

HOUSE BILL 937

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By: **Delegates Hecht, Ali, Barkley, Barnes, Benson, Bohanan, Burns, Cardin, Carr, Guzzone, Harrison, Hucker, Ivey, Kelly, King, Lafferty, Levi, Manno, Mathias, McHale, Mizeur, Niemann, Pena-Melnyk, Ramirez, Rosenberg, Ross, Stein, Taylor, F. Turner, V. Turner, and Vaughn**

Introduced and read first time: February 12, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Telephone Companies – Acquisitions and Franchises**

3 FOR the purpose of requiring a certain telephone company to provide the Public
4 Service Commission with copies of certain documents at certain times under
5 certain circumstances; requiring the Commission to provide a certain telephone
6 company with certain confidentiality and other protections under certain
7 circumstances; prohibiting certain persons from acquiring the power to exercise
8 certain influence over the policies and actions of a telephone company under
9 certain circumstances without prior authorization from the Commission;
10 prohibiting a certain person from acquiring a certain franchise or right under a
11 certain franchise without prior authorization from the Commission; authorizing
12 the commission to order compliance with, and take certain actions authorized
13 by, certain provisions under certain circumstances; requiring a certain
14 application to include certain information; requiring the Commission to
15 promptly examine and investigate certain applications and undertake certain
16 proceedings to review the application in accordance with certain provisions and
17 issue a certain order under certain circumstances; requiring the Commission to
18 consider certain factors when considering a certain acquisition; requiring the
19 Commission to issue a certain order granting a certain application under
20 certain circumstances; authorizing the Commission to condition a certain order
21 on the satisfactory performance or adherence to certain requirements; requiring
22 the Commission to issue an order denying a certain application under certain
23 circumstances; requiring the Commission to issue a certain order within a
24 certain time period under certain circumstances; providing for an extension of a
25 certain time period under certain circumstances; providing that the failure of
26 the Commission to issue a certain order within a certain time period is
27 considered to be approval of a certain acquisition; providing that nothing in
28 certain provisions prohibits dissemination of certain information by any party

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 under certain circumstances; providing for the application of certain provisions;
2 and generally relating to the acquisition of a certain telephone company or the
3 acquisition of a certain franchise to own or operate a telephone line in the State.

4 BY adding to
5 Article – Public Utility Companies
6 Section 6–106
7 Annotated Code of Maryland
8 (2008 Replacement Volume and 2009 Supplement)

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

11 **Article – Public Utility Companies**

12 **6–106.**

13 **(A) THIS SECTION APPLIES ONLY TO A TELEPHONE COMPANY THAT:**

14 **(1) HOLDS A FRANCHISE TO OWN OR OPERATE A TELEPHONE**
15 **LINE IN THE STATE; OR**

16 **(2) IS A CORPORATION FORMED AS A CLASS 13 CORPORATION**
17 **UNDER ARTICLE 23, § 28 OF THE CODE OF 1904.**

18 **(B) THIS SECTION APPLIES TO:**

19 **(1) THE ACQUISITION OF A TELEPHONE COMPANY; AND**

20 **(2) THE ASSIGNMENT, LEASE, OR TRANSFER OF A FRANCHISE OR**
21 **RIGHT UNDER A FRANCHISE TO OWN OR OPERATE A TELEPHONE LINE IN THE**
22 **STATE.**

23 **(C) (1) A TELEPHONE COMPANY, AT THE SAME TIME AS A FILING BY**
24 **THE COMPANY OR WITHIN 10 DAYS AFTER RECEIPT BY THE COMPANY, SHALL**
25 **PROVIDE THE COMMISSION WITH A COPY OF ANY DOCUMENT REGARDING THE**
26 **ACQUISITION OF VOTING SECURITIES OF THE TELEPHONE COMPANY OR ANY**
27 **COMPANY THAT OWNS OR CONTROLS THE TELEPHONE COMPANY, FILED OR**
28 **RECEIVED BY THE COMPANY, THAT IS FILED WITH:**

29 **(I) THE SECURITIES AND EXCHANGE COMMISSION;**

30 **(II) THE FEDERAL COMMUNICATIONS COMMISSION;**

31 **(III) THE DEPARTMENT OF JUSTICE;**

1 (IV) THE FEDERAL TRADE COMMISSION; OR

2 (V) ANY SUCCESSOR AGENCY.

