

HOUSE BILL 1306

C5, I3
HB 1415/16 – ECM

7lr2070

By: **Delegates Fisher, Clark, S. Howard, Morgan, and Sophocleus**

Introduced and read first time: February 10, 2017

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Cable Service – Broadband Connection Requirement – Enforcement**

3 FOR the purpose of authorizing a county or municipality to establish certain penalties for
4 certain failures to comply with a certain franchise agreement for a cable television
5 system; requiring that a franchise agreement include a service connection
6 requirement for wired broadband service, subject to certain conditions; providing
7 that a certain failure to install wired broadband on request under a service
8 connection requirement of a certain franchise agreement constitutes a certain
9 breach; authorizing a county or municipality to enforce a service connection
10 requirement in certain manners; authorizing a county or municipality to request the
11 Public Service Commission to enforce a service connection requirement in a certain
12 manner; providing that a certain remedy is in addition to and not in place of certain
13 other actions; authorizing the Commission to begin certain enforcement actions on a
14 certain request; authorizing the Commission to enforce a service connection
15 requirement in certain manners; authorizing the Commission to adopt certain
16 regulations and issue certain orders under certain circumstances; providing that
17 certain cable television systems and wired broadband service providers are deemed
18 to be public service companies for certain purposes; defining certain terms; providing
19 for the construction and application of this Act; providing that existing obligations
20 or contract rights may not be impaired by this Act; and generally relating to cable
21 television service and franchises.

22 BY repealing and reenacting, with amendments,

23 Article – Local Government

24 Section 1–708

25 Annotated Code of Maryland

26 (2013 Volume and 2016 Supplement)

27 BY adding to

28 Article – Public Utilities

29 Section 8–701 to be under the new subtitle “Subtitle 7. Miscellaneous”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2010 Replacement Volume and 2016 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Public Utilities
5 Section 13–101, 13–201, 13–205, and 13–208
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2016 Supplement)

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

10 **Article – Local Government**

11 1–708.

12 (a) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
13 **INDICATED, UNLESS OTHERWISE DEFINED BY LOCAL LAW.**

14 **(2) (I) [Unless otherwise defined by local law, in this section, “cable]**
15 **“CABLE television system” means a nonbroadcast facility that consists of a set of**
16 **transmission paths and associated signal generation, reception, and central equipment,**
17 **under common ownership and control, that distributes or is designed to distribute to**
18 **subscribers the signals of one or more television broadcast stations OR WIRED**
19 **BROADBAND SERVICE.**

20 **[(2)] (II) “Cable television system” does not include a facility that:**

21 **[(i)] 1. serves 49 or fewer subscribers; or**

22 **[(ii)] 2. serves only subscribers in one or more multiple dwelling**
23 **units under common ownership, control, or management.**

24 **(3) “SERVICE CONNECTION REQUIREMENT” MEANS A REQUIREMENT**
25 **UNDER A FRANCHISE AGREEMENT TO PROVIDE A CONNECTION TO A CABLE**
26 **TELEVISION SYSTEM OR WIRED BROADBAND SERVICE IN THE FRANCHISE SERVICE**
27 **TERRITORY ON REQUEST OF A SUBSCRIBER OR PROPERTY OWNER.**

28 **(4) “WIRED BROADBAND”:**

29 **(I) MEANS A HIGH-CAPACITY TRANSMISSION TECHNIQUE THAT**
30 **USES A CABLE TO TRANSMIT A WIDE RANGE OF FREQUENCIES TO A RESIDENCE OR**
31 **BUSINESS;**

32 **(II) INCLUDES WIRED BROADBAND SERVICE PROVIDED BY:**

1 1. DIGITAL SUBSCRIBER LINE (DSL);

2 2. CABLE MODEM; OR

3 3. FIBER OPTICS; AND

4 (III) DOES NOT INCLUDE WIRED BROADBAND SERVICE
5 PROVIDED BY:

6 1. SATELLITE; OR

7 2. WIRELESS TECHNOLOGY.

8 (b) This section does not authorize the governing body of a county to enact laws
9 or regulations for a municipality.

