Legislative Analysis

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MICHIGAN TELECOMMUNICATIONS ACT REVISIONS

House Bill 4314
Sponsor: Rep. Ken Horn
Committee: Energy and Technology

Complete to 3-7-11

A SUMMARY OF HOUSE BILL 4314 AS INTRODUCED 2-22-11

The bill will make numerous revisions to the Michigan Telecommunications Act by updating some provisions, deleting others, and repealing many sections (MCL 484.2101 et al.). A description of the changes by section follows. Repealed sections are in italics and preceded by asterisks (**).

Article I General Provisions

Section 101. Delete from the purpose of the act, the restructuring of regulation to focus on price and quality of service; supplementing existing state and federal law regarding antitrust, consumer protection, and fair trade to provide additional safeguards for competition and consumers; and streamlining the process for setting and adjusting the rates for regulated services.

Section 102. Delete the definitions of "port" and "primary basic local exchange service."

Section 103. Delete a requirement for the Michigan Public Service Commission (MPSC) to submit an annual report to the governor and legislature regarding the status of competition in telecommunications services in the state.

Article 2 Michigan Public Service Commission

Section 202.

- Delete a requirement that the MPSC establish by order the manner and form in which telecommunications providers of regulated services keep certain records and accounts.
- Delete the requirement to preserve the provision of high quality basic local exchange service.
- Require any service quality rules promulgated by MPSC relating to the provision of basic local exchange service to end users to expire June 30, 2011.

Section 205. Delete a provision allowing the MPSC to require changes in how a telecommunication service is provided if the rates, quality, general availability, or conditions for a regulated service were found to violate the act. Delete a provision specifying that the MPSC's authority includes, but is not limited to, revoking a license and issuing cease and desist orders.

Section 210. Add a new provision to specify that information regarding a settlement, including a recommended settlement issued by a mediator in a proceeding, could be disclosed only to the parties to the proceeding unless all parties consent to disclosure. A mediator's recommended settlement could be disclosed to the commission after a final order had been issued. The administrative law judge assigned to any contested case proceeding arising from a mediation could not be made aware of the acceptance or rejection by the parties of the recommended settlement or the terms of it. The parties to the mediation could not disclose or reveal the terms of the recommended settlement to anyone other than the parties to the mediation.

Section 211a. A provider of telecommunication services is required to register with the MPSC and to include certain information on the registration (the name of the provider, a description of the services provided, the address and telephone number of the provider's principal office, and the address and telephone number of the provider's registered agent). The bill would delete the requirement to include any other information considered necessary by the MPSC.

Section 213. Currently, Section 213 grants rulemaking authority to the MPSC subject to Section 201. (Section 201 gives the MPSC jurisdiction and authority to administer the act and all federal telecommunications laws, rules, and regulations.) The bill would limit the rulemaking authority of the MPSC to its specific authority over a service as provided in the act. Any rules promulgated by the MPSC before the bill's effective date that are inconsistent with the limited rule-making authority of this provision would be rescinded. A provision exempting telecommunication providers or services from certain departmental rules would be deleted.

Article 3 Regulated Telecommunications Services

A. Basic Local Exchange

Section 303. A reference to "primary basic local exchange service" would be changed to "basic local exchange service."

Section 305. Delete from the list of actions that a provider of basic local exchange service is prohibited from doing:

- 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 fair market value.
- Discriminating in favor of an affiliated burglar and fire alarm service over a similar service offered by another provider.

Section 305b. Delete a requirement that a provider of any telecommunication service provide a customer with a clear and simple explanation of the terms and conditions of the service being purchased; e.g., a statement of all fees, charges, and taxes included in a monthly bill as well as a good faith estimate of the actual monthly cost if the service was purchased.

Section 309. Delete the requirement that a basic local exchange service provide an annual printed telephone directory to each customer. Instead, a provider could distribute a printed telephone directory or, if the provider elected not to distribute a printed telephone directory to each customer, provide a printed or electronic telephone directory to a customer upon request.

** *Section 301a. Requires a provider to offer primary basic local exchange service to each residential customer within the service area where the provider offers such service.*

** *Section 304. Contains requirements regarding the alteration of primary basic local exchange rates.*

** *Section 306. Telecommunication provider of basic local exchange service not required to provide toll services; commission required to order a toll provider to interconnect with such a provider.*

** *Section 308. Basic local exchange or access rates; proceeds from sale, lease, or transfer of rate acquired assets; use; notification; and review.*

*** Section 309a. Cable service allowed to be provided under franchise agreement from local unit of government.*

** *Section 309b. Provider of inter-LATA toll service prohibited from taking action prohibited under state and federal labor laws to discourage or prevent employees from seeking union representation, pursuing collective bargaining, or engaging in any protected activities.*

B. Toll Access Service

Section 310a. Delete an obsolete provision regarding intrastate subscriber line charges or end-user line charges.

*** Section 311. Special toll access or switched access; prices; availability of special or switched toll access service to be available for resale.*

C. Toll Service

** *Section 312. Prohibits MPSC from reviewing or setting rates for toll service; toll service required to be available to all within the state; adjacent exchange toll calling plans.*

D. Discontinuance of Services

Section 313. Currently, a telecommunication provider providing either basic local exchange or toll service, or both, is prohibited from discontinuing either service to an exchange unless one or more alternative telecommunication providers are furnishing the same telecommunication service to the customers in the exchange. Instead, the highlighted text would be deleted and replaced with "a comparable voice service." A comparable voice service would include any two–way voice service offered through any form of technology capable of placing and receiving calls from a provider of basic local exchange service, including voice over Internet protocol services and wireless services.

** *Section 314. Provider prohibited from discontinuing regulated service for failure to pay rate or charge for unregulated service; determination of conditions for discontinuance under section.*

E. Services for the Hearing Impaired

Section 315.

