

C91H00
Office of People's Counsel

Operating Budget Data

(\$ in Thousands)

	<u>FY 02</u> <u>Actual</u>	<u>FY 03</u> <u>Approp.</u>	<u>FY 04</u> <u>Allowance</u>	<u>FY 03-04</u> <u>Change</u>	<u>FY 03-04</u> <u>% Change</u>
General Funds	\$2,496	\$0	\$0	\$0	
Adjusted General Funds	2,496	0	0	0	
Special Funds	0	2,561	2,566	5	0.2%
Contingent & Back of Bill Reductions	0	-1	-8	-7	6.0%
Adjusted Special Funds	\$0	\$2,560	\$2,558	-\$2	-0.1%
Adjusted Grand Total	\$2,496	\$2,560	\$2,558	-\$2	-0.1%

- The fiscal 2004 allowance decreases by \$2,080, or 0.1% below the fiscal 2003 working appropriation.
- In the 2002 session the General Assembly created the Public Service Fund, a special fund from which the Office of People's Counsel's operating budget is appropriated, beginning in fiscal 2003.

Personnel Data

	<u>FY 02</u> <u>Actual</u>	<u>FY 03</u> <u>Working</u>	<u>FY 04</u> <u>Allowance</u>	<u>Change</u>
Regular Positions	18.00	18.00	18.00	0.00
Contractual FTEs	1.00	1.00	1.00	0.00
Total Personnel	19.00	19.00	19.00	0.00

Vacancy Data: Regular Positions

Budgeted Turnover: FY 04	0.36	2.00%
Positions Vacant as of 12/31/02	0.00	0.00%

- The fiscal 2004 allowance does not include any new positions.

Note: Numbers may not sum to total due to rounding.

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Analysis in Brief

Major Trends

Office of People's Counsel Protects Consumer Interests and Secures Favorable Consumer Rates: The Office of People's Counsel (OPC) has had sustained success over several fiscal years in effectively advocating for consumer interests before a variety of courts and regulatory agencies. OPC successfully resolves consumer complaints and instances of questionable and illegal marketing practices. OPC participation in several major settlement agreements with utility companies continues to secure consumer savings.

Issues

OPC Represents Consumer Interest before the Public Service Commission in Two Major Verizon-MD Cases: OPC participated in two cases before the Public Service Commission (PSC) in fiscal 2002 that could have a dramatic impact on the State's local and long distance telephone markets. Case No. 8918 is ongoing and is a scheduled review of the plan controlling the rates Verizon-MD can charge for local service. OPC is arguing that Verizon-MD's current rate plan should be revised. Case No. 8921 was to determine whether Verizon-MD has met the federal requirements that would allow it to offer long distance service in the State. OPC argued that Verizon-MD was not compliant with the requirements, and that allowing Verizon-MD to offer long distance service in the State was not in the public interest. In December 2002 PSC issued a finding of conditional compliance. Verizon-MD has agreed to PSC's conditions, and the case will now go before the Federal Communications Commission (FCC). **OPC should update the committees on any new developments in Case No. 8918 and how it will ensure consumer interests are represented should Verizon-MD enter the long distance market.**

Recommended Actions

1. Concur with Governor's allowance.

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Operating Budget Analysis

Program Description

The Office of People’s Counsel (OPC) represents the interests of the State’s residential and noncommercial users of gas, electricity, telephones, water, sewage, and some commercial transportation before the Public Service Commission (PSC), courts, federal and State legislatures, federal agencies, and in roundtable and other settlement proceedings. OPC advocates for consumer interests in pursuit of three key goals:

- to obtain and protect fair and equitable prices, high quality, and reliable services for residential customers of regulated utility services;
- to keep the public informed about changes and new developments in the utility industry; and
- to protect customers during the transition from fully regulated services to a competitive market.

Performance Analysis: Managing for Results

Exhibit 1 lists several performance indicators intended to capture success at achieving the three goals listed above.

Exhibit 1

Program Measurement Data
Office of People’s Counsel
Fiscal 2001 through 2004

	<u>Actual</u> <u>FY 01</u>	<u>Actual</u> <u>FY 02</u>	<u>Estimated</u> <u>FY 03</u>	<u>Estimated</u> <u>FY 04</u>	<u>Net Chg.</u> <u>FY 01-04</u>
% of decisions rendered/cases settled favorable to OPC position	69%	80%	n/a	n/a	n/a
% of investigated consumer complaints against utility companies resolved successfully	88%	92%	92%	92%	4%
% of cases initiated on questionable marketing practices resolved favorably	93%	84%	80%	80%	-13%

Source: Office of People’s Counsel

OPC Protects Consumer Interests as Deregulation Progresses

Generally, OPC has achieved its goals despite the fact that deregulation of the electric, gas, and telecommunications markets have made consumers more vulnerable to price fluctuation and improper market practices.

