Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 813 (Senators Astle and Pugh)

Finance

Telephone Companies - Exemption from Prior Approval of Public Service Commission - Franchises, Securities, and Financing

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This bill exempts telephone companies from obtaining the prior authorization of the Public Service Commission (PSC) before taking specified actions related to franchises, securities, and financing.

Fiscal Summary

State Effect: Exempting telephone companies from specified PSC approval processes is not anticipated to materially affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: "Telephone company" means a public service company that owns telephone lines to receive, transmit, or communicate telephone or teletype communications, or leases, licenses, or sells telephone or teletype communications. A telephone company does not include a cellular telephone company.

Franchises

Without prior authorization from PSC, a public service company (including a telephone company) may not (1) assign, lease, or transfer a franchise or a right under a franchise; (2) enter into any agreement or contract that materially affects a franchise or a right under a franchise; or (3) abandon or discontinue the exercise of a franchise or a right as a whole or in part.

Securities

Without prior authorization from PSC, a public service company (including a telephone company) may not purchase, acquire, take, or hold any part of the capital stock of another public service company that operates in the State. Subject to specified exemptions, without prior authorization from PSC, a public service company may not issue or guaranty long-term debt. Specifically, a public service company may not (1) assume or guarantee an obligation or liability with respect to stocks, bonds, notes, or other evidence of indebtedness that is payable as a whole or in part to any person more than 12 months after the date of issuance; or (2) issues stocks, bonds, or other evidence of indebtedness payable as a whole or in part more than 12 months after issuance.

Prior authorization is not needed if the issuance or guaranty of debt is made by a gas, electric, or telephone company whose gross annual revenues are less than 3% of the total gross annual revenues of all public service companies in the State during a calendar year, if the company provides prior written notice to PSC and obtains approval of the transaction from a regulatory entity in another state that regulates the company.

Financing – Prior Approval

In addition to the limitations on the issuance or guaranty of long-term debt described above, a public service company (including a telephone company) must obtain prior authorization from PSC before the company lends money to an affiliate at rates or on terms that are significantly more favorable than the rates or terms that are otherwise commercially available to the affiliate.

PSC may authorize the issuance or guaranty of long-term debt, or the lending to an affiliate at favorable rates by a public service company if PSC finds that the act is consistent with the public convenience and necessity. However, authorization does not revive a lapsed franchise, validate an invalid franchise, add to the powers and privileges in a franchise, or waive a forfeiture.

Without prior authorization from PSC, a public service company – and in this specific case, a company controlling a public service company – may not take, hold, or acquire any part of the capital stock of a public service company that operates in the State and is the same class (electric, gas, telephone) as the acquiring company. A stock corporation may not take, hold, or acquire more than 10% of the total capital stock of a public service company that operates in the State unless PSC approves the acquisition and the stock is acquired as collateral security, subject to specified exclusions for a company that controls a gas and electric company.

Financing – Issuance of Stocks, Bonds, or Other Indebtedness

A public service company (including a telephone company) operating in the State may issue, without prior consent of PSC, notes that are for proper corporate purposes, not otherwise in violation of the law, and payable at periods not exceeding 12 months after the date of issuance. Notes may not be refunded directly or indirectly, unless authorized by PSC as discussed below, by an evidence of indebtedness running for more than 12 months.

PSC must authorize a public service company to issue stocks, bonds, or other evidence of indebtedness, payable wholly or partly more than 12 months after the date of issuance, if PSC finds that the issuance is reasonably required for the public service company to:

- acquire property;
- construct, complete, extend, or improve its facilities;
- discharge or lawfully refund its obligations;
- maintain or improve service; or
- reimburse money, not secured or obtained from the issuance, that is expended to acquire property, construct or improve its facilities, or to discharge or lawfully refund its obligations.

PSC may authorize a public service company to issue stocks, bonds, or other evidence of indebtedness, payable wholly or partly more than 12 months after the date of issuance, for the public service company to conform the aggregate capitalization of the company to the value of its property or to pay a dividend in shares of the company's own stock, subject to specified conditions.

Financing – Limitations on Capitalization

A public service company (including a telephone company) operating in the State may not capitalize or issue bonds against or as a lien on a contract for consolidation, merger, lease, or, subject to specified exemptions, to capitalize a franchise or the right to own a franchise. The stated capital of a public service company may not exceed, solely by virtue of a merger or consolidation of corporations, the stated capital of the corporations merged plus any additional sum paid in cash. PSC may approve the capitalization of tangible and intangible assets of specified public service companies in specified conditions relating to newly chartered or reorganized public service companies.

Background:

PSC Regulations of Telephone Companies

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.

Via docketed cases, PSC has been considering various issues associated with Verizon including the appropriate forms of regulating telephone companies, service quality, bundled services, a proposed pricing tariff, and other factors dating back to at least 2006.

In February 2010, PSC issued Order No. 83137, resolving six case proceedings (Case Nos. 9072, 9114, 9120, 9121, 9123, 9133)[1]. Under the order, Verizon must file an annual operational plan detailing steps it will take to meet service quality metrics

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[1]Case No. 9072 – In the matter of the request of Verizon Maryland Incorporated to reclassify certain retail bundled services to the competitive services basket as provided by the Commission's price cap plan.

Case No. 9114 – In the matter of the Commission's investigation into Verizon Maryland Incorporated's service performance and service quality standards.

Case No. 9120 – In the matter of the Commission's investigation into Verizon Maryland Incorporated's affiliate relationships.

Case No. 9121 – In the matter of the Commission's investigation into local calling area boundaries and related issues.

Case No. 9123 – In the matter of the Commission's inquiry into Verizon Maryland Incorporated's provision of local exchange telephone service over fiber optic facilities.

Case No. 9133 – In the matter of appropriate forms of regulating telephone companies.

specified in the order. Verizon must also adhere to a service quality plan and must track and report quarterly on residential voice out-of-service data. Verizon is required to adhere to rigorous service quality standards and is at financial risk if those standards are not met. The order goes into detail about the cases and the issues they raise.

Case No. 9114 was PSC's own investigation into Verizon's service quality. PSC found that Verizon's delays in restoring residential service derived from business decisions to allocate resources to goals other than residential service restoration, such as restoring service to business customers, building its FiOS-branded fiber network, or enhancing profitability through job reductions. In Case No. 9133, Verizon proposed an "Alternative Form of Regulation" (AFOR), which PSC rejected in its original form, citing issues relating to the disconnection between Verizon's revenues and service reliability, among others. PSC later approved an amended AFOR as part of Order No. 83137.

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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