

CHAPTER 11  
FORMERLY  
SENATE BILL NO. 18

AN ACT TO AMEND TITLE 6 AND TITLE 26 OF THE DELAWARE CODE RELATING TO THE PUBLIC SERVICE COMMISSION AND THE REGULATION OF MOTOR VEHICLE DEALERS AND PUBLIC UTILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 4915, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4915. Limitations on establishing or relocating dealers.

(g) All new motor vehicle dealers in the State shall bear the costs of the administration of this chapter by means of an annual assessment which ~~shall~~ may be established by the Commission as needed and ~~shall~~ must be no more than what is reasonably needed to defray the annual cost of administering this chapter; provided, in the event the Commission determines that any action or actions by a manufacturer pursuant to this section are frivolous, the Commission may assess the reasonable cost of the hearing against the manufacturer. Such assessment shall be paid by each new motor vehicle dealer on or before March 31 of each year. If a new motor vehicle dealer fails to pay the assessment, it shall pay a penalty of 12 percent of the amount due for each month or fraction thereof that the amount is unpaid. The Commission may enforce the collection of any delinquent assessment, or portion thereof, by legal action or in any other manner by which the collection of debts due the State may be enforced. All assessments under this section shall be deposited in the State Treasury to the credit of a New Motor Vehicle Dealer Fund to be used for the administration of this chapter by the Commission, as authorized by the General Assembly in its annual operating budget. Any amount which remains in the Fund at the end of any fiscal year shall be applied on an equal basis to the assessment charged against each new motor vehicle dealer for the next succeeding fiscal year.

Section 2. Amend § 203A, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 203A. Certificate of public convenience and necessity; abandonment or discontinuance of business, operations or service.

(d)(1) Subject to the provisions of Chapter 10 and ~~§ 706(d)~~ § 706(c) of this title and excluding electric suppliers, no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance.

Section 3. Amend § 215, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 215. Merger, mortgage or transfer of property; issuance of securities; assumption of obligation of another; transfer of control; exceptions.

(h) Notwithstanding any other provision of law, ~~no~~ Commission approval ~~shall be~~ is not required for any ~~internal reorganization or merger of public utility companies providing telecommunications services that operate under common ownership~~ services, including a mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a service provider governed under this subchapter.

Section 4. Amend § 605, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 605. Additional powers of the Commission.

In addition to its powers to issue franchises, the Commission ~~shall have~~ has the power and jurisdiction to do all of the following:

(3) Examine, upon reasonable written notice and during regular business hours, subscriber lists, repair records, service complaints, ~~rates charged,~~ and facilities and interview management personnel of all franchisees or applicants for franchises for the purpose of verifying applications or compliance with the terms of a franchise and of this subchapter;

Section 5. Amend § 704, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 704. Election of a telecommunications service provider to be governed by this subchapter.

(a) A telecommunications service provider offering services ~~as defined within § 705 of this title or any other provider offering competitive services as defined in 705(e)(1)b. of this title~~ under a certificate granted under § 203A of this title may elect or any telecommunication service provider that has previously elected may reelect, upon or after July 15, 2013, to determine its rates and prices for its telecommunications services pursuant to this subchapter. Upon the filing of written notice to the Commission of such an election or reelection, subchapters II and III of this chapter shall no longer apply except as specifically provided hereinafter and, in lieu thereof, this subchapter shall govern.

Section 6. Amend § 705, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 705. Definitions.

(a) "Basic services" ~~shall mean:~~ means switched access services.

~~(1) Individual residential local exchange access line and residential local usage at a location where there is no alternative provider of telephone service available to retail residential customers determined in accordance with subsection (d) of this section below; and~~

~~(2) Switched access services;~~

~~(b) "Bundle" means a combination of retail services offered as a package, either at a single price or with the availability of the price for 1 or more services contingent on the purchase of other services, and includes any telephone service combined with any other telephone service or any nontelephone services, including services offered by an affiliate of a telephone company or an unregulated entity.~~

~~(c)(1)~~ (b) "Competitive services" shall mean: means either of the following:

a. (1) All services which are not classified as "basic" in subsection (a) of this ~~section above;~~  
section.

~~b. Any bundled service, even if the bundled service includes 1 or more basic services; or~~

e. (2) Any new service other than switched access ~~service, offered after July 15, 2008.~~ service.