- ***Achieving Fair Prices and Quality Services:*** OPC has achieved a high percentage of favorable rulings from a variety of courts and regulatory agencies. This measure is likely to fluctuate from year to year. The percentage represents only those cases that are decided or closed in a given year; OPC is also likely to have several cases pending or ongoing.
- ***Keeping Consumers Informed and Aware:*** OPC has also successfully resolved the overwhelming majority of consumer complaints against utilities. It is worthwhile to note that OPC has recently begun keeping more precise data on the number of complaints that it handles. Due to the low number of OPC staff responsible for handling consumer complaints, OPC has begun referring more consumers to other agencies or resources. OPC also has begun tracking which complaints are successfully resolved and which are referred. This measure should be monitored as the new, more precise data accrue over time.
- ***Protecting Customers throughout Deregulation:*** To date, OPC has effectively protected consumers from questionable marketing practices. Recent cases have involved companies operating without a license from PSC, misleading consumers about the true identity of their companies, making fraudulent claims to religious and charity organizations, and forging consumers' names on enrollment forms. The number of such cases doubled from 2001 to 2002, which may help to explain the decline in the success rate. OPC has stated that its estimates of successful resolution in fiscal 2003 and 2004 are conservative.

OPC Negotiates with Utilities to Secure Favorable Consumer Rates

Exhibit 2 provides some estimates of the savings OPC has helped to secure for consumers throughout electricity deregulation.

- ***Settlement Savings:*** The Electric Choice and Competition Act of 1999 required a rate reduction of between 3% and 7.5% and a rate freeze of at least four years during a Standard Offer Service (SOS) period. By participating in the negotiations with the four major utilities, OPC was able to secure rate reductions on the high end of the scale, and for longer durations in some cases. The estimated settlement savings in Exhibit 2 reflect savings over the 2000 base rate and the statutory minimums. In actuality, the savings are probably greater because retail electric prices have been increasing since 2000, but Maryland consumers have been protected by the price freeze. While OPC cannot necessarily take full credit for these savings, they are a reflection of how Maryland consumers have benefited from the office's advocacy. In fiscal 2003 OPC has also participated in a settlement process to extend SOS beyond the time periods negotiated in the original settlement. This settlement is pending approval by PSC, but should it be approved, it will likely generate additional consumer savings.

Exhibit 2

**Estimated Residential Consumer Savings from
Office of People's Counsel Activities
(\$ in Millions)**

<u>Utility</u>	<u>Settlement Savings</u>	<u>Other Savings</u>	<u>Total</u>
Allegheny Power (Potomac Electric)	\$73 from 2000-2006	\$0	\$73
Baltimore Gas and Electric	\$319 from 2000-2006	\$9	\$328
Conectiv (Delmarva)	\$50 from 2000-2004	\$10	\$60
Pepco	\$100 from 2000-2004	\$98	\$198
Washington Gas and Light	\$0	\$18	\$18
Total	\$542	\$135	\$677

Source: Office of People's Counsel

- **Other Savings:** OPC has also participated in several other cases that have secured additional savings for consumers. OPC motions have protected consumers from utility company attempts to pass along illegitimate costs and those created by their own errors. OPC has also negotiated settlements when utilities have sought to increase rates and helped consumers realize savings from utility mergers. These savings are reflected in the "other savings" column of Exhibit 2.

Fiscal 2003 Actions

In fiscal 2003 OPC became a special funded agency. In the 2002 session, HB 135 created the Public Service Fund, which is funded by the Public Service Commission's assessments on regulated utilities. A budget amendment in fiscal 2003 appropriated OPC's legislative appropriation into the Public Service Fund and deleted the general funds.

Impact of Cost Containment

Fiscal 2003 cost containment reflects the reversion of \$1,188 to support free transit ridership for State employees, contingent upon enactment of a provision in the Budget Reconciliation and Financing Act (BRFA) of 2003.

Governor's Proposed Budget

The fiscal 2004 allowance decreases by \$2,080, or 0.1% below the working appropriation, shown in **Exhibit 3**. The largest single change is attributable to an increase in personnel expenditures of \$31,866. This increase is offset by reductions of approximately \$30,000 for legal support.

Impact of Cost Containment

The fiscal 2004 allowance reflects the elimination of \$8,368 for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in the 2003 BRFA.

