SB 677

Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 677 (Senator Della, *et al.*)
Finance

Telephone Companies - Acquisitions and Franchises

This bill requires a telephone company that holds a franchise to own or operate a telephone line in the State to apply for permission from the Public Service Commission (PSC) to enter into an agreement where a person may become an affiliate with the power to exercise influence over a telephone company or acquire a franchise to own or operate a telephone line in the State or a right under a franchise from a telephone company. The bill specifies what must be included in the application and what factors PSC must consider in investigating an acquisition. PSC must issue an order approving or denying an application within a specific timeframe, and the burden of proof is on the applicant to show that the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers.

Fiscal Summary

State Effect: Special fund expenditures from the Public Utility Regulation Fund may increase by up to $200,000 for PSC to investigate each proposed change in ownership or interest of a telephone company in the State. However, PSC expenditures will only increase in the event that a telephone company seeks approval for such a transaction. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Approval of a Telephone Company Acquisition

The bill applies to telephone companies that hold a franchise or own or operate a telephone line in the State. This also includes corporations formed as a Class 13 corporation under Article 23, § 28 of the Code of 1904 – telephone and telegraph companies formed under prior law. A telephone company must provide PSC a copy of any document regarding the acquisition of voting securities of the telephone company or any company that owns or controls the telephone company at the same time as a filing by the telephone company or within 10 days after receipt by the company. This includes any document filed with the Securities and Exchange Commission; the Federal Communications Commission; the Department of Justice; the Federal Trade Commission; or any successor agency.

Without prior authorization from PSC, a person may not: (1) acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of a telephone company if the person would become an affiliate of the telephone company as a result of the acquisition; and (2) acquire, by assignment, lease, or transfer, a franchise to own or operate a telephone line in the State or a right under a franchise from a telephone company.

Contents of an Application

An applicant bears the burden of showing that approving the acquisition is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers. Among other things, an application must include the identity and financial ability of the applicant and identify the source and amounts of funds or other consideration to be used in the transaction. An applicant's experience in operating public service companies providing telecommunications services must be provided as well as the background of key personnel. An applicant must also provide an operating plan for the company and must identify how the acquisition will serve customers.

PSC Approval of an Application

Upon receipt of an application, PSC must initiate a proceeding and, within 180 days, issue an order approving or denying the application. Approval must be granted if the transaction is consistent with the public interest, convenience, and necessity. Unless PSC finds that the 180-day period should be extended for an additional 45 days for good cause, failure of PSC to issue an order within the required period is considered to be an approval of the application. If PSC finds that the acquisition is not consistent with the public interest, convenience, and necessity, PSC must issue an order denying the application.

In making the determination to approve or deny an application for acquisition, PSC must study (1) the potential impact of the acquisition on rates and charges paid by customers; (2) continuing investment needs for the maintenance of utility services, plant, and related infrastructure; (3) the proposed capital structure that will result from the acquisition; (4) employment; (5) allocation of any savings that are expected to the public service company between stockholders and ratepayers; (6) reliability, quality of service, and quality of customer service; (7) community investment; (8) affiliate and cross-subsidization issues; (9) use or pledge of utility assets for the benefit of the affiliate; (10) jurisdictional and choice-of-law issues; and (11) any other issues PSC considers relevant.

Current Law: Without prior authorization from PSC, a public service company may not take, hold, or acquire any part of the capital stock of a public service company that operates in Maryland and is of the same class as the acquiring company. With regards to the acquisition of capital stock of a public service company, a company controlling a public service company is deemed to be a public service company of the same class as the controlled public service company. With respect to a stock corporation, companies are permitted only to acquire more than 10% of a public service company's capital stock (with PSC approval) as collateral security. PSC may allow a public service company of the same class to take, hold, or acquire more than 10% of the total capital stock of a public service company that operates in the State.

Background: In regulating telecommunications, PSC reviews tariff filings and rate revisions, authorizes telephone and telegraph companies to provide new service offerings, and regulates the intrastate services of long distance ("interexchange") companies and companies that resell interexchange service. Verizon Maryland, Inc. (formerly Bell Atlantic – Maryland, formerly C&P Telephone) is the traditional provider of local telephone service in virtually all of Maryland. However, Verizon now faces competition from additional telephone companies providing facilities-based local service and telephone companies providing resold local service. PSC's telecommunications-related activities are largely directed toward enhancing competition in the local exchange market through arbitrating interconnection agreements between Verizon Maryland and several competitors and monitoring service quality reports.

Via docketed cases, PSC has been considering various issues associated with Verizon Maryland including service quality, bundled services, local calling areas and the pricing of foreign exchange services, a proposed pricing tariff, and other factors dating back to at least 2006. A joint settlement agreement was proposed in December 2008 which all parties did not agree too. In February 2010 a final order was issued by PSC resolving six case proceedings (Case Numbers 9072, 9114, 9120, 9121, 9123, 9133).

PSC regulates gas, electric, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC is authorized to hear and decide matters relating to (1) rate adjustments; (2) applications to exercise or abandon franchises; (3) approval of issuance of securities; (4) promulgation of new rules and regulations; and (5) quality of utility and common carrier service. PSC sets utility rates, collects and maintains records and reports of public service companies, reviews plans for service, inspects equipment, audits financial records, handles consumer complaints, promulgates and enforces rules and regulations, defends its decisions on appeal to State courts, and intervenes in relevant cases before federal regulatory commissions and federal courts.

State Fiscal Effect: The bill requires PSC to thoroughly investigate a transaction where ownership of a major telephone company changes hands. In this investigation, PSC must consider the impact the transaction will have on customer rates, service quality, and community and employment impacts, among other factors. PSC also must assess the qualifications and financial integrity of an applicant. The extensive investigation required by the bill will require the use of external consultants, as such a transaction is a fairly uncommon event. PSC advises that based on past investigations into ownership changes in electric utilities, the cost of investigating each telecommunications transaction may require $200,000 in consulting expenses.

The probability that such an event may occur in the near-term cannot be reasonably ascertained at this time. However, for informational purposes, in the past two years, Verizon Communications, the owner of the major service provider in the State – Verizon Maryland – has proposed transactions selling telecommunications facilities in many other states, including Arizona, Idaho, Illinois, Indiana, Maine, Michigan, Nevada, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, Vermont, West Virginia, Wisconsin, and part of California. Thirteen states in which Verizon owns local telecommunications facilities were excluded from these transactions. To date, Verizon Maryland has not indicated that such a transaction may occur in Maryland.

Additional Information

Prior Introductions: None.

Cross File: None, but HB 937 (Delegate Hecht, *et al.*) - Economic Matters, is identical.

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

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