10 (c) The governing body of a county or municipality may:

11 (1) grant a franchise for a cable television system that uses a public
12 right-of-way;

13 (2) impose franchise fees;

14 (3) establish rates applicable to a franchise;

15 (4) ESTABLISH PENALTIES FOR FAILURE BY THE CABLE TELEVISION
16 SYSTEM TO COMPLY WITH THE FRANCHISE AGREEMENT; and

17 [(4)] (5) adopt rules and regulations for the operation of a franchise.

18 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A FRANCHISE
19 AGREEMENT SHALL INCLUDE A SERVICE CONNECTION REQUIREMENT FOR WIRED
20 BROADBAND SERVICE THAT A SUBSCRIBER OR PROPERTY OWNER REQUESTS TO BE
21 INSTALLED.

22 (2) A FRANCHISE AGREEMENT:

23 (I) SHALL INCLUDE A SCHEDULE FOR PHASING IN THE
24 AVAILABILITY OF WIRED BROADBAND SERVICE THROUGHOUT THE FRANCHISE
25 SERVICE TERRITORY AS A SERVICE CONNECTION REQUIREMENT; AND

1 (II) MAY INCLUDE CONDITIONS AND CIRCUMSTANCES UNDER
2 WHICH THE CABLE TELEVISION SYSTEM IS NOT REQUIRED TO INSTALL WIRED
3 BROADBAND SERVICE ON REQUEST AS A SERVICE CONNECTION REQUIREMENT.

4 (3) THE FAILURE OF A CABLE TELEVISION SYSTEM TO INSTALL WIRED
5 BROADBAND SERVICE ON REQUEST IN ACCORDANCE WITH A SERVICE CONNECTION
6 REQUIREMENT OF THE FRANCHISE AGREEMENT CONSTITUTES A BREACH OF THE
7 SERVICE CONNECTION REQUIREMENT OF THE FRANCHISE AGREEMENT.

8 (4) (I) A COUNTY OR MUNICIPALITY MAY SEEK TO ENFORCE A
9 SERVICE CONNECTION REQUIREMENT OF THE FRANCHISE AGREEMENT, INCLUDING
10 CRIMINAL OR CIVIL ACTIONS AND THE IMPOSITION OF PENALTIES IN ACCORDANCE
11 WITH LOCAL LAW ADOPTED BY THE COUNTY OR MUNICIPALITY.

12 (II) IN THE CASE OF A REPEATED BREACH OF A SERVICE
13 CONNECTION REQUIREMENT OF THE FRANCHISE AGREEMENT BY REPEATED
14 FAILURE TO INSTALL WIRED BROADBAND SERVICE ON REQUEST IN ACCORDANCE
15 WITH THE SERVICE CONNECTION REQUIREMENT, THE COUNTY OR MUNICIPALITY
16 MAY REQUEST THE PUBLIC SERVICE COMMISSION TO ENFORCE THE SERVICE
17 CONNECTION REQUIREMENT OF THE FRANCHISE AGREEMENT UNDER § 8-701 OF
18 THE PUBLIC UTILITIES ARTICLE.

19 (III) THE REMEDY UNDER SUBPARAGRAPH (II) OF THIS
20 PARAGRAPH IS IN ADDITION TO AND NOT IN PLACE OF ANY DIRECT ACTION A
21 COUNTY OR MUNICIPALITY MAY TAKE TO ENFORCE ANY REQUIREMENT OF THE
22 FRANCHISE AGREEMENT.

23 Article – Public Utilities

24 SUBTITLE 7. MISCELLANEOUS.

25 8-701.

26 (A) ON REQUEST OF A COUNTY OR A MUNICIPAL CORPORATION UNDER §
27 1-708(D) OF THE LOCAL GOVERNMENT ARTICLE, THE COMMISSION MAY BEGIN
28 PROCEEDINGS TO ENFORCE A SERVICE CONNECTION REQUIREMENT UNDER A
29 FRANCHISE AGREEMENT.

