

MICHIGAN TELECOMMUNICATIONS ACT REVISIONS

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House Bill 4314 (Substitute H-2)

Sponsor: Rep. Ken Horn

Committee: Energy and Technology

Complete to 4-26-11

A SUMMARY OF HOUSE BILL 4314 AS REPORTED BY COMMITTEE 4-12-11

The bill would amend the Michigan Telecommunications Act (MTA) to eliminate the requirement for primary basic local exchange service, rescind any administrative rules inconsistent with the act as amended by the bill, include voice over Internet protocol (VoIP) service as an unregulated service, make numerous revisions, and repeal sections of the act (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 Repealed sections are in italics and preceded by asterisks (**).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 definition of "primary basic local exchange service." Currently, the term means the provision of one primary access line to a residential customer for voice communication that includes not fewer than 100 outgoing calls per month, not less than 12, 000 outgoing minutes per month, and unlimited incoming calls.

In the definition of "person with disabilities," replace references to a "person" with "an individual."

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 201. Except as otherwise provided by law, the MPSC has the jurisdiction and authority to administer the MTA and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. The bill would specify that this includes, but is not limited to, the authority to arbitrate and enforce interconnection agreements and to establish rates in accordance with the standards set forth by applicable law.

Section 202.

- The MTA requires the MPSC to require, by order, that a provider of a 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.

The bill would add that with the exception of access service, a provider is exempt from any commission order requiring that provider to file with the commission its rates, services, and conditions of regulated service if the provider files a certification with the commission opting out of the filing requirement. A certification under this provision would have to be signed by an officer of the provider.

- Delete the requirement of the MPSC 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, and any retail service quality rules promulgated before January 1, 2006, 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 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. In addition, a provision exempting telecommunication providers or services from certain departmental rules would be deleted: electric power and communication lines; intrastate telephone services and facilities; filing procedures for communications common carrier tariffs; consumer standards and billing practices, residential telephone service; and uniform systems of accounts for Class A and Class B telephone companies.

Article 3 Regulated Telecommunications Services

A. Basic Local Exchange

Section 303. The MTA specifies that the sale or transfer of shares of stock of a provider of primary basic local exchange service is not a sale or transfer of a license or a discontinuance of service. The bill would instead apply the provision to a "basic local exchange service."

Section 304. The bill would delete the following provisions from the MTA:

- A requirement that rates for primary basic local exchange service (PBLES) be just and reasonable.
- Provisions regarding alteration of rates for PBLES.
- A provision limiting rate increases by a provider to only one rate increase for each regulated service during any 12 month period.
- An obsolete requirement that a provider that had not yet implemented an adjacent local calling plan submit a plan to do so before October 1, 2006.
- An exemption for a provider's rate alteration for a package of services from filing and review requirements as long as PBLES was provided on a stand-alone basis.
- A requirement that a provider offer its unregulated calling features on a stand-alone basis to its PBLES customers.
- A requirement that a person with disabilities or who voluntarily provides a service for a nonprofit or congressionally chartered veterans organization be exempt from any call limit, and receive a flat rate allowing unlimited monthly calls.
- An exemption for providers who provide basic local exchange service or basic local exchange and toll service to fewer than 250,000 end-users in Michigan to determine total service long run incremental cost (TSLRIC) through preparation of a cost study or determine that their TSLRIC is the same as that of a provider with more than 250,000 end-users.
- Allowing a provider of basic local exchange service with less than 15,000 end-users in Michigan to determine that its TSLRIC is the same as that of a provider with more than 250,000 end-users.
- Requiring a provider to file with the commission for review and approval a tariff for the rates and charges for calls made that exceed the 100 call limit of PBLES.

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 may distribute a printed telephone directory to each customer. If the provider elected not to distribute a printed telephone directory to each customer, a customer could request either a printed or electronic telephone directory from the provider; the directory would have to be provided to the customer at no additional charge.

*** 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 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. Allows cable service to be provided under franchise agreement from local unit of government.*

*** Section 309b. Prohibits a provider of inter-LATA toll service 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 requiring certain providers to file with the MPSC no later than June 1, 2007, a notice of an increase in the primary basic local exchange rate.

*** 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; requires toll service to be available to all within the state; and require all providers of toll service to make adjacent exchange toll calling plans available to their customers.*

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 (VoIP) services and wireless services.

The discontinuance of basic local exchange service by an incumbent local exchange carrier (as defined in 47 USC 251) would not affect the requirements of that incumbent local exchange carrier under federal law.

*** Section 314. Prohibits a provider from discontinuing regulated service for failure to pay rate or to 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.

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. Prohibits a provider of a regulated service from charging a rate for the service that is less than the TSLRIC of providing the service.*

Article 3A

Interconnection of Telecommunication Providers with the Basic Local Exchange Service

**** Section 353a.** When negotiating a successor interconnection agreement, unless the parties agree otherwise, the MTA requires the parties to use an interconnection agreement that has been approved by the MPSC in the 3-year period immediately preceding the commencement of negotiations as the baseline document. The bill would delete a provision that the party requesting the adoption of language different from that found in the baseline document in an arbitration proceeding bears the burden of persuasion that the requested change is lawful and appropriate.

