

KUMAR P. BARVE
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ODOGWU OBI LINTON
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PUBLIC SERVICE COMMISSION

Chair Brian Feldman
Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 605 - Information – Public Service Commission - Broadband and Voice Over Internet Protocol Service - Oversight (Broadband Accountability and Affordability Act)

Dear Chair Feldman and Committee Members:

The Public Service Commission (the “Commission”) appreciates the opportunity to provide this informational testimony for SB 605. The bill authorizes the Commission to exercise oversight of broadband service and voice over internet protocol (VoIP) service. It requires the Commission to adopt regulations on quality, reliability, and resilience, which would include outage reporting, maintenance standards, availability/adoption/pricing data, emergency preparedness, restoration plans, and back-up power requirements. It also requires the Commission to conduct evaluations and audits and order remedial actions.

Currently, the Public Utilities Article (PUA) expressly specifies that the Commission does not have jurisdiction over the regulation of VoIP service. The PUA is silent as to broadband service, but it does not currently confer any oversight authority to the Commission. In order to effectuate SB 605, the Commission would establish and implement administrative processes for the provision of services by a large number of entities that it does not currently regulate. This would likely be organized under a new division of the Commission’s Technical Staff, requiring personnel with expertise in fields that the Commission does not currently oversee.

There is a possibility that an attempted expansion of state jurisdiction over VoIP and broadband could lead to legal challenges based on federal preemption. For VoIP, the Federal Communications Commission (FCC) has made a declaratory ruling that VoIP cannot be regulated like a telephone service because its intrastate and interstate components would be impractical to separate.¹ Federal regulation of interstate commerce under the Constitution has been found to preempt state regulatory interests for this reason. Additionally, federal appeals

¹ See *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn Pub. Util. Comm.*, 19 F.C.C.R. 22404 (Nov. 12, 2004) (where the FCC determined that state jurisdiction over VoIP was preempted because of the impossibility exception of 47 U.S.C. § 152(b)).

courts have held that VoIP offerings qualified as “information services” under federal law.² Because the federal policy is non-regulation of information services, state regulation would conflict with that policy and would thus be preempted by federal law.

For broadband, there is no categorical federal preemption of state law regulating internet service absent specific federal statutory authority.³ There is a possibility of federal preemption for state regulatory requirements that effectively impose Title II common carrier-like obligations or that conflict with FCC policy. Commission regulation of broadband could also be subject to the risk of preemption to the extent that it materially inhibits broadband deployment or imposes non-cost-based fees, because federal law prohibits state actions that have the effect of preventing a carrier’s ability to provide interstate telecommunications service.⁴

For the purposes of this testimony, the Commission is not providing a legal conclusion as to whether state regulation of VoIP and broadband would be preempted by federal law and policy. The Commission’s intent is to convey that in any case, the Commission would expect legal challenges and litigation burden associated with implementing SB 605.

Please contact Niki Wiggins, Director of Legislative Affairs, at irene.wiggins3@maryland.gov if you have any questions related to this informational testimony.

Sincerely,



Kumar P. Barve
Chair, Maryland Public Service Commission

² *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018) (finding state regulation of Spectrum Voice VoIP service preempted by 47 U.S.C. § 153(24)).

³ *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019).

⁴ 47 U.S.C. § 253(a)–(d).