

TRADITIONAL LANDLINES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 636 Substitute S-2 with committee amendment

Sponsor: Sen. Mike Nofs

House Committee: Energy and Technology

Senate Committee: Energy and Technology

Complete to 12-11-13

A SUMMARY OF SENATE BILL 636 AS REPORTED BY HOUSE COMMITTEE 12-11-13

Briefly, the bill would do the following:

- Revise the procedure, beginning January 1, 2017, by which a telephone provider could discontinue basic local exchange and/or toll service to an exchange. (This would include allowing an incumbent service provider to no longer provide traditional landline service).
- Change the annual registration and fee for an operator service provider or a payphone service provider to a one-time registration and fee.
- Require duplicative costs or revenues to be included in the annual access restructuring mechanism report compiled by the MPSC.
- Change the date on which the MPSC must recalculate the size of the Access Restructuring Mechanism (ARM) to March 13, 2018.
- Revise the monthly disbursement to an eligible provider from the ARM if the provider discontinues basic local exchange service (such as landline service).
- Require the MPSC to maintain a publicly available database of providers of toll and local exchange service in each exchange.

Senate Bill 636 would amend the Michigan Telecommunications Act. Currently, a telecommunication provider that provides either basic local exchange or toll service, or both, cannot discontinue such service to an exchange unless one or more alternative providers for toll service, or two or more alternative providers for basic local exchange service, are furnishing a comparable voice service to the customers in the exchange. A comparable voice service includes voice over internet protocol (VoIP) and wireless services. The act provides the current process that a telecommunications provider must follow before discontinuing the service, including notices to customers and the public and a determination by the Michigan Public Service Commission (MPSC) regarding whether the discontinuation is authorized under the act.

The bill would specify that the above process would not apply after December 31, 2016. Beginning the next day, January 1, 2017, the telecommunications provider could discontinue basic local exchange or toll service in an exchange by meeting each of the following conditions:

- ❖ At the same time it files a petition for discontinuance with the federal government under federal law, the provider must also:
 - File a notice of the *proposed* discontinuance of service with the MPSC.
 - Publish a notice of the *proposed* discontinuance in a newspaper of general circulation, provide notice to its customers, and provide notice to any interconnecting telecommunications providers.

- ❖ Upon approval of the Federal Communications Commission (FCC) to discontinue service, the provider must do all of the following at least 90 days before discontinuing service:
 - File a *notice of discontinuance of service* with the MPSC.
 - Publish a notice of the discontinuance of service in the newspaper, provide notice to its customers by mail or within a bill, and provide notice to any interconnecting telecommunications providers.

After January 1, 2017, *and only* in an area in which a provider has given notice of a proposed discontinuance or has discontinued service within the previous 90 days, a customer of that provider or any interconnecting telecommunication provider could request the MPSC to investigate the availability of comparable voice service with reliable access to 9-9-1 and emergency services. (Note: The MPSC would not have authority to initiate an investigation as the bill is currently written; it could only do so in response to a complaint.)

"Comparable voice service" is defined in the bill to include any two-way voice service offered through any form of technology, including VoIP and wireless services, that is capable of placing calls to and receiving calls from a provider of basic local exchange services.

The MPSC would have to complete an investigation within 180 days. If it found that the FCC failed to make a finding that the present and future public convenience and necessity is not adversely affected or that the FCC did not adequately address the issue, the MPSC must declare by order that an emergency exists in an area that is not serviced by at least one voice service provider offering comparable voice service with reliable access to 9-1-1 and emergency services – including the current provider. However, the provider would not be required to participate in the request for service process.

The willing provider could utilize any form of technology capable of providing comparable voice service and reliable 9-1-1 and emergency services, including VoIP and wireless services. "Willing provider" is defined to mean a provider that voluntarily participates in the request for service process.

If the MPSC determined another provider is not capable of providing the required level of services, it must issue an order requiring the current telecommunications provider to provide those services utilizing any form of technology that the MPSC determines is capable of providing comparable services, but only until another willing provider is available. (This means that if the provider which proposed to or had discontinued

services had provided those services by traditional landline, the provider could not be ordered to reestablish traditional landline services if VoIP or wireless or another technology was able to produce a comparable level of service.)

An intrastate universal service fund under Section 316a could not be created or used to compensate or fund a willing provider or current telecommunications provider to provide service under this section (Section 313).

Further, the bill would specify that Section 313 would not create, restrict, or expand the MPSC's jurisdiction and authority:

- ❖ Established under Section 201.
- ❖ To carry out its obligations to enforce the rights, duties, and obligations of an entity established in Sections 251 and 252 of the federal Telecommunications Act and any applicable agreement or wholesale tariff or state law, rule, regulation, or order related to wholesale rights, duties, and obligations (including, but not limited to, interconnection and exchange voice traffic).
- ❖ To regulate switched access rates, terms, and conditions, including the implementation of federal or state law concerning intercarrier compensation.