3 (2) THE COMMISSION SHALL PROVIDE THE TELEPHONE
4 COMPANY WITH THE SAME CONFIDENTIALITY AND OTHER PROTECTIONS
5 PROVIDED BY THE FEDERAL AGENCY WITH WHICH THE FILING WAS MADE.

6 (D) WITHOUT PRIOR AUTHORIZATION FROM THE COMMISSION:

7 (1) A PERSON MAY NOT ACQUIRE, DIRECTLY OR INDIRECTLY, THE
8 POWER TO EXERCISE ANY SUBSTANTIAL INFLUENCE OVER THE POLICIES AND
9 ACTIONS OF A TELEPHONE COMPANY IF THE PERSON WOULD BECOME AN
10 AFFILIATE OF THE TELEPHONE COMPANY AS A RESULT OF THE ACQUISITION;
11 AND

12 (2) A PERSON MAY NOT ACQUIRE, BY ASSIGNMENT, LEASE, OR
13 TRANSFER, A FRANCHISE TO OWN OR OPERATE A TELEPHONE LINE IN THE
14 STATE OR RIGHT UNDER A FRANCHISE FROM A TELEPHONE COMPANY.

15 (E) AN APPLICATION FOR AUTHORIZATION FROM THE COMMISSION
16 UNDER SUBSECTION (D) OF THIS SECTION MUST INCLUDE DETAILED
17 INFORMATION REGARDING:

18 (1) THE IDENTITY AND FINANCIAL ABILITY OF THE APPLICANT;

19 (2) THE BACKGROUND OF THE KEY PERSONNEL ASSOCIATED
20 WITH THE APPLICANT;

21 (3) THE SOURCE AND AMOUNTS OF FUNDS OR OTHER
22 CONSIDERATION TO BE USED IN THE TRANSACTION;

23 (4) THE APPLICANT'S COMPLIANCE WITH FEDERAL LAW IN
24 CARRYING OUT THE TRANSACTION;

25 (5) WHETHER THE APPLICANT OR THE KEY PERSONNEL
26 ASSOCIATED WITH THE APPLICANT HAVE VIOLATED ANY STATE OR FEDERAL
27 STATUTES REGULATING THE ACTIVITIES OF PUBLIC SERVICE COMPANIES;

28 (6) ALL DOCUMENTS RELATING TO THE TRANSACTION GIVING
29 RISE TO THE APPLICATION;

1 **(7) THE APPLICANT'S EXPERIENCE IN OPERATING PUBLIC**
2 **SERVICE COMPANIES PROVIDING TELECOMMUNICATION SERVICES;**

3 **(8) THE APPLICANT'S PLAN FOR OPERATING THE PUBLIC**
4 **SERVICE COMPANY;**

5 **(9) HOW THE ACQUISITION WILL SERVE THE CUSTOMERS OF THE**
6 **PUBLIC SERVICE COMPANY IN THE PUBLIC INTEREST, CONVENIENCE, AND**
7 **NECESSITY; AND**

8 **(10) ANY OTHER INFORMATION THAT THE COMMISSION MAY**
9 **SPECIFY BY REGULATION OR ORDER.**

10 **(F) (1) THE COMMISSION PROMPTLY SHALL:**

11 **(I) EXAMINE AND INVESTIGATE EACH APPLICATION**
12 **RECEIVED UNDER THIS SECTION; AND**

13 **(II) UNDERTAKE ANY PROCEEDINGS NECESSARY OR**
14 **CONVENIENT TO REVIEW THE APPLICATION IN ACCORDANCE WITH TITLE 3 OF**
15 **THIS ARTICLE AND ISSUE AN ORDER CONCERNING THE ACQUISITION.**

16 **(2) THE COMMISSION SHALL CONSIDER THE FOLLOWING**
17 **FACTORS IN CONSIDERING AN ACQUISITION UNDER THIS SECTION:**

18 **(I) THE POTENTIAL IMPACT OF THE ACQUISITION ON**
19 **RATES AND CHARGES PAID BY CUSTOMERS AND ON THE SERVICES AND**
20 **CONDITIONS OF OPERATION OF THE PUBLIC SERVICE COMPANY;**

