HB 1494

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1494 (Delegate Davis, *et al.*)

Economic Matters Finance

Telecommunications - Basic and Competitive Services - Agreement

This bill specifies that it is the intention of the General Assembly that certain settlement agreements regarding the regulation of telephone companies, local calling boundaries, affiliate relationships, service performance, and classification of competitive or regulated services be approved substantially in the form that they have been filed with the Public Service Commission (PSC) by July 1, 2009. The bill includes specific requirements to be included in each of these settlements, as well as specifying that certain telephone services be considered competitive instead of regulated services. The bill also authorizes a telephone company to implement a service quality program to implement and monitor compliance with service quality standards.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: The bill will not materially affect State finances or operations.

Local Effect: Local government expenditures for telephone services may be affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that any additional residential telephone services that the local telephone company offers for the first time on or after July 1, 2009, beyond regulated basic service, must be classified as competitive services. By July 1, 2012, all component elements of bundled services must be available separately as individual services apart from a regulated basic service. The requirement applies to an incumbent local telephone company that provides local exchange service to more than 10,000 subscribers. Verizon Maryland is the only telephone company that meets this criterion.

On or after July 1, 2012, a telephone company, PSC, and the Office of People's Counsel may jointly develop and implement a service quality program to achieve compliance with service quality standards adopted by PSC. The service quality program must include a component where customers may be precertified for priority service response due to conditions such as medical needs or lack of alternative access to enhanced 9-1-1 service. The service quality program may include monetary incentives, such as reserving company funds, for customers whose service complaints are not addressed within a period of time or for extended out-of-service conditions, or missed appointments. PSC may allow the monetary provisions to take effect, lapse, or be reinstated based on overall compliance.

The bill specifies that it is the intention of the General Assembly that the settlement agreement that is the subject of the Joint Petition for Approval of Settlement Agreement filed with PSC on December 8, 2008, in Case Numbers 9072, 9114, 9120, 9121, and 9133 be completed by PSC and take effect no later than July 1, 2009.

Current Law:

Telephone Rate Regulation – Alternative Pricing

Under regulated telephone services, the rate charged to the customer is determined by a traditional rate of return regulation. PSC may adopt an alternative form of regulation if PSC finds, after notice and hearing, that an alternative form of regulation (1) protects consumers by, at a minimum, producing affordable and reasonably priced basic exchange service and ensures the quality, availability, and reliability of telecommunications services throughout the State; (2) encourages the development of competition; and (3) is in the public interest. Alternative forms of regulation may include price regulation, revenue regulation, ranges of authorized return, rate of return, categories of services, or price indexing.

Order Number 73011 (November 1996), relating to Case Number 8715, allowed Verizon to utilize a price cap plan. The approved price cap plan categorized and placed Verizon's services into one of six service baskets with separate pricing rules established for each classification. The plan allowed PSC to exercise greater control over pricing for services that lack competition and allowed Verizon flexibility to respond to market rates when applicable.

Telephone Lifeline Service

Telephone lifeline service is a local service provided to eligible subscribers at a discount that provides an individual residential local exchange dial access line plus the first 30 residential local untimed messages per billing month. The class of telephone subscribers eligible for telephone lifeline service includes individuals who have been certified by the Department of Human Resources as receiving assistance through the Electric Universal Service Program or the Maryland Energy Assistance Program. Persons enrolled in the telephone lifeline service program receive reduced rates equal to 50% of the current tariff rates.

Service Quality Standards

The Code of Maryland Regulations (COMAR 20.45.04.08) requires each utility to keep records of customer complaints and trouble reports so that it may review and analyze its procedures and actions as an aid in rendering improved service. Each utility must make arrangements to clear all out-of-service troubles not requiring unusual repairs within eight hours of the report to the company (excluding week nights, weekends, and holidays). Pursuant to Case Number 9114, Verizon is required to file monthly interim reports on the number of out-of-service conditions, the length of time needed to complete repairs for out-of-service, and the percentage of workforce time dedicated to out-of-service repairs versus installation. Pursuant to Order Number 81658, these reports may be treated as proprietary and confidential.