Registration of operator service providers and providers of payphone service

Currently, the act requires such providers to register annually with the MPSC and to include a \$100 fee. The bill would instead require only a one-time registration and fee process.

ARM report and recalculations revisions

Among other things, Public Act 182 of 2009 allowed all providers of toll access services to set their own intrastate switched toll access rates, but prohibited any of them, including smaller companies, from charging more for *intrastate* switched toll access services than the federal government allows for the same *interstate* services. A new fund was created – "the restructuring mechanism" – to provide financial assistance to certain incumbent local exchange carriers (ILECs) as a trade-off for reducing their intrastate access charges to the same level as applicable interstate access charges. PA 182 required the MPSC to recalculate the size of the restructuring mechanism for each eligible provider four years from the date the initial restructuring mechanism became operational (which would occur in mid-March of 2014) and again four years later.

Instead, the bill would eliminate the two calculations spaced four years apart and simply require the recalculation to be made on March 13, 2018.

Currently, the MPSC must report annually to the legislature and governor regarding the administration of the access restructuring mechanism (ARM). The bill would require the report to also identify any duplicative costs or revenues already being recovered by eligible providers through federal access recovery charges or the Connect America Fund. The MPSC must notify the FCC and all contributing providers of any identified

duplications. A duplicative recovery identified by the MPSC would not be exempt from public disclosure under Section 210.

Further, each eligible provider (an ILEC) is entitled to receive monthly disbursements from the ARM for up to 12 years from the establishment of the ARM. The bill would reduce this disbursement on a pro rata basis for each exchange in which the provider discontinued basic local exchange service. The reduction would be effective on the date of the service discontinuance.

Public database

The bill would eliminate a provision requiring the MPSC to submit an annual report describing the status of competition in telecommunication services in the state. Instead, the bill would require the MPSC to maintain a publicly available database of providers in each exchange that are licensed to or otherwise provide toll and local exchange service in the state.

Miscellaneous provisions

The bill would specify that a call made to a called party who is not located within the geographic area of the caller's local calling area or an adjacent area is not a local call if the tariff, service guide, or similar document containing the terms and conditions of the provider originating the call does not classify the call as a local call. (Underlining denotes new language added by the bill.)

Currently, a provider of basic local exchange service is prohibited from disconnecting the service to a customer before the resolution of a bona fide dispute. Instead, the bill would prohibit disconnection for nonpayment of that disputed amount.

BRIEF DISCUSSION OF THE BILL:

Types of Landline

There appears to be some confusion over what the bill would do in relation to landline telephones, with some saying the bill will take away all landlines and others saying it won't. Part of the problem is that one of the newer technologies – voice over Internet protocol (VoIP) – can also power landlines, albeit in a different manner than the landlines of old. And, there remain differences in the capabilities of each type of landline service. For instance, the traditional landline continues to work in power outages (unless the phone line itself has been downed). Some older burglar and alarm systems only work with the traditional landline services, as do some medical devices (consumers should check with the manufacturer or service provider before switching from traditional to VoIP service to verify if the newer technology will interface successfully with their equipment).

VoIP is powered by a modem, which requires electricity, and most systems come with a battery-backup that can provide about eight hours of service in a blackout (anecdotally, reports say backup service lasts anywhere from four hours on the low end to 16-18 hours on the high end). Extra backup batteries can be purchased from the service provider to

extend phone service during power outages. However, like cell phones, those batteries must be recharged by an electrical source as they run down, which could be difficult in an outage lasting days or weeks. Encouragingly, some VoIP systems may work with a traditional corded phone plugged into the outlet during prolonged power outages.

Supporters Views

Supporters say that the current regulations in place for providers to discontinue basic local exchange or toll services in an area are out of date and not conducive to making the most of current and future innovative technologies. They feel that the three-year delay before implementation as provided in this bill offers ample time to further vet the provisions and, if necessary, make adjustments if FCC regulations or ancillary technologies such as telemedicine, medical devices, and life alert systems are not yet ready to interface reliably. In addition, almost all of the state is currently serviced by broadband and/or wireless, with service areas increasing all the time. Regarding dependability in power outages, proponents say that having extra batteries on hand and taking measures such as taking the batteries out when not needed to make a phone call can extend the availability of the service. In fact, supporters say that VoIP provides such excellent service that many consumers are not even aware that their "landline" is being powered by VoIP.

Moreover, current law allows companies to vacate exchanges now. The bill just further streamlines the process, beginning in a few years. Some added consumer protections were included before Senate passage, such as allowing the MPSC to determine if the FCC order allowing a telecommunications provider to discontinue local exchange service negatively affects the service area regarding reliable access to 9-1-1 and emergency services. In short, some feel it is not good policy to have a state law requiring a business to continue to invest in outdated technologies rather than encourage investment and growth of newer and innovative technologies that provide consumers with more services at (most likely) a better price.