~~(2) For purposes of reclassifying basic service as competitive under § 706(c) of this title, competitive service shall be defined as services for which:~~

~~a. There are similar or substitute services or products which are offered and generally available within the relevant geographic area from at least 1 unaffiliated provider;~~

~~b. There is at least 1 unaffiliated service provider which is present and viable; and~~

~~e. There are no significant barriers to market entry.~~

~~(3) The Commission may also consider any other factors it deems relevant and in the public interest in making determinations regarding the classification of services as competitive.~~

~~(d)(1) With respect to subsection (a) of this section above, "alternative provider of telephone service" means, but is not limited to, a provider of a wireline telephone service, commercial mobile service as defined in § 332(d), Communications Act of 1934 [47 U.S.C. § 332(d)], or Voice over Internet Protocol service as defined in § 202(i)(2) of this title.~~

~~(2) If a retail residential customer disagrees with a telecommunications service provider's classification of its location as having an alternative provider of telephone service, the customer may bring the dispute to the Secretary of the Department of Technology and Information or his or her designee to determine if an alternative provider of telephone service is available to retail residential customers at the location. This standard shall be satisfied if the Secretary determines that a service that provides the ability to transmit and receive voice communications, including E-911 communications, is available from an alternative provider of telephone service at the location.~~

~~(e) Phrases used to identify specific services within the foregoing classifications shall be given the meanings commonly ascribed to them in proceedings before the Commission or in the industry. In the event the Commission concludes any of such phrases to have uncertain meaning, the Commission shall, by order after a duly noticed hearing, adopt an appropriate definition.~~

Section 7. Amend § 706, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 706. Offering, classification and abandonment of service.

(a) A service provider is not required to provide notice to the Commission for any new service.

(b) Competitive services, including new services, and basic services, other than switched access, are not subject to mandatory tariff or other filing requirements except as specifically provided in this subchapter.

~~(c) Upon application by the service provider, the Commission may, after notice and hearing, reclassify a basic service other than a switched access service as competitive. Any party proposing any such reclassification shall have the burden of supporting its proposal.~~

~~(d) Basic services other than switched access may be abandoned pursuant to § 203A of this title.~~

Notwithstanding the provisions of § 203A(d) of this title, a service provider may abandon a competitive service at any time.

~~(e) A service provider governed under this subchapter and offering services defined in § 705(a)(1) of this title shall obtain Commission approval for mergers as set forth in § 215(a)(1) of this title or transfers of control as set forth in § 215(b) of this title; provided, however, that this subsection shall not apply to or restrict transactions between parent and subsidiary corporations or between entities of which at least 50% of the beneficial ownership is held by the same persons or entities prior to such merger or transfer of control. Applications and Commission approval of mergers or transfers of control shall be governed by § 215(c), (d) and (g) of this title.~~

(d) Notwithstanding any other provision of law, Commission approval may not be required for any reorganization or merger, mortgage or transfer of property, issuance of securities, assumption of obligation of another, or transfer of control of a service provider governed under this subchapter.

Section 8. Amend § 707, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 707. Provision of basic services.

~~(a) Except for the determination of rate changes for basic services, which determinations shall be made pursuant to the provisions of this section, the offering of basic services in this State shall be subject to the provisions of subchapters I and V of this chapter and §§ 201, 202, 203A(e), 204, 206, 212, 217, 218, 222, and 303(a) of this title and all Commission procedures, rules and regulations shall apply except to the extent inconsistent with this subchapter.~~

(a) An offering of basic services in this State, that is not a determination of rate change, is subject to the provisions of subchapters I and V of this chapter, §§ 201, 202, 203A(c), 204, 206, 212, 217, 218, and 222 of this title, and all Commission procedures, rules, and regulations except to the extent inconsistent with this subchapter.

~~(b) After Beginning January 1, 2020, after January 1 of the year immediately following the initial election or reelection made pursuant to § 704 of this title, Commission approval may not be required to change tariff rates and rates for basic services must be established according to prevailing federal jurisdiction. services, which for any reelecting provider shall be the rates in existence as of July 15, 2013, may be changed by the service provider or upon Commission initiative according to the following formula; provided, however, that a rate for a basic service may not be changed more than once in any calendar year:~~

~~Change in Rate = Change in Gross Domestic Product Price Inflater since last rate change.~~

~~The Gross Domestic Product Price Inflation Index shall be that published by the United States Department of Commerce with the most recent available data for the relevant period or, in the event that such index is discontinued, the index determined by the Commission to most closely approximate the discontinued index.~~

~~(c) The following exceptions to the rate changes otherwise determined by the foregoing formula shall apply:~~

~~(1) A service provider may not increase switched access rates unless required to maintain parity with its interstate switched access rates.~~

