

**STATE OF MARYLAND
OFFICE OF PEOPLE'S COUNSEL**

Paula M. Carmody, People's Counsel

6 St. Paul Street, Suite 2102
Baltimore, Maryland 21202
410-767-8150; 800-207-4055
www.opc.state.md.us

BILL NO.: **Senate Bill 577**
Telecommunications Law -Modernization

COMMITTEE: **Finance**

HEARING DATE: **March 10, 2015**

SPONSOR: **Senator Pugh**

POSITION: **Oppose**

Senate Bill 577 significantly diminishes regulatory oversight over telephone services in the short term and allows telephone companies to abandon telephone services to residential customers with minimal notice and no scrutiny. The Office of People's Counsel (OPC) believes that the Bill essentially ends the State's long-standing and still necessary commitment to safe, reliable, affordable telephone service for all those who want and need it, and opposes the Bill.

First, Senate Bill 577 reduces the Public Service Commission (PSC or Commission) oversight over the rates and services provided by telephone companies by requiring de-tariffing of almost all services. Second, the PSC would no longer be required to examine and give its prior approval of certain transactions including mergers, stock transfers, financing instruments, internal reorganizations, and changes in ownership interest involving a telephone company and its parent company. Third, the Bill adds a new section to the Public Utilities Article which prohibits the Commission or any governmental unit from restricting the use of "any otherwise lawful

technology or facility” to provide services. Finally, the Bill would permit the Commission to allow a company to withdraw “retail service” after giving certain notices to the Commission and customers. For reasons that will be discussed below, the Office of People’s Counsel respectfully requests an UNFAVORABLE report unless the Bill is significantly amended to continue protections for residential basic local service exchange service.

BACKGROUND

Basic local exchange service, also known as wireline local telephone service, or “Plain Old Telephone Service” (POTS), has been regulated by the Public Service Commission for almost a hundred years. This oversight has been in place to ensure the quality, availability and reliability of telecommunications services that also are affordable and reasonably priced. Access to reasonably priced, reliable telecommunications service by residential customers is of obvious importance for health and safety reasons.

In this State, Verizon Maryland is the predominant regulated telephone company, the incumbent local exchange carrier (ILEC). Verizon Maryland provides basic local service through copper and in some areas fiber, lines. Verizon has made no secret of the fact that it would like to be freed from the bounds of state regulation of its services and prices. It is also no secret that the companies like Verizon, which operate the local exchange (or landline) network, want to abandon their copper-based services, which continue to provide generally reliable telephone service to millions of consumers. Through public statements, it is clear that Verizon desires to replace as much copper wire service as possible by using either fiber –optic communications (FIOS) or wireless offerings. However, these newer services are not comparable to wired basic local exchange service in terms of reliability and function. Newer services require

a source of back-up power while a copper line can maintain an electric charge for days or weeks in the event of widespread power outages. Some of the wireless substitutes are incompatible with medical alert and health monitoring services, fax and credit card machines, relay services, DSL or dial up modems, and home security systems.

OPC believes that care must be taken to ensure that statutory changes designed to lift some regulatory "burdens" do not expose Maryland residential consumers to less regulated and less reliable service over time. Unfortunately, SB 577 has the real potential to leave a large percentage of residential local exchange customers vulnerable to changes in their service that may prove to be more expensive while being less reliable.

THE DE-TARIFFING PROVISIONS AND THE END OF RATE REGULATION

As drafted, the Bill removes Commission authority to require the filing of tariffs for all services except for those provided to inmates and to public safety answering points (PSAPs) (911 services). Tariffs are considered the "contract terms and conditions" between a company and its customers. The tariffs are a source of all the rates, charges and conditions of service. In the absence of tariffs, customers would either have to enter into direct bi-lateral contracts with the company or agree to a set of "Terms and Conditions." The Bill would substitute website posting¹ for the tariffs. Additionally, the Bill changes Section 4-203 (a) to remove Commission authority over the rates charged for all services except for those to inmates or PSAPs. As a practical matter, this leaves customers in a "take it or leave it" position.

