
By: **Delegate Stern**

Introduced and read first time: January 11, 2002

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Telecommunications Carriers - Prohibited Actions - Penalties and**
3 **Reporting Requirements**

4 FOR the purpose of requiring the Public Service Commission to make certain
5 recommendations and reports to the General Assembly; prohibiting certain
6 actions by telecommunications carriers that knowingly impede the development
7 of competition in any telecommunications service market; requiring the
8 Commission to assess certain penalties in certain circumstances; requiring the
9 Commission to analyze certain information and monitor certain activities by
10 telecommunications carriers; defining certain terms; and generally relating to
11 telecommunications carriers.

12 BY renumbering
13 Article - Public Utility Companies
14 Section 1-101(ii) through (pp), respectively
15 to be Section 1-101 (kk) through (rr), respectively
16 Annotated Code of Maryland
17 (1998 Volume and 2001 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Public Utility Companies
20 Section 2-116 and 2-122
21 Annotated Code of Maryland
22 (1998 Volume and 2001 Supplement)

23 BY adding to
24 Article - Public Utility Companies
25 Section 1-101(ii) and (jj); and 8-501 through 8-505, inclusive, to be under the
26 new subtitle "Subtitle 5. Prohibited Actions of Telecommunications
27 Carriers"
28 Annotated Code of Maryland
29 (1998 Volume and 2001 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That Section(s) 1-101(ii) through (pp), respectively, of Article - Public
3 Utility Companies of the Annotated Code of Maryland be renumbered to be Section(s)
4 1-101(kk) through (rr), respectively.

5 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
6 read as follows:

7 **Article - Public Utility Companies**

8 1-101.

9 (II) "TELECOMMUNICATIONS CARRIER" MEANS A PERSON WHO OFFERS
10 TELECOMMUNICATIONS SERVICES DIRECTLY OR INDIRECTLY THROUGH THE
11 FACILITIES OF THE BASIC LOCAL TELEPHONE EXCHANGE.

12 (JJ) "TELECOMMUNICATIONS SERVICE" MEANS PUBLIC SERVICES PROVIDED
13 FOR THE TRANSMISSION OF VOICE OR DATA COMMUNICATIONS WHICH ARE
14 TRANSMITTED THROUGH A SWITCHED LOCAL EXCHANGE NETWORK.

15 2-116.

16 (a) (1) As it considers desirable, the Commission may conduct proceedings
17 on proposed amendments to any law that, in the judgment of the Commission, would
18 affect the public interest in any aspect of the business of a public service company.

19 (2) On request of the Governor, the General Assembly, or either house of
20 the General Assembly, the Commission shall conduct proceedings on proposed
21 amendments to any law that, in the judgment of the Commission, would affect the
22 public interest in any aspect of the business of a public service company.

23 (b) (1) The Commission may recommend or prepare legislation on any
24 matter within or related to the jurisdiction of the Commission.

25 (2) If a proceeding under this section was held on request, subject to §
26 2-1246 of the State Government Article, the Commission shall report its conclusions
27 to the person or body who requested the proceeding.

28 (3) THE COMMISSION SHALL SUBMIT LEGISLATIVE RECOMMENDATIONS
29 IN ACCORDANCE WITH § 8-505 OF THE ARTICLE WITH ITS ANNUAL REPORT FILED
30 UNDER § 2-122 OF THIS ARTICLE.

31 2-122.

32 (a) (1) On or before the third Wednesday of March of each year, the
33 Commission shall publish an annual report that summarizes the activities of the
34 Commission that includes:

1 (i) a summary of each regulation, opinion, or order that the
2 Commission adopted, entered, or passed during the year; [and]

3 (ii) ITS FINDINGS AND RECOMMENDATIONS FOR LEGISLATIVE
4 ACTION UNDER § 8-505 OF THIS ARTICLE; AND

5 (III) any other information that the Commission considers of value.

6 (2) The Commission shall send a copy of the report to the Governor and,
7 subject to § 2-1246 of the State Government Article, to the General Assembly.

8 (b) Each year, the Commission shall publish a report that includes:

9 (1) the progress of the residential conservation service plan;

10 (2) Commission activities to moderate peak electric demand; and

11 (3) energy conservation measures taken by gas companies and electric
12 companies in the State to reduce electrical and natural gas demand.

13 SUBTITLE 5. PROHIBITED ACTIONS OF TELECOMMUNICATIONS CARRIERS.

14 8-501.

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (B) "COLLOCATION" MEANS THE PLACEMENT OF EQUIPMENT OF ONE
18 TELECOMMUNICATIONS CARRIER IN THE PHYSICAL FACILITIES OF ANOTHER
19 TELECOMMUNICATIONS CARRIER.