If the party negotiating an interconnection agreement takes a position that the opposing party believes is contrary to a prior ruling of the MPSC in an arbitration proceeding, the opposing party is required to file a motion with the MPSC for a determination. The bill would change the requirement to file a motion to instead allow the opposing party to file a motion for a determination.

Division H. Imputation

**** Section 362.** *Requires the rate of a local exchange service provider to be subject to certain requirements if the provider had a service that competed with a service of another provider, the other provider used a service from provider of local exchange service that was not available within the relevant market or geographic area from any other provider of local exchange service, and the provider of local exchange service used the same noncompetitive service or its functional equivalent.*

Article 4 Unregulated Services

Section 401. Include interconnected voice over Internet protocol (VoIP) 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.

Article 5 Prohibited Activity

Section 502. The bill would revise a list of prohibited conduct by a provider of telecommunication service as follows:

- Replace references to "telecommunication service" with "basic local exchange service".
- Revise the prohibition on 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 to apply to such acts that were intentional. The definition of "material information" would be revised to include a good faith estimate of all applicable fees, taxes, and charges that will be billed to the end-user, regardless of whether the fees, taxes, or charges are authorized by state or federal law (highlighting denotes new language).

- Delete a prohibition on charging an end user for a subscribed service that the end-user did not make an initial affirmative order.
- Delete a prohibition on failing to confirm in writing within 15 days the order of a residential end-user for a service.
- Delete a prohibition on stating to an end-user that their 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.
- Delete a provision prohibiting the disparaging of the services, business, or reputation of another by false, deceptive, or misleading representation of fact.
- Delete the prohibition of 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 of the party when they are not.
- Revise a prohibition regarding 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 so that it would apply to a statement that was intentionally false, deceptive, or misleading.
- Delete a prohibition on causing coercion and duress as a result of the time and nature of a sales presentation.
- Revise a prohibition on disconnecting the service to the customer before the resolution of a dispute to apply to a bona fide dispute existing between a customer and the provider.

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. Requires each new provider seeking to do business in Michigan to file with the MPSC a small and minority-owned telecommunication business participation plan.*

Article 6 Penalties, Repeals, and Effective Dates

*** Section 602. Requires the MPSC to assure that none of the amounts paid by a provider for a violation of the act under Section 601 or for other related defense costs are passed through to the provider's customers in any manner.*

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

The Michigan Cable Telecommunications Association indicated it is neutral on the bill. (4-12-11)

The CWA–United Council of Michigan opposes the bill. (4-12-11)

Verizon indicated opposition to the bill. (4-12-11)

UAW indicated opposition to the bill. (4-12-11)

Michigan AFL-CIO indicated opposition to the bill. (4-12-11)

Michigan Township Association indicated concerns with Section 313 and therefore opposes the bill. (4-12-11)

The following positions were given on earlier versions of the bill:

A representative of AT&T testified in support of the bill. (3-8-11)

A representative of Frontier Communications testified in support of the bill. (3-8-11)

A representative of the Institute for Policy Innovation testified in support. (3-8-11)

A representative of the 60 Plus Association testified in support. (3-8-11)

The Detroit Regional Chamber submitted written testimony in support. (2-24-11)

The Michigan Environmental Council submitted written testimony supporting the concept of allowing customers to obtain a printed or electronic version of a telephone directory upon request. (2-28-11)

A consortium of regional Chambers of Commerce submitted written testimony in support. (3-8-11)

Midwest Consumers for Choice and Competition submitted written testimony in support. (3-8-11)

The Michigan Taxpayers Alliance submitted written testimony in support. (3-8-11)

The NAACP, Michigan State Conference, submitted written testimony in support. (3-7-11)

Urban League of Detroit & Southeastern Michigan submitted written testimony in support. (3-7-11)

The Michigan Business & Professional Association submitted written testimony in support. (3-8-11)

Saginaw Future submitted written testimony in support. (3-8-11)

The Disability Network submitted written testimony in support. (3-8-11)

The Lansing Regional Chamber of Commerce indicated support for the bill. (3-8-11)

Sprint indicated support for the bill. (3-8-11)

Michigan Citizen Action submitted written testimony in support. (3-22-11)

The Michigan Chamber of Commerce indicated support for the bill. (3-22-11)

The Telecom Association of Michigan–TAM indicated support for the H-1 Substitute of the bill. (3-22-11)

Daystar Communications indicated support for some provisions and opposition to others. (3-22-11)

Michigan Access, Inc. indicated support for some provisions, opposition to others, and neutrality on still others. (3-22-11)

The Michigan Public Service Commission indicated a neutral position. (3-22-11)

A representative of the Michigan Internet & Telecommunications Alliance testified regarding its concerns, including a concern about the lack of regulation of VoIP services. (3-8-11)

International Brotherhood of Electrical Workers, Local 1106 submitted testimony in opposition. (3-22-11)

International Brotherhood of Electrical Workers – Michigan State Conference indicated opposition. (3-22-11)

TC3 Telecom, Inc. indicated opposition for certain provisions. (3-8-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ 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.