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BILL ANALYSIS

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House Bill 4314 (Substitute H-2 as passed by the House)
Sponsor: Representative Ken Horn
House Committee: Energy and Technology
Senate Committee: Energy and Technology

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CONTENT

The bill would amend the Michigan Telecommunications Act (MTA) to eliminate various provisions, repeal a number of sections (including a section requiring primary basic local exchange service), and do the following:

-- Revise the Act's purposes.
-- Limit the scope of the Public Service Commission's (PSC's) rule-making authority to the authority granted in the Act, and rescind existing rules that are inconsistent with this authority.
-- Specify that the PSC would not have authority over voice over internet protocol (VoIP).
-- Allow a telecommunication provider to opt out of a requirement to file a schedule of rates, services, and conditions of service with the PSC.
-- Establish an expiration date of June 30, 2011, on certain service quality rules.
-- Allow a provider of basic local exchange or toll service to discontinue service to an exchange only if an alternative provider offers a comparable service, rather than the same service.
-- Prohibit basic local exchange service providers, rather than telecommunication providers, from taking certain actions, and delete some actions from the list of prohibitions.

The bill would eliminate the following:

-- A requirement that the PSC preserve the provision of high-quality basic local exchange service.
-- A requirement that the PSC report annually on the state of competition in telecommunication services in Michigan.
-- Provisions authorizing the PSC to require changes to the provision of regulated services by a provider who violates the MTA or a Commission order.
-- Provisions prohibiting a basic local exchange service provider from acquiring assets from or transferring them to an affiliate for less than the fair market value.
-- A requirement that a telecommunication provider give a customer a clear and simple explanation of the terms and conditions of services before the customer purchases them.
-- A requirement that a provider give each customer a printed telephone directory.
-- A requirement that the PSC promulgate rules establishing privacy guidelines.

The bill would repeal sections that do the following:

-- Require each telecommunication provider to offer primary basic local exchange service to its residential customers.
-- Require the PSC to order a toll provider to interconnect with a basic

- **local exchange service provider that does not offer toll or have interconnection with a toll provider.**
- **Prohibit the use of rates or proceeds from rate-acquired assets to subsidize the cost of other products and services.**
- **Require a provider of both basic local exchange service and toll service to impute to itself certain prices.**
- **Require the PSC to mandate that toll service be universally available to all people within the State.**
- **Prohibit a provider from discontinuing a regulated service for a customer's failure to pay for an unregulated service.**
- **Prohibit a provider of a regulated service from charging less than the total service long-run incremental cost (TSLRIC) of providing it.**
- **Require a provider to file with the PSC a small and minority-owned telecommunication business participation plan.**
- **Prohibit a provider from passing on to its customers the cost of any remedies or penalties the provider is ordered to pay for an MTA violation.**

Article 1: General Provisions

Purpose of Act. The MTA identifies a number of purposes, including the following:

- Restructuring regulation to focus on price and quality of service and not on the provider, and supplementing existing State and Federal law regarding antitrust, consumer protection, and fair trade to provide additional safeguards for competition and consumers.
- Streamlining the process for setting and adjusting the rates for regulated services to ensure effective rate review and reduce the costs and length of hearings associated with rate cases.

The bill would delete these two purposes.

Report: Telecommunication Competition. The MTA requires the PSC to submit to the Governor and the legislative standing committees with oversight of telecommunication issues an annual report describing the status of competition in telecommunication services in the State. A provider must submit to the PSC all requested information necessary for the preparation of the report. The bill would delete these provisions.

(Under the Act, "telecommunication services" includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated use.)

Article 2: Michigan Public Service Commission

PSC Jurisdiction & Authority. Under Section 201, except as otherwise provided by the MTA and Federal law, the PSC has the jurisdiction and authority to administer the Act and all Federal telecommunications laws, rules, orders, and regulations that are delegated to the State. Under the bill, this would include the authority to arbitrate and enforce interconnection agreements and to establish rates in accordance with the standards set forth by applicable law.