Exhibit 3

**Governor's Proposed Budget
Office of People's Counsel
(\$ in Thousands)**

How Much It Grows:	FY 02 <u>Actual</u>	FY 03 <u>Approp.</u>	FY 04 <u>Allowance</u>	FY 03-04 <u>Change</u>	FY 03-04 <u>% Change</u>
General Funds	\$2,496	\$0	\$0	\$0	
Adjusted General Funds	2,496	0	0	0	
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Contingent & Back of Bill Reductions	0	-1	-8	-7	6.0%
Adjusted Special Funds	\$0	\$2,560	\$2,558	-\$2	-0.1%
Adjusted Grand Total	\$2,496	\$2,560	\$2,558	-\$2	-0.1%

Where It Goes:

Personnel Expenses

Employee and retiree health insurance.....	\$41
Turnover adjustments.....	30
Employee retirement and deferred compensation	-20
Independent salary setting authority	-10
Workers' compensation charges.....	-10

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Where It Goes:

Other Changes

Communications, office supplies, and employee transit.....	14
Rent, insurance coverage.....	6
Legal support.....	-30
Travel, contractual services, and equipment.....	-23
Total	-\$2

Note: Numbers may not sum to total due to rounding.

Issues

1. OPC Represents Consumer Interest before the Public Service Commission in Two Major Verizon-MD Cases

OPC participated in two cases before PSC in 2002 that could have a dramatic impact on the State's local and long distance telephone markets.

Review of Verizon-MD's Alternative Rate Plan: Case No. 8918

Case No. 8918 is ongoing and is a scheduled review of Verizon-MD's Alternative Rate Plan (ARP), which controls the rates Verizon-MD can charge for basic local exchange service. OPC is arguing that Verizon-MD's current rate plan does not meet any of the statutory requirements for alternative forms of regulation and thus should be revised. OPC has also submitted recommended changes to the plan.

Statutory Compliance

Section 4-301 of the Public Utility Companies article states that the commission may adopt an alternative form of regulation if such regulation:

- produces reasonably priced and affordable basic exchange service;
- ensures the quality, availability, and reliability of telecommunications services;
- encourages competition; and
- serves the public interest.

Reasonable and Affordable Basic Exchange Service: OPC estimates that under the ARP, Verizon-MD had excess revenues in the range of \$843 million to \$1.3 billion from 1997 through 2001. OPC also notes that residential basic rates in Maryland are among the highest of Verizon-MD's states and well above the national average despite the fact that Maryland has some of the lowest input costs in the country. OPC argues that basic exchange service cannot be reasonable under these conditions. OPC also contends that the State's relatively high penetration rates are not a reliable indicator of affordability because local telephone service is a virtual necessity in today's environment and as such is characterized by inelastic demand, similar to heating energy, health care, or prescription expenses. OPC argues that the current ARP has not made any progress towards reasonability or affordability over traditional regulation.

Quality, Availability and Reliability of Telecommunications: OPC argues that at best Verizon-MD service quality is remaining stable. OPC could not identify any new services or products that had been introduced during the ARP period. OPC also was not able to find any indication that the availability and modernization of facilities had improved during the ARP period.

Encouragement of Competition: OPC notes that local exchange competition has been extremely slow to develop in Maryland. In fact, competitive local exchange companies (CLECs) have actually lost market share in Maryland, dropping from a high of 6% penetration in June 2001, to only 4% in December 2001. Maryland is one of only three states to experience loss of competitive penetration and has lower CLEC market share rates than all but three states. OPC argues that given these statistics, the ARP cannot be found to have fostered competition.

Support of Public Interest: OPC argues that for all of the reasons listed above, Verizon-MD's current ARP does not support the public interest.

OPC Recommendations for a Revised ARP

OPC makes several recommendations to the commission for consideration in revising Verizon-MD's rate plan:

- Adjust the pricing formula to avoid the overcharge situation OPC believes occurred during the first five years of the ARP.
- Reduce existing rates before the new plan goes into effect in order to reduce the excess profits OPC identified during the ARP period. OPC specifically identifies the local usage component of local basic service for reduction.
- Modify pricing rules and definitions to avoid manipulation by Verizon-MD.
- Expand eligibility for the Lifeline program, which provides telephone bill assistance to low-income Marylanders. OPC also recommends that the commission require Verizon-MD to expand advertising of this program to increase enrollment.

OPC should update the committees on any new developments in this case.

Determination of Verizon-MD's Section 271 Compliance: Case No. 8921

Case No. 8921 was to review whether Verizon-MD was in compliance with Section 271 (§271) of the federal Telecommunications Act of 1996 ("the Act"), which prohibits Bell operating companies (such as Verizon-MD) from offering interLATA (long distance) service in their service territories unless their operations meet certain conditions. Though the Federal Communications Commission (FCC) will make the final decision as to whether Verizon-MD is §271 compliant, the federal statute stipulates that FCC must "consult with" the State commission on the company's compliance. Verizon-MD filed a request that PSC consider its §271 compliance on April 12, 2002.