30 (B) THE COMMISSION MAY ENFORCE A SERVICE CONNECTION
31 REQUIREMENT OF A FRANCHISE AGREEMENT:

32 (1) BY ADMINISTRATIVE PROCEEDINGS UNDER TITLE 3 OF THIS
33 ARTICLE;

1 **(2) BY ENFORCEMENT ACTIVITIES UNDER TITLE 13 OF THIS ARTICLE;**
2 **OR**

3 **(3) THROUGH CRIMINAL OR CIVIL ACTION IN A COURT OF COMPETENT**
4 **JURISDICTION UNDER TITLE 13 OF THIS ARTICLE WITH THE COMMISSION ACTING**
5 **AS A PARTY ON BEHALF OF THE LOCAL JURISDICTION.**

6 **(C) TO THE EXTENT AUTHORIZED UNDER FEDERAL LAW, THE COMMISSION**
7 **MAY ADOPT REGULATIONS AND ISSUE ORDERS FOR ENFORCEMENT OF SERVICE**
8 **CONNECTION REQUIREMENTS OF FRANCHISE AGREEMENTS UNDER § 1-708 OF THE**
9 **LOCAL GOVERNMENT ARTICLE.**

10 **(D) A CABLE TELEVISION SYSTEM OR OTHER WIRED BROADBAND SERVICE**
11 **PROVIDER UNDER § 1-708 OF THE LOCAL GOVERNMENT ARTICLE IS DEEMED TO BE**
12 **A PUBLIC SERVICE COMPANY FOR PURPOSES OF PROCEEDINGS AND ENFORCEMENT**
13 **UNDER TITLES 3 AND 13 OF THIS ARTICLE.**

14 13-101.

15 (a) This section does not apply to a violation of the following provisions of this
16 article:

17 (1) Title 5, Subtitle 4;

18 (2) Title 7, Subtitle 1;

19 (3) Title 8, Subtitles 1 and 3; and

20 (4) Title 9, Subtitle 3.

21 (b) A person may not fail, neglect, or refuse to comply with any provision of this
22 division or any effective and outstanding direction, ruling, order, rule, regulation, or
23 decision of the Commission.

24 (c) An individual who knowingly violates or knowingly aids or abets a public
25 service company in the violation of subsection (b) of this section or any provision of this
26 division:

27 (1) is guilty of a misdemeanor; and

28 (2) unless a different punishment is specifically provided by law, on
29 conviction is subject to a fine not exceeding \$1,000 for a first offense and not exceeding
30 \$5,000 for each additional or subsequent offense.

1 13-201.

2 (a) This section does not apply to a violation of the following provisions of this
3 article:

4 (1) Title 5, Subtitle 4;

5 (2) Title 7, Subtitle 1;

6 (3) § 7-213 as it applies to electric cooperatives;

7 (4) Title 8, Subtitles 1 and 3;

8 (5) Title 9, Subtitle 3; and

9 (6) Title 8, Subtitle 4.

10 (b) (1) Except as provided in paragraph (2) of this subsection, the Commission
11 may impose a civil penalty not exceeding \$25,000 against a person who violates a provision
12 of this division, or an effective and outstanding direction, ruling, order, rule, or regulation
13 of the Commission.

14 (2) The civil penalty that the Commission may impose on a common carrier
15 for each violation may not exceed \$2,500.

16 (c) (1) A civil penalty may be imposed in addition to any other penalty
17 authorized by this division.

18 (2) Each violation is a separate offense.

19 (3) Each day or part of a day the violation continues is a separate offense.

20 (d) The Commission shall determine the amount of any civil penalty after
21 considering:

22 (1) the number of previous violations of any provision of this article;

23 (2) the gravity of the current violation;

24 (3) the good faith efforts of the violator in attempting to achieve compliance
25 after notification of the violation; and

26 (4) any other matter that the Commission considers appropriate and
27 relevant.

28 (e) (1) Except as provided in paragraphs (2) and (3) of this subsection, a civil
29 penalty collected under this section shall be paid into the General Fund of the State.

1 (2) A civil penalty assessed for a violation of a service quality and reliability
2 standard under § 7–213 of this article shall be paid into the Electric Reliability Remediation
3 Fund under § 7–213(j) of this article.