20 (C) "TELECOMMUNICATIONS CARRIER" MEANS A PERSON WHO OFFERS
21 GOODS OR SERVICES DIRECTLY OR INDIRECTLY THROUGH THE FACILITIES OF A
22 BASIC LOCAL TELEPHONE EXCHANGE INCLUDING:

23 (1) A DIGITAL SUBSCRIBER LINE;

24 (2) LONG DISTANCE TELEPHONE SERVICE; AND

25 (3) LOCAL BASIC TELEPHONE EXCHANGE SERVICE.

26 (D) "TELECOMMUNICATIONS SERVICE" MEANS THE TRANSMISSION OF VOICE
27 OR DATA COMMUNICATIONS THROUGH A SWITCHED LOCAL EXCHANGE NETWORK AS
28 A PUBLIC SERVICE.

29 8-502.

30 A TELECOMMUNICATIONS CARRIER MAY NOT KNOWINGLY IMPEDE THE
31 DEVELOPMENT OF COMPETITION IN ANY TELECOMMUNICATIONS SERVICE MARKET
32 BY:

- 1 (1) REFUSING OR DELAYING AN INTERCONNECTION OR COLLOCATION;
- 2 (2) PROVIDING AN INFERIOR CONNECTION TO ANOTHER
3 TELECOMMUNICATIONS CARRIER;
- 4 (3) IMPAIRING THE SPEED, QUALITY, OR EFFICIENCY OF A SERVICE
5 USED BY ANOTHER TELECOMMUNICATIONS CARRIER;
- 6 (4) DENYING A REQUEST OF ANOTHER TELECOMMUNICATIONS
7 CARRIER FOR INFORMATION REGARDING THE LOCAL EXCHANGE NETWORK,
8 INCLUDING:
 - 9 (I) THE LOCAL EXCHANGE NETWORK'S DESIGN AND FEATURES;
 - 10 (II) ITS GEOGRAPHIC COVERAGE;
 - 11 (III) ITS TRAFFIC CAPABILITIES; AND
 - 12 (IV) INFORMATION NECESSARY FOR THE DESIGN OF EQUIPMENT;
- 13 (5) REFUSING OR DELAYING ACCESS BY ANY PERSON TO ANOTHER
14 TELECOMMUNICATIONS CARRIER;
- 15 (6) ACTING OR FAILING TO ACT IN A MANNER THAT HAS A SUBSTANTIAL
16 ADVERSE EFFECT ON THE ABILITY OF ANOTHER TELECOMMUNICATIONS CARRIER
17 TO PROVIDE SERVICE TO CUSTOMERS;
- 18 (7) VIOLATING THE TERMS OF OR UNREASONABLY DELAYING THE
19 IMPLEMENTATION OF AN INTERCONNECTION AGREEMENT ENTERED INTO IN
20 ACCORDANCE WITH § 252 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 IN A
21 MANNER THAT UNREASONABLY DELAYS, INCREASES THE COST, OR IMPEDES THE
22 AVAILABILITY OF TELECOMMUNICATIONS SERVICES TO CONSUMERS;
- 23 (8) REFUSING, DELAYING ACCESS TO, OR PROVIDING AN INFERIOR
24 OPERATION SUPPORT SYSTEM TO ANOTHER TELECOMMUNICATIONS CARRIER;
- 25 (9) FAILING TO OFFER NETWORK ELEMENTS THAT THE COMMISSION OF
26 THE FEDERAL COMMUNICATIONS COMMISSION HAS DETERMINED MUST BE
27 OFFERED ON AN UNBUNDLED BASIS TO ANOTHER TELECOMMUNICATIONS CARRIER
28 IN A MANNER CONSISTENT WITH THE COMMISSION'S OR THE FEDERAL
29 COMMUNICATIONS COMMISSION'S ORDERS OR REGULATIONS REQUIRING SUCH
30 OFFERINGS;
- 31 (10) VIOLATING THE OBLIGATIONS OF § 251 OF THE FEDERAL
32 TELECOMMUNICATIONS ACT OF 1996;
- 33 (11) VIOLATING AN ORDER OF THE COMMISSION REGARDING MATTERS
34 BETWEEN TELECOMMUNICATIONS CARRIERS; OR
- 35 (12) OTHERWISE IMPEDING THE DEVELOPMENT OF COMPETITION IN A
36 TELECOMMUNICATIONS SERVICE MARKET.

1 8-503.

2 (A) IN A CASE WHERE A CIVIL PENALTY IS NOT OTHERWISE PROVIDED FOR IN
3 THIS SUBTITLE, A PERSON WHO VIOLATES THIS SUBTITLE OR A REGULATION OR
4 ORDER OF THE COMMISSION ADOPTED UNDER THIS SUBTITLE IS SUBJECT TO A
5 CIVIL PENALTY IMPOSED IN THE MANNER PROVIDED IN § 8-503 OF THIS ARTICLE.

