information content; (2) on rates, terms, and conditions that are at least as favorable as those it provides itself or an affiliate; and (3) without restriction to the content that a consumer can receive. An ISP or consumer that has been denied access to broadband Internet service in violation of the bill may bring a civil action to enforce its rights and potentially receive monetary damages. The local franchising authority may bring an action to enforce the bill's requirements or may require the cable operator and the requesting ISP to submit to mediation or arbitration to settle a dispute.

Fiscal Summary

State Effect: None. No new responsibilities are placed on the State. The State does not currently use cable lines to access the Internet.

Local Effect: Local governments where the franchising fees are tied to the local cable operator's profits may be impacted, although the impact cannot be forecasted. Potential increase in legal fees to the extent that legal action would be required of local governments.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Cable operators are not required to provide broadband Internet access to ISPs or to consumers.

Background: The move towards faster “broadband” Internet access will, in many people’s estimation, further revolutionize the Internet and expand its uses exponentially. The faster connections will provide a broad variety of services that are not available at this time or that take too long to download on the “narrowband” technologies most Internet users access today. These expanded services include video, animation, video conferencing, on-line schooling, and, potentially, a whole new set of technologies based on more rapid Internet pipelines. Currently, the most popular broadband access point is via cable television lines used by cable operators that are franchised and regulated as local monopolies by county and municipal governments. Consumers, however, have concerns about cable companies acting as the gatekeepers to Internet technologies that will dominate the future market. This bill seeks to open the broadband Internet market to allow the medium to continue its development through competition and without the oversight of a monopoly that could attempt to control Internet services, prices, and content and that could effectively exclude most ISPs from the market in favor of the cable operator’s affiliates.

One concern consumers have about cable companies controlling the Internet is the current practice of “bundling” Internet services. For example, a cable operator may require the use of a certain e-mail carrier to receive and send electronic mail, a specific software package to link to the Internet, and a certain search engine to surf the Internet. A user could then connect to another ISP, but would be subject to a second fee. With dial-up systems, the most common current means for establishing an Internet connection, consumers have a great deal of freedom in choosing an ISP, and competition has kept the price for Internet services relatively low. Obviously, consumers would like to maintain a healthy level of competition in order to preserve reasonable prices. Finally, Internet users are concerned about freedom of speech and free access to information. Cable operators could potentially block access to competitors’ sites or to other sites, thereby censoring a medium that has flourished as a free market and as an inexpensive publisher of a wide variety of thoughts and ideas.

Cable companies who have laid the infrastructure that will support broadband access to the Internet would like some say as to how the lines are utilized and who accesses them. If their lines are opened to all providers, they would have less of a stake in infrastructure improvements, reducing the impetus to further expand broadband access.

Local Fiscal Effect: The counties and municipalities, as the local franchising authorities, are responsible for bringing actions to enforce the bill's requirements. The common belief is that opening cable lines to all ISPs will not be a simple process and will be hard fought by cable operators. If, at some point, local governments require additional legal services, costs could be considerable. The exact costs cannot be reliably estimated.

Franchise fees paid by cable companies are sometimes tied to the companies' profits. In the short term, opening the broadband market may result in more households acquiring cable modems and linking to cable lines. This would result in profits for the cable companies as they charge ISPs for the use of their lines. However, cable companies would prefer to keep the lines closed, believing that more households will eventually turn to cable for Internet access regardless of whether the market is open or closed. When that happens, cable companies want to be the beneficiaries. As more people use cable lines for Internet access, a larger infrastructure to support the users would be required, and cable companies' profits may slow temporarily. Overall, it is unclear how an open broadband Internet access market would affect the revenues of cable companies and franchising fees that are linked to their profits.

Small Business Effect: Unless the local franchising authority decides otherwise, small business ISPs would gain access to cable lines for the transmission of Internet services. Obviously, this would be beneficial for small ISPs, especially with the requirement that they be provided access at favorable rates. If the future of the Internet is broadband access, small ISPs will have a difficult time surviving without the open access that has helped them succeed to this point.

Additional Information

Prior Introductions: None.

Cross File: SB 505 (Senator Dorman, *et al.*) - Finance.

Information Source(s): Department of Budget and Management, Attorney General's Office, Garrett County, Montgomery County, Prince George's County, Department of Legislative Services

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