4 (3) A civil penalty assessed for a violation of § 7–505(b)(7), § 7–507, §
5 7–603, § 7–604, or § 7–606 of this article, or a rule, an order, or a regulation adopted under
6 any of those sections, shall be paid into the Retail Choice Customer Education and
7 Protection Fund under § 7–310 of this article.

8 13–205.

9 A public service company is subject to a fine of \$100 for each day beyond 30 days
10 after the deadline set by the Commission that the public service company fails to:

11 (1) file its annual report with the Commission in accordance with Title 6,
12 Subtitle 2 of this article;

13 (2) make a report or furnish information that the Commission requests or
14 requires; or

15 (3) fails to give a full, specific, and responsive answer to any question
16 reasonably directed to it by the Commission.

17 13–208.

18 (a) In addition to any otherwise available remedy, the Commission may
19 summarily order a person who is subject to the jurisdiction of the Commission to cease and
20 desist from an act or practice if the Commission determines from specific facts shown by
21 affidavit or other statement made under oath that:

22 (1) the person has engaged in an act or practice that constitutes a violation
23 of any provision of this division or any order or regulation adopted under this division that
24 directly concerns consumer protection or public safety;

25 (2) immediate, substantial, and irreparable harm will result before the
26 affected person could have an opportunity to respond to the facts alleged;

27 (3) the need for the immediate issuance of a summary cease and desist
28 order outweighs the affected person's right to receive notice and be heard before issuance
29 of the order; and

30 (4) issuance of the summary cease and desist order is in the public interest.

31 (b) A summary cease and desist order issued by the Commission under subsection
32 (a) of this section shall:

- 1 (1) be personally and promptly served on the affected person or the person's
2 legal representative;
- 3 (2) be effective only after it is served under item (1) of this subsection;
- 4 (3) identify the date and hour of issuance;
- 5 (4) define the harm that the Commission finds will result if the summary
6 cease and desist order is not issued;
- 7 (5) state the basis for the Commission's finding that the harm will be
8 immediate, substantial, and irreparable;
- 9 (6) state that any person affected by the summary cease and desist order
10 may immediately apply to have the order modified or vacated by the Commission;
- 11 (7) state that the Commission may modify or vacate the summary cease
12 and desist order as requested or may set the matter for hearing under subsection (c) of this
13 section; and
- 14 (8) provide notice of the opportunity for an evidentiary hearing to
15 determine whether the summary cease and desist order should be modified, vacated, or
16 entered as final.
- 17 (c) (1) Within 15 calendar days after the date and hour of successful service of
18 the summary cease and desist order, the affected person may file a request for an
19 evidentiary hearing with the Commission on the propriety of a final order.
- 20 (2) If the Commission receives a request for an evidentiary hearing on the
21 propriety of a final order from the affected person within the time limit in paragraph (1) of
22 this subsection, the Commission shall complete the evidentiary hearing within 15 calendar
23 days after the date and hour when the request is received.
- 24 (3) Within 48 hours after completing the evidentiary hearing requested
25 under paragraph (1) of this subsection, the Commission shall issue a final order in which it
26 shall determine whether the affected person has engaged in an act or practice that is in
27 violation of any provision of this division or any order or regulation adopted under this
28 division that directly concerns consumer protection or public safety.
- 29 (4) If the Commission does not receive a request for an evidentiary hearing
30 on the propriety of a final order from the affected person within the time limit in paragraph
31 (1) of this subsection, the summary cease and desist order shall become final.
- 32 (d) If the Commission fails to comply with subsection (c)(2) or (3) of this section,
33 the summary cease and desist order is void from the time of issuance.

1 (e) The Commission may not impose a penalty for a violation of a summary cease
2 and desist order that is void under subsection (d) of this section.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
4 apply to any cable television franchise agreement or wired broadband agreement entered
5 into or renewed on or after the effective date of this Act.

6 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed as
7 supplemental to and not in derogation of any existing authority of a county or municipality
8 to grant a franchise for wired broadband service within its jurisdiction.

9 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing obligation
10 or contract right may not be impaired in any way by this Act.

11 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2017.