
By: **Delegates Stern, Barve, Cadden, Cane, and Clagett**
Introduced and read first time: February 9, 2001
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Telephone Companies - Structural Separation**

3 FOR the purpose of requiring structural separation of the retail and wholesale
4 activities of a certain telephone company into certain affiliates; providing
5 certain criteria for the structural separation and continuing operations of the
6 affiliates; providing for the approval by the Public Service Commission of
7 certain transactions; providing for the implementation and enforcement of this
8 Act by the Commission; declaring certain findings of the General Assembly;
9 defining certain terms; requiring the Commission to report to certain
10 committees on or before a certain date; and generally relating to telephone
11 companies and structural separation.

12 BY adding to

13 Article - Public Utility Companies
14 Section 8-501 through 8-505 to be under the new subtitle "Subtitle 5.
15 Structural Separation"
16 Annotated Code of Maryland
17 (1998 Volume and 2000 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Public Utility Companies**

21 **SUBTITLE 5. STRUCTURAL SEPARATION.**

22 8-501.

23 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (B) "COMPETITIVE LOCAL EXCHANGE CARRIER" MEANS A TELEPHONE
26 COMPANY AUTHORIZED BY THE COMMISSION TO PROVIDE RETAIL LOCAL
27 TELECOMMUNICATIONS SERVICES THAT WAS NOT AN INCUMBENT LOCAL

1 EXCHANGE CARRIER IN THE STATE ON THE DATE OF ENACTMENT OF THE FEDERAL
2 TELECOMMUNICATIONS ACT OF 1996.

3 (C) "INCUMBENT LOCAL EXCHANGE CARRIER" MEANS A TELEPHONE
4 COMPANY THAT PROVIDED LOCAL EXCHANGE TELEPHONE SERVICES TO A
5 MAJORITY OF THE ACCESS LINES IN THE STATE ON THE DATE OF ENACTMENT OF
6 THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

7 (D) "RETAIL AFFILIATE" MEANS A TELEPHONE COMPANY CREATED BY THE
8 STRUCTURAL SEPARATION OF THE INCUMBENT LOCAL EXCHANGE CARRIER
9 REQUIRED UNDER § 8-503 OF THIS SUBTITLE TO PROVIDE RETAIL LOCAL
10 TELECOMMUNICATIONS SERVICES.

11 (E) "WHOLESALE AFFILIATE" MEANS A TELEPHONE COMPANY CREATED BY
12 THE STRUCTURAL SEPARATION OF THE INCUMBENT LOCAL EXCHANGE CARRIER
13 REQUIRED UNDER § 8-503 OF THIS SUBTITLE TO PROVIDE WHOLESALE
14 TELECOMMUNICATIONS SERVICES TO COMPETITIVE LOCAL EXCHANGE CARRIERS
15 AND TO THE RETAIL AFFILIATE.

16 8-502.

17 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

18 (1) ACTION IS NEEDED TO DEVELOP AND MAINTAIN VIBRANT AND
19 IRREVERSIBLE COMPETITION IN ALL INTRASTATE TELECOMMUNICATIONS MARKETS
20 THROUGHOUT MARYLAND;

21 (2) DEVELOPMENT OF FULLY COMPETITIVE MARYLAND
22 TELECOMMUNICATIONS MARKETS WILL ENSURE THAT CONSUMERS RECEIVE THE
23 WIDEST POSSIBLE ARRAY OF SERVICES AT COMPETITIVELY DETERMINED PRICES;
24 AND

25 (3) COMPETITION WILL PROMOTE AND ENHANCE ECONOMIC
26 DEVELOPMENT OPPORTUNITIES IN RURAL, URBAN, AND SUBURBAN AREAS OF THIS
27 STATE.

28 8-503.

29 (A) IN ADDITION TO ANY OTHER REQUIREMENTS OF LAW, AN INCUMBENT
30 LOCAL EXCHANGE CARRIER SHALL STRUCTURALLY SEPARATE ITS RETAIL
31 OPERATIONS FROM ITS WHOLESALE OPERATIONS BY CREATING A RETAIL AFFILIATE
32 AND A WHOLESALE AFFILIATE, CONSISTENT WITH PROCEEDINGS OF THE
33 COMMISSION TO IMPLEMENT THIS SUBTITLE.

34 (B) THE RETAIL AFFILIATE AND THE WHOLESALE AFFILIATE SHALL
35 CONDUCT THEIR RESPECTIVE OPERATIONS IN ACCORDANCE WITH THIS SECTION.

36 (C) THE RETAIL AFFILIATE SHALL OPERATE AS A COMPETITIVE LOCAL
37 EXCHANGE CARRIER.

1 (D) THE WHOLESALE AFFILIATE SHALL OWN AND OPERATE ALL NETWORK
2 FACILITIES OF THE INCUMBENT LOCAL EXCHANGE CARRIER AS IT EXISTED BEFORE
3 THE EFFECTIVE DATE OF THE STRUCTURAL SEPARATION.

4 (E) THE WHOLESALE AFFILIATE SHALL OPERATE COMPLETELY
5 INDEPENDENTLY FROM THE RETAIL AFFILIATE. THE RETAIL AFFILIATE MAY NOT
6 JOINTLY OWN WITH THE WHOLESALE AFFILIATE, OR OTHERWISE CONTROL, ANY
7 NETWORK FACILITIES OR THE LAND, BUILDINGS, POLES, CONDUITS OR
8 RIGHTS-OF-WAY ON OR IN WHICH NETWORK FACILITIES ARE LOCATED.