Verizon-MD requested consideration of its compliance with §271 (c) of the Act, which provides a specific checklist of conditions indicating that a competitive market exists for intraLATA (local) telephone service within its service territory. PSC also agreed to consider whether allowing Verizon-MD into the long distance market was in the public interest, despite Verizon-MD's objections to this criterion. Though

the Act does not require an analysis of whether Bell entry into the long distance market is in the public interest, FCC has held that such an analysis is appropriate and useful in determining §271 compliance.

OPC argued that Verizon-MD had not provided sufficient evidence of competition in the local market to comply with the checklist, citing many of the same conditions it raised in the ARP case. OPC further argued that allowing Verizon-MD to offer long distance service would only exacerbate the lack of competition in the local market by allowing Verizon-MD to engage in cross-marketing of its services and offer a “one-stop shopping” option that its local competitors could not. OPC contended that Verizon-MD’s entry into the long distance market was not in the public interest, and urged PSC to recommend against §271 compliance.

On December 16, 2002, PSC issued a finding of “conditional compliance” which laid out ten concerns with the local competitive environment. Many of these concerns were the same issues that OPC and other opposed parties had raised. The conditional finding required Verizon-MD to address these concerns before PSC could declare that Verizon-MD entry into the long distance market was in the public interest. Verizon-MD agreed to the conditions, though disputed their necessity for §271 compliance, and on December 17, 2002, PSC declared that Verizon-MD was technically compliant with the checklist. FCC will consider this recommendation when making its final decision.

OPC should update the committees on how it plans to monitor Verizon-MD’s activities in the event of FCC approval of the §271 petition and ensure that consumer interests are protected should Verizon-MD enter the long distance market.

Recommended Actions

1. Concur with Governor's allowance.

Current and Prior Year Budgets

Current and Prior Year Budgets Office of People's Counsel (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2002					
Legislative Appropriation	\$2,513	\$0	\$0	\$0	\$2,513
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	0	0	0	0
Reversions and Cancellations	-17	0	0	0	-17
Actual Expenditures	\$2,496	\$0	\$0	\$0	\$2,496
Fiscal 2003					
Legislative Appropriation	\$2,561	\$0	\$0	\$0	\$2,561
Budget Amendments	-2,561	2,560	0	0	-1
Working Appropriation	\$0	\$2,560	\$0	\$0	\$2,560

Note: Numbers may not sum to total due to rounding.

Fiscal 2003

In the 2002 session, HB 135 created a special fund, the Public Service Fund, from which OPC's operating budget is appropriated beginning in fiscal 2003. The budget amendment appropriated the agency's fiscal 2003 appropriation to the Public Service Fund and deleted the general funding.

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Appendix 2

**Object/Fund Difference Report
Office of People's Counsel**

<u>Object/Fund</u>	<u>FY03</u>		<u>FY04</u> <u>Allowance</u>	<u>FY03 - FY04</u> <u>Amount Change</u>	<u>Percent</u> <u>Change</u>
	<u>FY02</u> <u>Actual</u>	<u>Working</u> <u>Appropriation</u>			
Positions					
01 Regular	18.00	18.00	18.00	0	0%
02 Contractual	1.00	1.00	1.00	0	0%
Total Positions	19.00	19.00	19.00	0	0%
Objects					
01 Salaries and Wages	\$ 1,427,191	\$ 1,383,598	\$ 1,423,493	\$ 39,895	2.9%
02 Technical & Spec Fees	783,165	887,627	858,037	-29,590	-3.3%
03 Communication	52,766	48,760	55,629	6,869	14.1%
04 Travel	20,397	30,763	20,397	-10,366	-33.7%
07 Motor Vehicles	11,235	12,812	13,404	592	4.6%
08 Contractual Services	74,127	68,469	64,901	-3,568	-5.2%
09 Supplies & Materials	24,704	18,937	23,485	4,548	24.0%
10 Equip - Replacement	4,711	4,137	0	-4,137	-100.0%
11 Equip - Additional	3,266	4,800	0	-4,800	-100.0%
12 Grants, Subsidies, Contr	7,017	7,017	7,017	0	0%
13 Fixed Charges	87,311	94,248	99,905	5,657	6.0%
Total Objects	\$ 2,495,890	\$ 2,561,168	\$ 2,566,268	\$ 5,100	0.2%
Funds					
01 General Fund	\$ 2,495,890	\$ 0	\$ 0	\$ 0	0.0%
03 Special Fund	0	2,561,168	2,566,268	5,100	0.2%
Total Funds	\$ 2,495,890	\$ 2,561,168	\$ 2,566,268	\$ 5,100	0.2%

Notes: Full-time and contractual positions and salaries are reflected for operating budget programs only.
Fiscal 2003 appropriations and fiscal 2004 allowance do not include cost containment and contingent reductions.