~~(2) A service provider may elect not to implement all or a portion of a rate increase otherwise required by the formula.~~

~~(3) A service provider may elect to decrease rates in circumstances where the formula would require otherwise.~~

~~(4) Upon request by a service provider, the Commission may, after notice and hearing, establish a different rate change formula than that set forth in subsection (b) of this section for basic services provided by that service provider in light of the degree of competition, including intermodal competition, the service provider faces, if the Commission determines that the new formula will result in rates that are just and reasonable.~~

~~(5) In circumstances where a rate decrease would result from an application of the formula, the decreased rate shall not be lower than the incremental cost of providing that basic service as determined by the Commission.~~

~~(6) Upon application by a service provider, the rate structure for a basic service may be adjusted by the Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that particular basic service.~~

~~(7) Upon application by a service provider other than a local exchange carrier, the rates charged for a basic service which is purchased as a necessary component by such other provider of telecommunications services in order to offer its telecommunication services may be adjusted by the Commission upon a showing by such other service provider that the rate is not just and reasonable.~~

~~(8) Upon the application by any ratepayer or the service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect an unforeseen change in the service provider's costs of providing telecommunications services, which change occurs for reasons beyond the control of the applicable service provider. Such change may include, but not be limited to, legal or regulatory changes which affect such costs, the method of accounting for such costs or taxes applicable to the service provider.~~

~~(9) Notwithstanding any other provision to the contrary, effective January 1, 2014, a service provider may increase rates for basic services, other than switched access services, up to 10% per calendar year for a period of 5 years. Effective January 1, 2019, rates for basic services, other than switched access service, may be increased up to 5% per calendar year. A rate for a basic service may not be changed more than once in any calendar year. The service provider shall provide 30 days advance notice to customers of the first increase in rates.~~

~~(d) Rate adjustments made pursuant to paragraphs (c)(5), (6) and (7) of this section may be made with the Commission's approval at any time and shall not be limited to once in any year.~~

~~(e) Notwithstanding subsection (b) of this section, no (c) No service provider may assess switched access rates pursuant to tariff that are higher than the switched access rates set forth in the tariffs of the incumbent local exchange carrier in the same service territory.~~

~~(f) Notwithstanding any provision to the contrary, the amount of any change in rates resulting from application of the formula in subsection (b) of this section but not implemented by the service provider as of July 1,~~

~~2013, shall be deposited into the Delaware Broadband Fund identified in § 709 of this title in lieu of implementing these amounts through changes in rates.~~

Section 9. Amend § 1012, Chapter 10, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1012 Certification of electric suppliers.

(a) Certification requirements. — Prior to doing business in Delaware, every electric supplier seeking to provide electric supply service to customers shall obtain a certificate from the Commission. The Commission shall promulgate rules and regulations governing the information that electric suppliers shall be required to provide and requirements to be satisfied in order to obtain such certificate. The failure by any electric supplier to comply with any of the requirements promulgated by the Commission shall result in penalties, including monetary assessments, suspension or revocation of the electric supplier's certificate, or other sanctions.

(b) Rules and regulations. — The Commission may promulgate rules and regulations with respect to electric suppliers and electric supply service to protect customers after the implementation of retail competition, including those related to standardized customer information billing, service terms and conditions, dispute procedures, changing suppliers and standards for suppliers who offer environmentally-advantageous "Green Power" options, such as electricity generated from renewable resources, biomass, hydroelectric and other such generating sources. ~~The Commission shall also require each electric supplier to provide disclosure, on a quarterly basis, of a uniform set of information about the fuel mix of electricity purchased by its customers, such as categories of electricity from renewable resources, coal, natural gas, nuclear, oil and other resources, or disclosure of a regional average.~~ All electric suppliers shall consent to the jurisdiction of the Delaware courts for acts or omissions arising from their activities in the State. Electric suppliers shall not solicit customers by means of telemarketing where such telemarketing is prohibited by applicable laws and regulations.

(c) Fees and assessments. —

(1) Electric suppliers required to obtain a certificate to provide retail electric supply service shall pay an application fee of \$750.

(2) For purposes of §§ 114 (Charges and fees; costs and expenses of proceedings), 115 (Public policy; regulatory assessment; definition of revenue; returns; collection of assessment), and 116 (Delaware Public Service Commission Revolving Fund; deposit of moneys collected) of this title, an electric supplier shall be deemed to be a "public utility" as defined in § 102(2) of this title.

Approved April 17, 2019