Each utility must grant appointments to customers on reported service troubles, scheduled so that they can meet the eight hour standard for out-of-service troubles. If appointments with the customer cannot be kept, the utility must make every reasonable effort to notify the customer in timely fashion of the delay. The number of appointments the utility fails to meet may not be greater than 20% of the total commitments given per month within a district service center. The utility must make reasonable efforts to prevent subsequent reports and the rate of subsequent trouble reports may not be greater than 13% of the total reports per month registered within a district service center.

Background: Via docketed cases, PSC has been considering various issues associated with specified provisions of the settlement dating back to at least 2006. In November 2008, the Office of the People's Counsel (OPC), Verizon, and technical staff advised PSC that a settlement in principle had been reached on Case Number 9133, as well as several other cases pending before PSC. The parties were granted stays in the procedural schedule to finalize settlement negotiations.

PSC conducted settlement hearings and as a result of these hearing, the commissioners identified issues that were not resolved through the settlement agreements. Testimony before PSC indicated that the reliability of the copper network used to support most landline customers through basic landline and lifeline services has been compromised in order to focus on new fiber-optic networks. Thus, service quality has been below both Verizon standards and the State requirements. The proposed settlement would not require Verizon to return financial resources to maintaining the copper network; instead, the settlement allows Verizon to pay penalties if out-of-service times exceed specified standards. A final decision regarding the proposed settlement is expected in late March 2009.

The proposed settlement considers issues before PSC in six separate cases (9072, 9114, 9120, 9121, 9123, and 9133). If PSC rejects the proposed settlement, then Verizon and PSC will go forward with the cases. The majority of the filings and hearings have been completed in the six cases. Some of the cases include parties who are not parties to the proposed settlement.

Case Number 9072 – Was initiated in April 2006 after Verizon filed an application to reclassify certain bundled service offerings as competitive services. The proposed reclassification would allow Verizon greater flexibility to adjust rates for the bundled services in response to market conditions. The bundled services involve local exchange service "bundled" with other services as a package, while the individual services offered on a stand-alone basis (such as unbundled local exchange service) would not be reclassified. Following hearings held in February 2007, the hearing examiner determined that the request to reclassify must be denied as the record did not provide sufficient support that competition existed statewide and that rates resulting from reclassification of bundled services would be just and reasonable throughout the entire State. Verizon appealed the proposed order and that appeal is currently pending.

The proposed settlement reclassifies all bundled services as competitive, effective on one day's notice versus the 30 days notice required by Public Utility Companies Article § 4-203(a)(1).

Case Number 9114 – In response to an increase in customer complaints regarding unreasonable delays in restoring service, by Order Number 81546 issued August 3, 2007, PSC instituted this investigation regarding repair and restoration of telephone service and directed Verizon Maryland to provide information and materials in response to a Show Cause Order. After response by the company relating various measures to ameliorate service deficiencies, PSC directed filing of Interim Performance Reports in Order Number 81658 issued on October 15, 2007. These interim reporting requirements were modified, and as of December 2008, the company has filed 13 interim reports, all of which Verizon deems confidential. The matter remains pending and PSC withheld filing of a formal complaint due to the settlement negotiations.

The proposed settlement would substitute a two-day average of residential and business out-of-service times for the current eight-hour standard. PSC advises that residential out-of-service times discussed in the hearing on the proposed settlement were at times as long as 10 or 14 days, while business out-of-service times rarely exceeded a half-day. Verizon would be subject to penalties ranging from $250,000 per quarter to a maximum of $8 million per year (for repeated violations), until July 2012 or when Verizon's primary residential market share reaches 50%.

Case Number 9120 – Was initiated in June 2007 as a PSC investigation into Verizon's affiliate relationships. The case involves a review of whether Verizon could "bundle," or sell together, its own services and services provided by its affiliates, consistent with the existing price cap regulatory framework. Several parties maintained that combining Verizon's price-capped services with affiliates' nonprice-capped services would undermine the price cap regulatory system. By letter orders issued in August 2007, PSC suspended all of the proposed tariffs and delegated the review to the PSC hearing examiner.