6 (1) IF THE VIOLATOR HAS FEWER THAN 35,000 SUBSCRIBER ACCESS
7 LINES THE CIVIL PENALTY MAY NOT EXCEED \$2,000 FOR EACH VIOLATION.

8 (2) IF THE VIOLATOR HAS MORE THAN 35,000 SUBSCRIBER ACCESS
9 LINES THE CIVIL PENALTY MAY NOT EXCEED THE GREATER OF \$30,000 OR 0.0825% OF
10 THE CARRIER'S GROSS INTRASTATE ANNUAL TELECOMMUNICATIONS REVENUE FOR
11 EACH VIOLATION.

12 (B) (1) EACH VIOLATION OF THIS SUBTITLE OR ANY ORDER OR REGULATION
13 OF THE COMMISSION IS A SEPARATE VIOLATION.

14 (2) IN CASE OF A CONTINUING VIOLATION, EACH DAY THAT A
15 VIOLATION CONTINUES IS A SEPARATE OFFENSE.

16 (C) A PENALTY ADOPTED UNDER THIS SUBTITLE ATTACHES AND BEGINS TO
17 ACCRUE FROM THE DAY AFTER WRITTEN NOTICE IS DELIVERED TO A PERSON
18 STATING THE PERSON IS IN VIOLATION OF THIS SUBTITLE OR AN ORDER OR
19 REGULATION OF THE COMMISSION.

20 (D) A VIOLATION OF THIS SUBTITLE OR A ORDER OR REGULATION OF THE
21 COMMISSION COMMITTED WHILE WITHIN THE SCOPE OF EMPLOYMENT BY AN
22 OFFICER, AGENT, OR EMPLOYEE OF A TELECOMMUNICATIONS CARRIER IS
23 CONSIDERED TO BE A VIOLATION OF THE TELECOMMUNICATIONS CARRIER.

24 8-504.

25 (A) IN ADDITION TO ANY OTHER AVAILABLE PENALTY, THE COMMISSION
26 SHALL ASSESS DIRECTLY AND COLLECT ALL CIVIL PENALTIES ESTABLISHED UNDER
27 THIS SUBTITLE AGAINST VIOLATORS OF THIS SUBTITLE.

28 (B) CIVIL PENALTIES MAY BE ASSESSED ONLY AFTER NOTICE AND
29 OPPORTUNITY TO BE HEARD.

30 (C) IN DETERMINING THE AMOUNT OF THE CIVIL PENALTY TO BE ASSESSED,
31 THE COMMISSION MAY CONSIDER ANY MATTERS OF RECORD IN AGGRAVATION OR
32 MITIGATION OF THE PENALTY, INCLUDING:

33 (1) THE DURATION AND GRAVITY OF THE VIOLATION;

34 (2) THE PRESENCE OR ABSENCE OF DUE DILIGENCE ON THE PART OF
35 THE VIOLATOR IN ATTEMPTING EITHER TO COMPLY WITH THE REQUIREMENTS OF
36 THIS SUBTITLE, THE REGULATIONS, OR THE ORDERS OF THE COMMISSION, OR TO
37 SECURE LAWFUL RELIEF FROM THOSE REQUIREMENTS;

1 (3) ANY ECONOMIC BENEFITS ACCRUED BY THE VIOLATOR BECAUSE OF
2 THE DELAY IN COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE, THE
3 REGULATIONS, OR THE ORDERS OF THE COMMISSION; AND

4 (4) THE AMOUNT OF MONETARY PENALTY THAT WILL DETER FURTHER
5 VIOLATIONS AND TO OTHERWISE AID IN ENHANCING VOLUNTARY COMPLIANCE
6 WITH THIS SUBTITLE, THE REGULATIONS, OR THE ORDERS OF THE COMMISSION.

7 (D) IF A PERSON ON WHOM THE COMMISSION IMPOSES A PENALTY TAKES A
8 TIMELY JUDICIAL REVIEW OF THE PENALTY IMPOSED BY THE COMMISSION ORDER,
9 THE REVIEWING COURT SHALL ENTER A JUDGMENT ON ALL AMOUNTS UPON
10 AFFIRMANCE OF THE COMMISSION ORDER.