21 **(II) THE POTENTIAL IMPACT OF THE ACQUISITION ON**
22 **CONTINUING INVESTMENT NEEDS FOR THE MAINTENANCE OF UTILITY**
23 **SERVICES, PLANT, AND RELATED INFRASTRUCTURE;**

24 **(III) THE PROPOSED CAPITAL STRUCTURE THAT WILL**
25 **RESULT FROM THE ACQUISITION, INCLUDING ALLOCATION OF EARNINGS FROM**
26 **THE PUBLIC SERVICE COMPANY;**

27 **(IV) THE POTENTIAL EFFECTS ON EMPLOYMENT BY THE**
28 **PUBLIC SERVICE COMPANY;**

29 **(V) THE PROJECTED ALLOCATION OF ANY SAVINGS THAT**
30 **ARE EXPECTED TO THE PUBLIC SERVICE COMPANY BETWEEN STOCKHOLDERS**
31 **AND RATE PAYERS;**

1 (VI) ISSUES OF RELIABILITY, QUALITY OF SERVICE, AND
2 QUALITY OF CUSTOMER SERVICE;

3 (VII) THE POTENTIAL IMPACT OF THE ACQUISITION ON
4 COMMUNITY INVESTMENT;

5 (VIII) AFFILIATE AND CROSS-SUBSIDIZATION ISSUES;

6 (IX) THE USE OR PLEDGE OF UTILITY ASSETS FOR THE
7 BENEFIT OF AN AFFILIATE;

8 (X) JURISDICTIONAL AND CHOICE-OF-LAW ISSUES; AND

9 (XI) ANY OTHER ISSUES THE COMMISSION CONSIDERS
10 RELEVANT TO THE ASSESSMENT OF THE ACQUISITION IN RELATION TO THE
11 PUBLIC INTEREST, CONVENIENCE, AND NECESSITY.

12 (3) (I) IF THE COMMISSION FINDS THAT THE ACQUISITION IS
13 CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY,
14 INCLUDING BENEFITS AND NO HARM TO CONSUMERS, THE COMMISSION SHALL
15 ISSUE AN ORDER GRANTING THE APPLICATION.

16 (II) THE COMMISSION MAY CONDITION AN ORDER
17 AUTHORIZING THE ACQUISITION ON THE APPLICANT'S SATISFACTORY
18 PERFORMANCE OR ADHERENCE TO SPECIFIC REQUIREMENTS.

19 (4) IF THE COMMISSION DOES NOT FIND THAT THE ACQUISITION
20 IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY,
21 INCLUDING BENEFITS AND NO HARM TO CONSUMERS, THE COMMISSION SHALL
22 ISSUE AN ORDER DENYING THE APPLICATION.

23 (5) THE APPLICANT BEARS THE BURDEN OF SHOWING THAT
24 GRANTING THE ACQUISITION IS CONSISTENT WITH THE PUBLIC INTEREST,
25 CONVENIENCE, AND NECESSITY, INCLUDING BENEFITS AND NO HARM TO
26 CONSUMERS.

27 (6) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
28 SUBPARAGRAPH, THE COMMISSION SHALL ISSUE AN ORDER WITH RESPECT TO
29 THE APPLICATION NO LATER THAN 180 DAYS AFTER THE FILING OF THE
30 APPLICATION FOR AUTHORIZATION.

31 (II) UNLESS THE COMMISSION FINDS, BASED ON GOOD
32 CAUSE, THAT THE 180-DAY PERIOD SHOULD BE EXTENDED FOR AN ADDITIONAL
33 45 DAYS, FAILURE OF THE COMMISSION TO ISSUE AN ORDER WITHIN THE 180-

1 DAY PERIOD SHALL BE CONSIDERED TO BE AN APPROVAL OF THE ACQUISITION
2 BY THE COMMISSION.

3 (G) NOTHING IN THIS SECTION PROHIBITS DISSEMINATION BY ANY
4 PARTY OF INFORMATION CONCERNING THE ACQUISITION IF THE
5 DISSEMINATION DOES NOT OTHERWISE CONFLICT WITH FEDERAL OR STATE
6 LAW.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2010.