Subject to Section 201, the PSC may promulgate rules under the Administrative Procedures Act. Under the bill, the Commission's authority to promulgate rules also would be limited to its specific authority over a service as provided under the Act. In addition, any rules promulgated before the bill's effective date that were inconsistent with this limited rule-making authority would be rescinded.

Provider Information. Under the Act, the PSC must require by order that a provider of regulated service, including access service, make available for public inspection and file with the Commission a schedule of the provider's rates, services, and conditions of service, including access service provided by contract. Under the bill, except for access service, a provider would be exempt from any PSC order requiring the filing if it filed with the Commission a certification to opt out. The certification would have to be signed by an officer of the provider.

(Under the Act, "telecommunication provider" means a person that provides one or more telecommunication services for compensation. "Access service" means access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication services within the local exchange. Except for end-user common line services, the term does not include access service to a person who is not a provider.)

Basic Local Exchange Service. The bill would eliminate a requirement that the PSC preserve the provision of high-quality basic local exchange service.

("Basic local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality two-way interactive switched voice or data communication.)

Service Quality Rules. The Act requires the PSC to promulgate rules to establish and enforce quality standards for the provision of basic local exchange service to end-users. Under the bill, any of these rules and any retail service quality rules promulgated before January 1, 2006, would expire on June 30, 2011.

Violations. If the PSC finds, after notice and hearing, that the rates, quality, general availability, or conditions for a regulated service violate the MTA or a Commission order, or are adverse to the public interest, the Commission may require changes in how telecommunication services are provided. The PSC's authority includes the revocation of a license and the issuance of cease and desist orders. The bill would delete these provisions.

Disclosure of Settlement. Under the bill, information regarding settlement, including a recommended settlement issued by a mediator in a proceeding, could be disclosed only to the parties to the proceeding unless all of them consented to disclosure. A mediator's recommended settlement could be disclosed to the PSC after the Commission issued a final order. The administrative law judge assigned to any contested case proceeding arising from a mediation could not be made aware of the parties' acceptance or rejection of the recommended settlement, or its terms. The parties to the mediation could not disclose or reveal the terms of the recommended settlement to anyone other than those parties.

Article 3: Regulated Telecommunications Services

Primary Basic Local Exchange Service. The bill would repeal Section 301a, which requires a provider to offer primary basic local exchange service to each residential customer within its service area where the provider is offering residential basic local exchange service.

"Primary basic local exchange service" means the provision of one primary access line to a residential customer for voice communication, including at least 100 outgoing calls per month, at least 12,000 outgoing minutes per month, and unlimited incoming calls. The bill would delete this definition, as well as all provisions related to primary basic local exchange service.

Prohibited Provider Actions. A provider of basic local exchange service may not take certain actions, including the following:

-- Selling, leasing, or otherwise transferring an asset to an affiliate for an amount less than the fair market value of the asset.
-- Buying, leasing, or otherwise acquiring an asset from an affiliate for an amount greater than the asset's fair market value.
-- Discriminating in favor of an affiliate burglar and fire alarm service over a similar service offered by another provider.

The bill would delete these actions from the list of prohibited actions.

Pre-Purchase Information. Before a customer purchases any telecommunication service or upon request, a provider must give the customer a clear and simple explanation of the terms and conditions of the services, including a statement of all fees, charges, and taxes that will be included in the customer's monthly bill. The statement must include a good faith estimate of the actual monthly cost that the customer will be required to pay if the service is purchased. The bill would delete these requirements.

Toll Services; Interconnection with Toll Provider. The bill would repeal Section 306, which states that a provider of basic local exchange service is not required to provide toll services. Under this section, if a basic local exchange service provider does not offer toll or have interconnection with a toll provider, the PSC must order a toll provider to interconnect with the basic local exchange service provider upon terms that are fair to both providers.

("Toll service" means the transmission of two-way interactive switched communication between local calling areas. The term does not include individual negotiated contracts for similar telecommunication services or wide-area telecommunication service (WATS).)

Transfer of Provider Assets. Under Section 308, basic local exchange or access rates or proceeds from the sale, lease, or transfer of rate-acquired assets may not be used, directly or indirectly, to subsidize or offset the costs of other products or services offered by the provider or an affiliate by providing them at less than the total service long-run incremental cost (TSLRIC).