11 (E) IF A TIMELY JUDICIAL REVIEW IS NOT TAKEN AND THE PENALTY
12 REMAINS UNPAID FOR 60 DAYS AFTER SERVICE OF THE ORDER, THE COMMISSION IN
13 ITS DISCRETION MAY EITHER BEGIN PROCEEDINGS TO REVOKE OR SUSPEND THE
14 ENTITY'S AUTHORITY TO DO BUSINESS IN THIS STATE OR BRING SUIT TO RECOVER
15 THE PENALTIES. UNLESS STAYED BY A REVIEWING COURT, INTEREST SHALL
16 ACCRUE FROM THE 60TH DAY AFTER THE DATE OF SERVICE OF THE COMMISSION
17 ORDER TO THE DATE FULL PAYMENT IS RECEIVED BY THE COMMISSION.

18 (F) THE COMMISSION MAY RECOVER THE PENALTY IN A CIVIL ACTION IN
19 STATE COURT.

20 (G) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ALL FINES AND CIVIL
21 PENALTIES ASSESSED AND PAID OR RECOVERED UNDER THIS SUBTITLE SHALL BE
22 PAID INTO THE GENERAL FUND OF THIS STATE.

23 8-505.

24 (A) (1) THE COMMISSION SHALL INCLUDE ITS FINDINGS AND ANY
25 APPROPRIATE RECOMMENDATIONS FOR LEGISLATIVE ACTION IN ITS ANNUAL
26 REPORT TO THE GENERAL ASSEMBLY FILED UNDER § 2-122 OF THIS ARTICLE. IN
27 PREPARING THIS ANALYSIS THE COMMISSION SHALL:

28 (I) MONITOR AND ANALYZE:

29 1. PATTERNS OF ENTRY AND EXIT AND CHANGES IN
30 PATTERNS OF ENTRY AND EXIT FOR EACH RELEVANT MARKET FOR
31 TELECOMMUNICATIONS SERVICES, INCLUDING EMERGING HIGH-SPEED
32 TELECOMMUNICATIONS MARKETS;

33 2. THE STATUS OF DEPLOYMENT OF SERVICES TO
34 CONSUMERS, AND THE MARKET TRENDS OF THE TELECOMMUNICATIONS SERVICES
35 IN THIS STATE INCLUDING ANY PATTERNS OR PRACTICES OF SERVICE QUALITY
36 DEFICIENCIES OR FAILURES AND THE FREQUENCY, DURATION AND RECURRENCE
37 OF SUCH FAILURES.

1 (II) EVALUATE INFORMATION PROVIDED BY
2 TELECOMMUNICATIONS CARRIERS THAT PERTAINS TO THE STATE OF COMPETITION
3 IN THE TELECOMMUNICATIONS MARKETS, INCLUDING:

4 1. THE NUMBER AND TYPE OF FIRMS PROVIDING
5 TELECOMMUNICATIONS SERVICES, INCLUDING BROADBAND
6 TELECOMMUNICATIONS SERVICES, IN THE STATE;

7 2. THE TELECOMMUNICATIONS SERVICES OFFERED BY
8 THESE FIRMS TO BOTH RETAIL AND WHOLESALE CUSTOMERS;

9 3. THE EXTENT TO WHICH CUSTOMERS AND OTHER
10 PROVIDERS ARE PURCHASING THE FIRMS' TELECOMMUNICATIONS SERVICES;

11 4. THE TECHNOLOGIES OR METHODS BY WHICH THESE
12 FIRMS PROVIDE THESE SERVICES, INCLUDING DESCRIPTIONS OF TECHNOLOGIES IN
13 PLACE AND UNDER DEVELOPMENT AND THE DEGREE TO WHICH FIRMS RELY ON
14 OTHER WHOLESALE PROVIDERS TO PROVIDE SERVICE TO THEIR OWN CUSTOMERS;
15 AND

16 5. THE TARIFFED RETAIL AND WHOLESALE PRICES FOR
17 SERVICES PROVIDED BY THESE FIRMS; AND

18 (III) COLLECT ALL INFORMATION THAT THE COMMISSION
19 CONSIDERS NECESSARY TO ASSIST IN MONITORING AND ANALYZING THE
20 TELECOMMUNICATIONS MARKETS AND THE STATUS OF COMPETITION AND
21 DEPLOYMENT OF TELECOMMUNICATIONS SERVICES TO CONSUMERS IN THE STATE.

22 (B) IN ANALYZING THE INFORMATION OBTAINED BY PARAGRAPH (A)(I)(2) AND
23 (II) OF THIS SECTION, AT A MINIMUM, THE COMMISSION SHALL ASSESS THE
24 VARIABILITY ACCORDING TO:

25 (1) GEOGRAPHY;

26 (2) EXCHANGE, WIRECENTER, OR ZIP CODE; AND

27 (3) CUSTOMER CLASS, INCLUDING THE VARIABILITY BETWEEN
28 RESIDENTIAL AND SMALL, MEDIUM, AND LARGE BUSINESS CUSTOMERS.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2002.