- Delete provisions creating and relating to the Michigan Telecommunication Relay Service Advisory Board.
- Allow the rate established by the MPSC for providers to recover costs relating to calls placed through a telecommunication relay service to be assessed as a line item on an end-user's bill.
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F. Lifeline Services

Section 316.

- Revise the eligibility criteria for discounted services for low income customers to refer to the poverty guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services.
- Allow the rate established by the MPSC for providers to recover costs relating to providing discounted services to low income customers to be assessed as a line item on an end-user's bill.

I. Regulated Rates

** *Section 321. Limitation on rate charge by provider of regulated telecommunication service.*

Article 3A
Interconnection of Telecommunication Providers with the Basic Local Exchange Service

** *Section 351. Applicability of article to providers of basic local exchange service or basic local exchange and toll service.*

** Section 352. *Rates for basic local exchange service for interconnection; rates for network elements, unbundled loops, number portability, and termination of local traffic.*

** Section 353. *Obsolete provision regarding a report and recommendations by MPSC to the legislator and governor involving issues pertaining to interconnection of telecommunication providers with the basic local exchange service.*

B. Service Unbundling

** Section 355. *Service unbundling and separate pricing.*

** Section 356. *Co-location with other providers.*

C. Resale of Local Exchange Service

** Section 357. *Availability for resale of basic local exchange services; wholesale rates; applicability of section.*

D. Number Portability

** Section 358. *Defines "number portability" and requires a provider of basic local exchange service to provide number portability.*

E. Termination Rates

** Section 359. *Establishment of rate charge for termination of local traffic; agreement to provide for the exchange of local traffic.*

H. Imputation

** Section 362. *Rate of provider of local exchange service subject to certain conditions.*

I. Customer Data Base

** Section 363. *Requires providers of basic local exchange service to allow access by other providers to data bases necessary to complete a call within the exchange.*

Article 3B   Federal Programs

** Section 375. *Requires providers receiving federal universal service support for services provided to elementary and secondary schools to discount those services.*

** Section 376. *Requires providers receiving federal universal service support for services provided to libraries to discount those services.*

Article 4 Unregulated Services

Section 401. Include interconnected voice over Internet protocol service in the list of services that the MPSC does not have authority over, and that are not considered part of basic local exchange service.

** *Section 402. Allows a provider of an unregulated service to file a tariff with the MPSC.*

Article 5 Prohibited Activity

** *Section 502. Prohibited conduct by provider of telecommunication service; assurance of discontinuance of the prohibited conduct.*

Section 503. Delete a provision requiring the MPSC to promulgate rules establishing privacy guidelines in the providing of telecommunication services. The rules included protections against the releasing of certain customer information and customer privacy intrusions.

** *Section 504. Requirement to file with MPSC a small and minority-owned telecommunication business participation plan.*

Article 6 Penalties, Repeals, and Effective Dates

Section 601. Delete from the remedies that the MPSC may order after finding a person has violated the act, attorney fees and actual costs of a person or a provider of less than 250,000 end users.

** *Section 602. Prohibits a provider from passing costs incurred pursuant to Section 601 or other related defense costs through to the provider's customers.*

FISCAL IMPACT:

The following is a preliminary fiscal impact statement; it will be updated as additional information becomes available.

The bill would reduce the activities of the Public Service Commission (PSC) relative to regulating telecommunications providers and administering and enforcing the Michigan Telecommunications Act. Section 211 of the MTA provides that the costs of administering the act are supported by assessments against the regulated entities, as provided in 1972 PA 299.[1] There would be no General Fund impact. The amendments made by the bill impacting the MPSC's regulatory activities include:

[1] PUA telecommunications form, http://www.dleg.state.mi.us/mpsc/forms/xls/puafortelecomforyearend2010.xls and instructions, http://www.dleg.state.mi.us/mpsc/forms/pdf/puainstructionsfortelecom.pdf

- Eliminating primary basic local exchange service (PBLES). The act requires PBLES rates to be "just and reasonable" and allows the rates to be adjusted with approval from the MPSC.
- Eliminating a requirement that the MPSC submit an annual report on the status of competition in the telecommunications industry in the state.[2]
- Rescinding the service quality rules, effective June 2011.[3]
- Eliminating a requirement that the MPSC establish by order the manner by which providers of regulated services submit certain data in order to determine the total service long run incremental costs.[4] This data is used by the MPSC to determine intercarrier charges, although the bill deletes other provisions that provide that providers shall not charge a rate for the regulated service that is less than its total service long run incremental costs and shall set interconnection charges at its total service long run incremental costs.
- Permitting the MPSC to order changes in how telecommunications services are provided if the rates, general availability, quality, or conditions of service violate the act. The MPSC's authority includes revocation of licenses and issuing cease and desist orders.
- Rescinding any administrative rules inconsistent with the act, as amended.
- Rescinding the MPSC's rule making authority concerning privacy guidelines.[5]

The bill makes numerous other changes affecting the operations of telecommunications providers, including a provision that permits telecommunications providers that provide basic local exchange service or toll service to discontinue providing service to an exchange if a comparable voice service – such as VOIP or wireless service - is available to the customers in the exchange. Together these changes could impact the phone service rates consumers – including the state and local governments - would be required to pay.

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[2] For past reports see, http://www.dleg.state.mi.us/mpsc/comm/reports/
[3] See, R 484.519 et seq. of the Michigan Administrative Code.
[4] This data is used by the MPSC to determine intercarrier charges, although the bill deletes other provisions that provide that providers shall not charge rate for the regulated service that is less than its total service long run incremental costs and shall set interconnection charges at its total service long run incremental costs.
[5] See, R 484.201 et seq. of the Michigan Administrative Code.