¹ A review of the current Verizon Maryland website makes it clear that there is no clear and conspicuous display of the tariffed rates for basic local exchange service as a stand-alone service, but at least it is currently available and subject to oversight.

OPC believes that it is not in the public interest, and the interests of residential customers in particular, at this time to make a “flash cut” determination that residential basic local exchange service should be detariffed. While there is some competition, a significant percentage of residential customers continue to rely upon the basic, no-frills telephone service provided by local wireline carriers such as Verizon, which is considered the “provider of last resort.” De-tariffing may be appropriate for services provided to other classes of customers (businesses, for example) and may even be appropriate for “discretionary services” (call waiting or call forwarding, for example) provided to residential customers. However, to remove these rate and terms of service protections from residential customers, many of whom are elderly or vulnerable, while maintaining them for incarcerated individuals and their families seems counter to good public policy.² For many households, even those with both basic wireline and cell phone service, the still-regulated basic wireline service provides affordability together with reliability and security.

DISCONTINUANCE OR ABANDONMENT OF REGULATED RETAIL SERVICES

The Bill changes Section 5-103 to allow a telephone company to discontinue or abandon regulated Retail services on 14 days’ notice to the Commission and 30 days’ notice to customers. Retail services include basic residential local exchange services. As noted above, many residential customers continue to rely upon basic wireline service. Allowing a telephone company with a long-standing franchise obligation to simply withdraw such an important and necessary service for its own business reasons, with no Commission approval or oversight, is not in the interest of residential telephone customers and may subject those customers to

² Some states are managing a gradual transition by permitting detariffing for all non-basic retail telecommunications services. For example, New York adopted this approach just last year.

unreasonable hardship. Customers may be forced into purchasing services at higher costs or, worse, into buying services that are incompatible with other equipment that they rely upon for health and safety reasons.

OPC has not identified any customer benefit from allowing telephone companies the unilateral right to withdraw or abandon affordable, reliable telephone services to households, and does not recommend the adoption of such changes to Maryland law. Residential customers should be given some protection from arbitrary decisions of the telephone companies. However, if such modifications are to be considered, at a minimum, a company should be required to make a case at an evidentiary Commission hearing, showing, by substantial evidence, why discontinuing basic local exchange is reasonable and in the public interest. As part of that showing, a company must also prove that such a withdrawal protects customers by ensuring that affordable and reasonably priced service is available in all parts of the State.

THE CHOICE OF TECHNOLOGY PROVISION

The Bill adds a new Section 8-502 which allows a telephone company to use the technology of its choice to provide services without any restriction by the Commission or any governmental entity. Again, OPC would probably not oppose this provision if the Commission was allowed to retain oversight over technology used to provide *residential* basic local exchange service. As noted above, choice of technology has real and potentially disruptive consequences for many residential customers. The Commission should retain oversight over proposals to replace technology that has generally served the residential customers reliably and at reasonable cost with other technology that are not comparable. While OPC understands that companies are eager to lift “regulatory burdens”, care must be taken that such freedom does not come at the cost

of exposing Maryland residential customers to less safe, less reliable and potentially more costly service over time.

THE CORPORATE TRANSACTIONS PROVISIONS

OPC has been informed that the changes to Sections 5-203 and 6-101 of the Public Utilities Article are meant to apply to certain transactions of companies under a single holding company structure, i.e., companies under a common parent. However, as currently written, it is not clear that the changes would be limited to those circumstances. OPC understands that other parties will be proposing amendments to clarify this concept. While OPC believes that the current language is unclear and subject to overly broad interpretations, OPC understands that the proposed amendments may provide a satisfactory clarification and limitation on the scope of those provisions.

Because of these stated concerns about the detrimental impacts of Senate Bill 577 on the continued provision of basic local exchange service for residential customers, OPC respectfully requests an UNFAVORABLE REPORT.