

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

Committee Report: Favorable

House action: Adopted

Read second time: March 13, 2017

CHAPTER _____

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2013 Volume and 2016 Supplement)

3 BY adding to
4 Article – Public Utilities
5 Section 8–701 to be under the new subtitle “Subtitle 7. Miscellaneous”
6 Annotated Code of Maryland
7 (2010 Replacement Volume and 2016 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article – Public Utilities
10 Section 13–101, 13–201, 13–205, and 13–208
11 Annotated Code of Maryland
12 (2010 Replacement Volume and 2016 Supplement)

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

15 **Article – Local Government**

16 1–708.

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

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

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

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

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

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

33 **(4) “WIRED BROADBAND”:**

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

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

5 1. **DIGITAL SUBSCRIBER LINE (DSL);**

6 2. **CABLE MODEM; OR**

7 3. **FIBER OPTICS; AND**

8 **(III) DOES NOT INCLUDE WIRED BROADBAND SERVICE**
9 **PROVIDED BY:**

10 1. **SATELLITE; OR**

11 2. **WIRELESS TECHNOLOGY.**

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

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

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

17 (2) impose franchise fees;

18 (3) establish rates applicable to a franchise;

19 **(4) ESTABLISH PENALTIES FOR FAILURE BY THE CABLE TELEVISION**
20 **SYSTEM TO COMPLY WITH THE FRANCHISE AGREEMENT; and**

21 **[(4)] (5)** adopt rules and regulations for the operation of a franchise.

22 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A FRANCHISE**
23 **AGREEMENT SHALL INCLUDE A SERVICE CONNECTION REQUIREMENT FOR WIRED**
24 **BROADBAND SERVICE THAT A SUBSCRIBER OR PROPERTY OWNER REQUESTS TO BE**
25 **INSTALLED.**

26 **(2) A FRANCHISE AGREEMENT:**

1 **(I) SHALL INCLUDE A SCHEDULE FOR PHASING IN THE**
2 **AVAILABILITY OF WIRED BROADBAND SERVICE THROUGHOUT THE FRANCHISE**
3 **SERVICE TERRITORY AS A SERVICE CONNECTION REQUIREMENT; AND**

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

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

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

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

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

26 **Article – Public Utilities**

27 **SUBTITLE 7. MISCELLANEOUS.**

28 **8-701.**

29 **(A) ON REQUEST OF A COUNTY OR A MUNICIPAL CORPORATION UNDER §**
30 **1-708(D) OF THE LOCAL GOVERNMENT ARTICLE, THE COMMISSION MAY BEGIN**
31 **PROCEEDINGS TO ENFORCE A SERVICE CONNECTION REQUIREMENT UNDER A**
32 **FRANCHISE AGREEMENT.**

1 **(B) THE COMMISSION MAY ENFORCE A SERVICE CONNECTION**
2 **REQUIREMENT OF A FRANCHISE AGREEMENT:**

3 **(1) BY ADMINISTRATIVE PROCEEDINGS UNDER TITLE 3 OF THIS**
4 **ARTICLE;**

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

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

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

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

18 13-101.

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

21 (1) Title 5, Subtitle 4;

22 (2) Title 7, Subtitle 1;

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

24 (4) Title 9, Subtitle 3.

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

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

31 (1) is guilty of a misdemeanor; and

1 (2) unless a different punishment is specifically provided by law, on
2 conviction is subject to a fine not exceeding \$1,000 for a first offense and not exceeding
3 \$5,000 for each additional or subsequent offense.

4 13–201.

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

7 (1) Title 5, Subtitle 4;

8 (2) Title 7, Subtitle 1;

9 (3) § 7–213 as it applies to electric cooperatives;

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

11 (5) Title 9, Subtitle 3; and

12 (6) Title 8, Subtitle 4.

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

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

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

21 (2) Each violation is a separate offense.

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

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

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

26 (2) the gravity of the current violation;

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

1 (4) any other matter that the Commission considers appropriate and
2 relevant.

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

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

8 (3) A civil penalty assessed for a violation of § 7–505(b)(7), § 7–507, §
9 7–603, § 7–604, or § 7–606 of this article, or a rule, an order, or a regulation adopted under
10 any of those sections, shall be paid into the Retail Choice Customer Education and
11 Protection Fund under § 7–310 of this article.

12 13–205.

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

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

17 (2) make a report or furnish information that the Commission requests or
18 requires; or

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

21 13–208.

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

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

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

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

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

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

4 (1) be personally and promptly served on the affected person or the person's
5 legal representative;

6 (2) be effective only after it is served under item (1) of this subsection;

7 (3) identify the date and hour of issuance;

8 (4) define the harm that the Commission finds will result if the summary
9 cease and desist order is not issued;

10 (5) state the basis for the Commission's finding that the harm will be
11 immediate, substantial, and irreparable;

12 (6) state that any person affected by the summary cease and desist order
13 may immediately apply to have the order modified or vacated by the Commission;

14 (7) state that the Commission may modify or vacate the summary cease
15 and desist order as requested or may set the matter for hearing under subsection (c) of this
16 section; and

17 (8) provide notice of the opportunity for an evidentiary hearing to
18 determine whether the summary cease and desist order should be modified, vacated, or
19 entered as final.

20 (c) (1) Within 15 calendar days after the date and hour of successful service of
21 the summary cease and desist order, the affected person may file a request for an
22 evidentiary hearing with the Commission on the propriety of a final order.

23 (2) If the Commission receives a request for an evidentiary hearing on the
24 propriety of a final order from the affected person within the time limit in paragraph (1) of
25 this subsection, the Commission shall complete the evidentiary hearing within 15 calendar
26 days after the date and hour when the request is received.

27 (3) Within 48 hours after completing the evidentiary hearing requested
28 under paragraph (1) of this subsection, the Commission shall issue a final order in which it
29 shall determine whether the affected person has engaged in an act or practice that is in
30 violation of any provision of this division or any order or regulation adopted under this
31 division that directly concerns consumer protection or public safety.

32 (4) If the Commission does not receive a request for an evidentiary hearing
33 on the propriety of a final order from the affected person within the time limit in paragraph
34 (1) of this subsection, the summary cease and desist order shall become final.

1 (d) If the Commission fails to comply with subsection (c)(2) or (3) of this section,
2 the summary cease and desist order is void from the time of issuance.

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

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.