In January 2008, the PSC hearing examiner issued a proposed order stating that bundling unregulated services with regulated services is not in conformance with the alternative form of regulation, known as the price cap plan, which is in place for Verizon. PSC held that at any time a Verizon affiliate bundles services with Verizon, the service provided by the affiliate is subject to pricing limits of the price cap plan for Verizon-Maryland. On June 27, 2008, Verizon and Verizon affiliates filed a petition for judicial review in the Baltimore City Circuit Court. The court case is pending and the trial was moved to July 2009 to allow time for settlement hearings.

The proposed settlement would reclassify all bundled services as competitive, effective on one day's notice versus the 30 days notice currently required by the PSC review period.

Case Number 9121 – Was initiated in response to a legislative request to investigate local calling areas and the pricing of foreign exchange services. In Order Number 81609 issued September 17, 2007, in Case Numbers 8772 and 9121, PSC determined that Verizon has complied with PSC directives to date with respect to local calling areas, but that a new proceeding should be initiated to examine these results on a statewide basis. PSC noted the evolving variety of calling options over the past seven years has altered the landscape of the telephone market. Although the specific complaint was dismissed and Case Number 8772 was closed, Case Number 9121 was initiated to consider relevant issues regarding the community of interest test and local calling area boundary and related pricing issues. Most subscribers to foreign exchange service pay $14 per month.

The proposed settlement would allow customers who purchased a bundle costing more than $40 per month to pay $2 instead of $14. Those who did not purchase a bundle would pay the full foreign exchange rate, which would be deemed competitive and therefore not regulated by PSC.

Case Number 9123 – PSC initiated the proceeding in October 2007 at the request of OPC. OPC had received complaints about Verizon's practices when customers switched from copper service to fiber optic (FIOS). FIOS requires a power source, while copper lines do not. In the case, OPC asked PSC to consider new copper retirement rules. There are multiple parties to Case Number 9123 that are not parties to the proposed settlement.

The proposed settlement requires that PSC not adopt new copper retirement rules, and if PSC did adopt new copper retirement rules, the proposed settlement would not be effective.

Case Number 9133 – Was initiated by PSC in response to an annual updated price tariff filed by Verizon scheduled to take effect on January 1, 2008. Although the increases met the requirements of the price cap plan, PSC rejected the price cap filing due to the pending service quality proceeding in Case Number 9114. On December 31, 2007, Verizon filed suit in Baltimore City Circuit Court and on March 25, 2008, the court vacated the PSC determination on the ground that the existing price cap plan allowed increases and does not link prices to service quality. Case Number 9133 was initiated to review the Verizon price cap plan and determine whether an alternate form of regulation should apply for Verizon. On November 20, 2008, PSC suspended the schedule in the proceeding to allow for the filing and consideration of a settlement.

The proposed settlement would not link price increases to service quality. The proposed settlement allows Verizon to increase the price of basic service by $1 per month beginning in July 2009, in addition to a price increase originally scheduled to take effect January 2009. After the two price increases, the next price increase takes effect in 2012.

Bundled Service – Generally

Bundled service is any combination of retail services offered as a package, either at a single price or with the availability of the price for one or more services contingent on the purchase of other services. Bundled service can include any telephone service combined with any other telephone service or with any nontelephone service including services offered by an affiliate of a telephone company or unrelated entity. An example of a bundled service offering is cable, telephone, and high-speed Internet services bundled together as a package and offered at a single price. Bundled prices may offer a set of goods or services at combined prices that reward customers with an aggregate price that is less than what would have been spent had all of the individual goods or services been purchased independently.

State Fiscal Effect: The bill precludes PSC from ruling on several cases pending before the commission. PSC has already conducted hearings and received testimony on the aforementioned case proceedings so any reduction in staff hours resulting from approval of the settlement agreement is expected to be negligible.

Local Government Effect: To the extent that PSC is precluded from offering additional rate or service protections, the price of certain telephone services obtained by local governments may be affected.

Small Business Effect: The bill specifies that certain services provided to small businesses by Verizon are competitive services and removes these services from regulatory oversight of PSC. The bill directs PSC to approve the settlement agreement in substantially the form in which it was filed. To the extent that PSC is precluded from offering additional rate or service protections to small businesses, the bill may have a negative impact on small businesses.

Additional Information

Prior Introductions: None.

Cross File: SB 1026 (Senator Middleton) - Finance.

Information Source(s): Public Service Commission, Department of Legislative Services

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