Restructuring Mechanism

In a separate matter, some feel that the date of the next scheduled MPSC restructuring mechanism recalculation needs to be rescheduled soon in order to avoid negative implications resulting from recent changes in how some interconnectivity charges are handled; without this change, some companies (ILECs and CLECs) could lose a significant amount of money otherwise recouped from the ARM. By delaying the next recalculation date, eligible providers would continue to receive disbursements from the ARM fund based on 2009 landline numbers until 2018. If the ARM is recalculated in a few months as scheduled, disbursements would significantly decrease as the number of households with traditional landlines have also decreased. Extending the date will allow a disbursement closer to what was originally envisioned when the provision was placed in statute.

Opponents' Views

Some believe there are significant drawbacks to the bill. For instance, some say, the traditional, copper-based landlines are a necessity for some consumers due to the

drawbacks to VoIP and wireless service during power outages and to interface uncertainties with other devices. They say that no definitive evidence was presented at committee as to the interface capabilities between VoIP and wireless and telemedicine devices, life alert systems used by many seniors, and medical devices such as pacemakers; for example, devices used to diagnose certain cardiac conditions do not currently work with cell phones and may not work with all VoIP systems. People with dementia or other cognitive difficulties may not understand the steps needed to preserve battery life to power VoIP systems in a blackout. Traditional landlines also appear to be the most reliable regarding 9-1-1 and emergency calls.

There is concern that the bill as written is likely to make it easier for incumbent providers to forego providing telephone services via copper wires, which can be expensive to maintain, and move to more lucrative and newer technologies such as VoIP and/or wireless – leaving consumers with no ability to keep their traditional landline service. A few media stories report that in certain areas in some states, incumbent providers have not only ceased providing new landline connections to new structures or ceased to maintain existing traditional landline services, but have also removed copper wiring in those exchanges. There is nothing in the bill to prevent this from happening in Michigan.

Thus, though not requiring a phone company to pull up its old copper wires and replace them with Internet protocol technology, the bill appears to provide an easier process to do so. Opponents maintain that though there has been a significant shift of consumers to wireless or VoIP services, there is still a significant number of consumers that either prefer to – or need to – retain traditional landline service. Further, broadband and/or wireless are not currently available to all areas of the state, especially rural areas. It is not certain that such services can be made available statewide before the bill's provisions take effect in 2017, or that the services will be as dependable and reliable as are the traditional landline services.

Advocates say that the bill's consumer protection provisions could be made stronger by delaying passage of the bill, delaying the 2017 implementation date, and/or giving the MPSC authority to initiate an investigation regarding the capabilities of alternate service providers to deliver truly comparable phone services regarding 9-1-1 reliability and ability to interface with other technologies such as medical devices *before* a phone company discontinues service in an exchange. As written, the MPSC can only launch an investigation, or have any say, if a consumer or an interconnecting provider files a complaint. According to committee testimony, filing such complaints is an arduous process beyond the capabilities of the average citizen absent legal help, especially considering the short timeframes provided to do so.

CLEC Competition Concerns

In addition, some telecommunications providers have concerns that the bill may have unintended consequences that could affect competition in the state. For example, many companies, known as CLECs, utilize existing equipment of incumbent providers to deliver an array of telecommunications services to consumers. Should the incumbent pull out of an area, and decide to shut down or remove the existing copper wiring used by

the CLECs to access customers' homes, it could negatively impact those businesses, thus decreasing competition and reducing consumer choice.

Regarding the date change for the next recalculation of the ARM, that is a matter that could easily be addressed in separate legislation.

FISCAL IMPACT:

Senate Bill 636 would have a negative, yet likely nominal, fiscal impact on the Michigan Public Service Commission (PSC) within the Department of Licensing and Regulatory Affairs (LARA) and would not have a significant fiscal impact on local units of government.

POSITIONS:

The following entities offered or indicated *support* for the bill:

AT&T
Telecommunications Association of Michigan
Detroit Regional Chamber
Mobile Technology Association of Michigan
Century Link
The Wayne County Sherriff
Detroit Area Agency on Aging
Saginaw County Chamber of Commerce
Michigan Chamber of Commerce
Traverse City Area Chamber
Frontier Communications
Grand Rapids Area Chamber
Deputy Sheriffs Association of Michigan

The Michigan Cable Telecommunications Association indicated a *neutral* position on the bill.

T-Mobile indicated a *neutral* position on the bill.

The following entities offered or indicated *opposition* to the bill:

Clear Rate Communications
Sprint
Michigan Sheriff's Association
Telnet Worldwide
Michigan Internet and Telecom Alliance
Elder Law Disability Rights Section – State Bar of Michigan
Michigan Association of Chiefs of Police
Michigan Communications Directors Association

Burglar and Fire Alarm Association of Michigan
MI AFSCME Council 25
Communications Workers of America (CWA)
AARP
Alzheimer's Association of Michigan
Americans for Prosperity
Michigan AFL-CIO
Michigan State Employee Retirees Association
The ARC Michigan
Greater Lansing Labor Council
Kent Ionia Central Labor Council
City of Bay City

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.