("Total service long-run incremental cost" means, given current service demand, including associated costs of every component necessary to provide the service, one of the following:

-- The total forward-looking cost of a telecommunication service, relevant group of services, or basic network component, using current least-cost technology that would be required if the provider had never offered the service.
-- The total cost that the provider would incur if it were initially to offer the service, group of services, or basic network component.)

A provider of basic local exchange service may not sell or transfer capital assets used to provide service for an amount less than the fair market value to any other provider or affiliated entity for the purpose of providing an unregulated service.

A provider must notify the PSC when it transfers substantial assets, functions, or employees associated with basic local exchange service to an affiliated entity, indicating the affiliated entity's identity, and describing the transaction and the impact on basic local exchange service.

Section 308 also provides that, in an investigation, the PSC has the authority to review the books and accounts of both the provider and its affiliated entities.

The bill would repeal Section 308.

Printed Telephone Directory. The MTA requires a provider of basic local exchange service to give each customer an annual printed telephone directory at no additional cost. The bill, instead, would permit a provider to distribute a printed directory to each customer. If a provider elected not to do so, a customer could request either a printed or electronic directory, which the provider would have to supply for free.

Cable Service. The bill would repeal Section 309a, which allows a telecommunication provider to provide cable service if it has received a franchise agreement from the local unit of government.

(The provision of cable service now is regulated by the Uniform Video Services Local Franchise Act, which took effect on January 1, 2007.)

Inter-LATA Toll Service Provider: Prohibited Conduct. The bill would repeal Section 309b. This section prohibits a provider of inter-LATA toll service in Michigan from taking any action prohibited under State or Federal labor laws to discourage or prevent its employees from seeking union representation, pursuing collective bargaining, or engaging in any other protected activities, including closing an office or facility in Michigan to prevent organizing.

Special Toll Access Service/Switched Access. The bill would repeal Section 311, which requires a provider of both basic local exchange service and toll service to impute to itself its prices of special toll access service and switched access for the use of essential facilities it uses in the provision of toll, WATS, or other service for which toll access service is a component.

("Special access" means the provision of access service, other than switched access service, to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication service within the exchange, including the use of local private lines. "Wide-area telecommunications service", or "WATS", means the transmission of two-way interactive switched communication over a dedicated access line.)

Section 311 requires all other providers of intrastate special toll access service, switched toll access services, toll, or WATS to impute to themselves in the aggregate on a service-by-service basis their individual cost of special or switched toll access service or its equivalent in their pricing.

Under Section 311, telecommunication services that use special or switched toll access service must be made available for resale by the telecommunication provider offering the service.

Toll Service: Rates & Availability. Under Section 312, the PSC may not review or set the rates for toll service, but must require that toll service be universally available to all people within the State. Upon PSC review and approval, all toll service providers must make available to their customers adjacent exchange toll calling plans, and inform their customers of the available plans that provide a monthly allowance of toll calling to adjacent exchanges for which there is no local calling.

The bill would repeal Section 312.

Discontinuation of Basic Local Exchange/Toll Service. Under the MTA, a provider that provides basic local exchange and/or toll service may not discontinue either service to an exchange unless at least one alternative provider furnishes the same telecommunication service to customers in that exchange. The bill would refer to "a comparable voice service", rather than "the same telecommunication service". A comparable voice service would include any two-way voice service offered through any form of technology that is capable of placing and receiving calls from a provider of basic local exchange service, including VoIP and wireless services.

The bill provides that discontinuance of basic local exchange service by an incumbent local exchange carrier would not affect the requirements of that carrier under Federal law.

Failure to Pay: Discontinuation of Service. Section 314 prohibits a provider of a regulated service from discontinuing that service for a customer's failure to pay a rate or charge for an unregulated service; and requires the PSC to determine when and under what conditions a provider of basic local exchange service may discontinue service for a customer's failure to pay. The bill would repeal this section.