9 (F) (1) ALL TRANSACTIONS AND AGREEMENTS BETWEEN THE RETAIL
10 AFFILIATE AND THE WHOLESALE AFFILIATE:

11 (I) SHALL BE AT ARM'S LENGTH;

12 (II) SHALL BE REDUCED TO WRITING AND BE AVAILABLE FOR
13 PUBLIC INSPECTION; AND

14 (III) MAY NOT TAKE EFFECT UNTIL APPROVED BY THE
15 COMMISSION.

16 (2) THE COMMISSION MAY NOT APPROVE A TRANSACTION BETWEEN
17 THE WHOLESALE AFFILIATE AND THE RETAIL AFFILIATE UNTIL ALL INTERESTED
18 PARTIES HAVE HAD AN OPPORTUNITY TO BE HEARD AND UNLESS THE COMMISSION
19 AFFIRMATIVELY FINDS THAT THE TRANSACTION:

20 (I) DOES NOT DISCRIMINATE AGAINST COMPETITIVE LOCAL
21 EXCHANGE CARRIERS; AND

22 (II) WILL NOT RESULT IN ANY CROSS-SUBSIDIZATION BETWEEN
23 THE WHOLESALE AFFILIATE AND THE RETAIL AFFILIATE.

24 (G) THE RETAIL AFFILIATE AND WHOLESALE AFFILIATE SHALL:

25 (1) MAINTAIN SEPARATE BOOKS, RECORDS, AND ACCOUNTS; AND

26 (2) HAVE SEPARATE OFFICERS, DIRECTORS, AND EMPLOYEES.

27 (H) THE WHOLESALE AFFILIATE MAY NOT DISCRIMINATE IN FAVOR OF THE
28 RETAIL AFFILIATE, AND THE RETAIL AFFILIATE MAY NOT DISCRIMINATE IN FAVOR
29 OF THE WHOLESALE AFFILIATE.

30 (I) (1) THE WHOLESALE AFFILIATE SHALL MAKE ALL PRODUCTS, SERVICES
31 AND SERVICE FUNCTIONS, INCLUDING NETWORK ELEMENTS, FACILITIES,
32 INTERFACES AND SYSTEMS, AVAILABLE TO EACH COMPETITIVE LOCAL EXCHANGE
33 CARRIER AT THE PRICES, TERMS, AND CONDITIONS AT WHICH THEY ARE AVAILABLE
34 TO THE RETAIL AFFILIATE.

35 (2) THE WHOLESALE AFFILIATE SHALL MAKE ALL THOSE PRODUCTS,
36 SERVICES AND SERVICE FUNCTIONS AVAILABLE TO AN AFFILIATED OR

1 UNAFFILIATED COMPETITIVE LOCAL EXCHANGE CARRIER ONLY THROUGH A TARIFF
2 OR AN INTERCONNECTION AGREEMENT APPROVED BY THE COMMISSION.

3 8-504.

4 (A) THE COMMISSION MAY ADOPT:

5 (1) STREAMLINED PROCEDURES FOR REVIEW OF TRANSACTIONS
6 BETWEEN THE RETAIL AFFILIATE AND THE WHOLESALE AFFILIATE;

7 (2) ENFORCEMENT MEASURES FOR VIOLATIONS OF THIS SUBTITLE,
8 INCLUDING AUDITING REQUIREMENTS; AND

9 (3) ANY OTHER REQUIREMENT OR PROCEDURE NECESSARY OR
10 APPROPRIATE FOR IMPLEMENTATION OF THIS SUBTITLE.

11 (B) THE COMMISSION SHALL ENFORCE THE REQUIREMENTS OF THIS
12 SUBTITLE UNDER § 5-101 OF THIS ARTICLE.

13 8-505.

14 THIS SUBTITLE DOES NOT EXPAND OR RESTRICT THE JURISDICTION OF THE
15 COMMISSION UNDER TITLE 3 OF THIS ARTICLE.

16 SECTION 2. AND BE IT FURTHER ENACTED, That:

17 (a) On or before August 1, 2001, the Public Service Commission shall begin
18 proceedings to implement this Act in accordance with Title 3 of the Public Utility
19 Companies Article. The Commission shall conclude the proceedings on or before
20 February 1, 2002.

21 (b) As part of its proceedings to implement this Act, the Commission, after
22 providing all interested parties a full opportunity to submit proposals, offer
23 comments, and participate in hearings, shall by order or regulation, establish a code
24 of conduct governing the relationship between the retail affiliate and the wholesale
25 affiliate to ensure that:

26 (1) the retail affiliate is not given any undue preference or advantage in
27 its relationship with the wholesale affiliate; and

28 (2) all services provided by the wholesale affiliate to the retail affiliate
29 are provided in a nondiscriminatory manner as required under this Act and other
30 applicable law.

31 SECTION 3. AND BE IT FURTHER ENACTED, That on or before January 13,
32 2002, the Public Service Commission, subject to § 2-1246 of the State Government
33 Article, shall report to the House Environmental Matters Committee and the Senate
34 Finance Committee on the status of competition in local exchange telephone service
35 in the State and on the implementation of this Act.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2001.