HB 1082

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1082 (Delegate Stern)
Economic Matters

Telecommunications Services - Competition - Enforcement

This bill prohibits telecommunications companies from knowingly impeding the development of a telecommunications service market and authorizes the Public Service Commission (PSC) to institute a proceeding to evaluate whether a violation warrants a return of the company to price and revenue controls using rate of return regulation. The bill authorizes PSC to resolve and adjudicate disputes; award compensatory, consequential, and punitive damages, or any combination of them; and award attorney's fees and costs. Telecommunications companies found in violation of the provisions of this bill would not be allowed to recover the costs of any violation from customers.

Fiscal Summary

State Effect: None. The provisions of this bill could be handled with existing budgeted resources. To the extent that increased local telecommunications service competition reduces prices, State expenditures for local telecommunications service could decrease.

Local Effect: Local governments could recognize the same expenditure reductions as the State.

Small Business Effect: Potential significant.

Analysis

Bill Summary: The bill specifies that telecommunications carriers may not:

- unreasonably refuse or delay interconnections, collocation, access to network elements, or access to the network elements platform, or provide inferior connections to another telecommunications carrier;

- unreasonably impair the speed, quality, or efficiency of services used by another telecommunications carrier;

- except for proprietary information that is subject to a proprietary agreement or protective order, unreasonably deny a request of another provider for information regarding the technical design and features, geographic coverage, information necessary for the design of equipment, or traffic capabilities of the local exchange network;

- unreasonably delay connection access of another telecommunications carrier whose product or service requires novel or specialized access to the local exchange network;

- unreasonably refuse or delay access by any person to another telecommunications carrier;

- unreasonably act or fail to act such that a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers results;

- unreasonably fail to offer services to customers in a local exchange, where a telecommunications carrier is certified to provide service and has entered into an interconnection agreement for the provision of local exchange telecommunications services, with the intent to delay or impede the ability of the incumbent local exchange telecommunications carrier to provide inter-LATA telecommunications services;

- violate the terms of or unreasonably delay implementation or enforcement of an interconnection agreement entered into in accordance with § 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers;

- unreasonably impede or delay a telecommunications carrier's access to or implementation of its rights under this subtitle by resorting in bad faith to processes under the commission; and

- unreasonably fail to offer network elements that the commission or the Federal Communications Commission (FCC) has determined must be offered on an unbundled basis to another telecommunications carrier in a manner consistent with the commission's or federal communications commission's order or rules requiring that offer.

PSC is authorized to establish other prohibited activities not specifically listed in the bill.

PSC is required to establish procedures for imposing a penalty that provides for notice, hearing, and a written order relating to the imposition of the penalty. PSC may waive any penalty imposed under the provisions of this bill if it makes a written finding of its reasons. Reasons for waiving a penalty may include technological infeasibility and acts of God.

The bill provides that in addition to any other available penalty, PSC may assess directly, after an opportunity for a hearing, an administrative penalty not exceeding 0.00825% of the company's gross intrastate telecommunications revenue for a violation of this subtitle. Each day of a continuing violation against a person is specified as a separate violation. The penalty is assessed beginning on the day the PSC order requires compliance with the order and continues until the entity is in compliance with the PSC order.

When PSC assesses an administrative penalty it is required to consider (1) the nature, circumstances, extent, gravity, and number of violations; (2) the degree of culpability of the violator; (3) prior offenses and repeated violations of the violator; and (4) any other matter that the commission considers appropriate and relevant.

The bill provides that telecommunications companies found in violation of the provisions of this bill may appeal the decision of PSC to a court of competent jurisdiction. The courts may stay or alter the decision of PSC. If the court finds a reasonable basis for the failure of the telecommunications carrier to make timely payment according to the commission's order, the court is required to establish a new date for payment to be made.

Current Law: PSC is authorized to adopt policies and regulations governing the development of competition in the telecommunications services market. Policies and regulations adopted by the commission must be consistent with federal law, policies and regulations of FCC, Title 4 of the Public Utility Companies (PUC) Article, and any other applicable provisions of Maryland law.

Under Chapter 205 of 2001, PSC has the authority to impose a civil penalty of up to $10,000 against any person who violates a provision of PUC, or an effective and outstanding direction, ruling, order, rule, or regulation of PSC. A civil penalty may be imposed in addition to any other penalty authorized by this PUC. Each violation is a separate offense and each day or part of a day the violation continues is a separate offense. PSC is required to determine the amount of any civil penalty after considering: (1) the number of previous violations of any provision of this article; (2) the gravity of the current violation; (3) the good faith efforts of the violator in attempting to achieve compliance after notification of the violation; and (4) any other matter that the commission considers appropriate and relevant.

Background: PSC notes that many of the impediments to competition specified in the bill relate to interconnection issues. Under the federal Telecommunications Act of 1996 (the Act), PSC has authority to arbitrate these issues and then enforce that arbitration order. PSC has entered into multiple arbitration proceedings since the passage of the Act and has had several cases where one company has claimed that the other is not following the arbitration order. Similarly, PSC adopted a Maryland Guidelines and Performance Assurance Plan which is a comprehensive set of service standards which Verizon must satisfy in order to avoid the automatic imposition of penalties.

PSC advises that it has not defined any violations "in the development of competition," it has resolved disputes regarding the interpretation of interconnection agreements where one party claimed that the other party's interpretation was anticompetitive. A hearing examiner of PSC recently sent a request for a docketed hearing before the full commission to address an arbitration filed by Verizon that involves 115 companies.

Small Business Effect: To the extent PSC enforces the provisions of this bill, small telecommunications companies could experience significantly easier entrance into the local telecommunications service market. To the extent that the specified violations and penalties enable small telecommunications providers to more easily enter the local telecommunications market, increased competition could also significantly reduce telecommunications service prices for all small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission, Office of People's Counsel, Department of Legislative Services

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Analysis by: Daniel P. Tompkins

Direct Inquiries to:
(410) 946-5510
(301) 970-5510