Hearing/Speech Impairment & Low-Income Rates. Under the MTA, rates and charges for calls placed through a telecommunication relay service may not exceed those for calls placed directly from the same originating location to the same terminating location. A provider may offer discounts on toll calls where a text telephone-telecommunications device for the deaf is used. The PSC must establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred under these provisions, and may waive those costs assessed to individuals who are deaf, hard of hearing, or speech-impaired.

The PSC also must require each provider of residential basic local exchange service to offer certain low-income customers the availability of that service and access service at reduced rates. The Commission must establish a rate for each subscriber line to allow the provider to recover the costs incurred under this requirement.

The bill provides that these rates established by the PSC could be assessed as a line item on an end-user's bill.

Regulated Service: TSLRIC. The bill would repeal Section 321, which prohibits a provider of a regulated telecommunication service from charging a rate that is less than the TSLRIC of providing the service.

Article 4: Unregulated Services

Voice Over Internet Protocol. The MTA lists telecommunication services over which the PSC does not have authority, and provides that these services are not considered part of basic local exchange service.

The bill would include interconnected VoIP among the services over which the PSC does not have authority.

Article 5: Prohibited Activity

Prohibited Actions. The MTA prohibits telecommunication providers from doing any of the following:

-- Charging the end-user for service provided after the end-user canceled the service.

- -- Causing a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact whose omission is deceptive or misleading.
- -- Representing or implying that the subject of a transaction will be provided promptly, or at a specified time or within a reasonable time, if the provider knows or has reason to know it will not be.
- -- Requiring the purchase of a regulated service as a condition of purchasing an unregulated service.
- -- Disconnecting a service to a customer before the resolution of a dispute with the provider.
- -- Making a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a service that is false, misleading, or deceptive.

Under the bill, these prohibitions would apply to a basic local exchange service provider, rather than a telecommunication provider. Also, the bill would refer to *intentionally* false or misleading statements or representations, and to a *bona fide* dispute between a customer and a provider.

("Material information" includes all applicable fees, taxes, and charges that will be billed to the end-user, regardless of whether they are authorized by State or Federal law. The bill would refer to a good faith estimate of these fees, taxes, and charges.)

The bill also would delete the following from the list of prohibited actions:

- -- Charging an end-user for a subscribed service for which the end-user did not make an affirmative order.
- -- Failing to confirm a residential end-user's oral order of a service in writing within 15 days.
- -- Stating to an end-user that basic local exchange service or other regulated service will be discontinued unless the end-user pays a charge that is due for an unregulated service.
- -- Disparaging the services, business, or reputation of another by false, deceptive, or misleading representation of fact.
- -- Representing to a party to whom services are supplied that the services are being supplied in response to a request made by or on behalf the party when they are not.
- -- Causing coercion and duress as a result of the time and nature of a sales presentation.

<u>PSC Rules: Privacy Guidelines</u>. The MTA requires the PSC to promulgate rules that establish privacy guidelines in the provision of telecommunication services. The rules must include protections against the release of certain customer information and customer privacy intrusions. The bill would delete these requirements.

<u>Small & Minority-Owned Business Participation Plan</u>. Section 504 of the MTA required each telecommunication provider doing business in Michigan to file with the PSC a small and minority-owned telecommunication business participation plan by March 1, 2006, and requires a new provider seeking to do business in the State to file such a plan with its license application. The plan must contain the entity's plan for purchasing goods and services from small and minority-owned telecommunications businesses and information on programs, if any, to provide technical assistance to such businesses. The bill would repeal this section.

<u>Article 6: Penalties, Repeals, & Effective Dates</u>

<u>Remedies & Penalties</u>. If, after notice and hearing, the PSC finds that a person has violated the MTA, the Commission must order remedies and penalties to protect and make whole ratepayers and other people who have suffered an economic loss as a result of the violation.

Under Section 602, the PSC must assure that none of the amounts paid as remedies or penalties or any other related defense costs are passed through to the provider's customers in any manner. The bill would repeal Section 602.

MCL 484.2101 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

While the bill would likely have many impacts on businesses and customers in the telecommunications industry, it is not clear that the bill would have a significant impact on State or local finances. Most of the changes to the MTA would affect the responsibilities of telecommunications companies and would not significantly change the mission or responsibilities of the Public Service Commission as they relate to the industry.

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