

REWRITE TELEPHONE ACT

Senate Bill 124 with House Committee
amendments
First Analysis (10-31-91)

Sponsor: Sen. Mat Dunaskiss
Senate Committee: Technology and
Energy
House Committee: Public Utilities

THE APPARENT PROBLEM:

Federal deregulation policies are forcing states to assume greater responsibility for telecommunications policy, even as segments of the telephone industry press for increased deregulation of certain services. State legislatures have responded to these deregulation pressures in a number of ways. Vermont, for example, enacted a "social contract" plan under which the state gained commitments from New England Telephone as to the stability of local rates and minimum service quality standards, while the telephone company was removed from some of the constraints of rate-of-return regulation and given greater flexibility in responding to intrastate long distance competition. Competing long distance carriers were guaranteed non-discriminatory access for intrastate services, while the legislation also required a five-year plan for the state for its uses of telecommunications, with an emphasis on education and health and consideration given to economic development. In New Jersey, the Board of Public Utilities approved a plan filed by New Jersey Bell which provided for rate stability for basic telephone services and which effectively deregulated a number of other services for which competitive alternatives were available (such as Centrex, Yellow Pages). The plan, which was designed to encourage network modernization and lead to new investment, also permitted intrastate long distance competition (between LATAs, or local access and transport areas) and allowed competing carriers pricing flexibility. Illinois undertook a complete overhaul of its statutes governing telecommunications as far back as 1985, in legislation (which sunsetted this year) which gave the Illinois Commerce Commission authority to deregulate services as they became competitive and opened all telephone markets to competition, including, ultimately, the local exchange.

Part of Michigan's response to these deregulation pressures occurred in 1986, when the legislature enacted Public Act 305, which substantially amended Public Act 206 of 1913 (the basic law regulating telephone companies as common carriers regulated by the Michigan Public Service Commission) to allow the Public Service Commission (PSC) to exercise flexible regulation of, and in some cases to deregulate, local telephone companies. The 1986 amendment also included a provision which repeals virtually the entire law on January 1, 1992 (the one exception is the section which preserves the requirement that telephone companies provide affordable basic local exchange service).

THE CONTENT OF THE BILL:

The bill would create a new act, the "Michigan telecommunications act," and repeal various existing acts or parts of acts dealing with telephone services. It would take effect on January 1, 1992, and would be repealed on January 1, 1996. It is tie-barred to Senate Bills 512 (which would amend the Public Service Commission enabling act to remove telephone companies from public utilities regulated by the PSC) and 513 (which would substitute "telecommunications" for "telephone" in the law which requires public utilities to pay for the costs of their regulation).

The bill would consist of five articles:

- (1) General provisions (which would include definitions and a general statement regarding the deregulation of telecommunication services),
- (2) the powers and duties of the Public Service Commission (PSC),
- (3) regulated telecommunications services (basic local exchange services, access services, toll services, discontinuation of services, services for the hearing

impaired, and "lifeline" services for low income people),

(4) unregulated services (to include, but not be limited to, reselling telecommunication services, enhanced services, paging, cellular, mobile, and answering services; video; cable television; pay-per-view; shared tenant, private networks; financial transaction networks; radio and television; WATS; personal communication networks; and 800 prefix numbers); and

(5) penalties, repeals, and effective date.

Major provisions of the bill include:

- * implementation of a "file and use" system of setting local telephone service rates, which means local telephone companies could raise local rates and begin using them unless the Public Service Commission (PSC) decided to review the increase within 90 days of being notified;

- * requiring local telephone customers to choose either "metered" service (paying for a limited number of "flat rate" local calls per month, after which the company could charge its own rate for each additional call) or "measured" service (paying more for calls as distance or duration increases) or some combination of both.

- * giving the Public Service Commission (PSC) the authority to administer the bill, but limit its administrative powers and duties to those set out in the bill;

- * continuing to assess providers of regulated telecommunications services for the expenses of the PSC;

- * requiring that customers who filed "frivolous" objections to rate increases pay the telephone company's "reasonable" attorney fees in defending the rate increase;

- * prohibiting telephone companies from using rates charged for local telephone services to subsidize or offset the costs of other services they offered;

- * requiring PSC approval of any "package" deals offered by telephone companies which included discounts on unregulated services offered in conjunction with basic local service;

- * generally exempting the rates for access services from regulation by the PSC except for requiring the

PSC to approve alterations in rates for intrastate subscriber line charges or end-user line charges to basic local exchange customers;

- * setting conditions for providers wishing to discontinue regulated services;

- * prohibiting providers of regulated services from cutting off regulated services to customers who failed to pay for an unregulated service;

- * requiring (and setting conditions for) services to the hearing impaired and for the poor;

- * setting penalties (including fines and possible license revocation) for violations of the bill's provisions;

- * repealing two acts (one of which regulates the transmission and reception of telephone and telegraph messages, the other of which requires railroad companies to furnish telephone connections) and most of the existing sections of Public Act 206 of 1913, which regulates telephone companies as common carriers (the only sections that would be retained would be those concerning judicial review of PSC orders, and prohibiting using telephone lines and equipment for commercial purposes).

HOUSE COMMITTEE ACTION:

The House Committee on Public Utilities adopted 26 amendments to Senate Bill 124 as passed by the Senate, many of which were technical in nature.

The substantive amendments include:

- * doubling (from 45 days to 90 days) the amount of time the PSC would have to decide whether or not to review a rate change.

- * deleting Article 5 ("Prohibited Activity"), which already is in a statute that does not have an expiration date;

- * rewriting the section in Article 4 ("Unregulated Services") which describes the services which are not regulated under the bill, adding radio and television and specifying that none of the unregulated services would be considered part of basic local services;

- * capping intra-LATA ("near long distance calls" within a local calling area) rates for residential service for the life of the bill and at the rates existing on December 31, 1991;

- * adding certain prohibitions on cellular telecommunications providers to prohibit discrimination and cross-subsidization;

- * allowing the Public Service Commission to implement the bill's provisions by issuing orders (in addition to the Senate provision for rule promulgation);
- * facilitating the provision of local directories by other than the local telephone company by requiring local telephone companies to provide ready access to directory information that was of the same quality as that provided by the local company to itself or its affiliates;
- * requiring the PSC to notify the public of the available lifeline services;
- * requiring PSC approval for an change in intrastate subscriber line charges or end-user line charges to basic local exchange customers.

FISCAL IMPLICATIONS:

Fiscal information is not available. (10-30-91)

ARGUMENTS:

For:

Proponents of the bill argue that the explosion in new telecommunications technology, coupled with the crucial role played by telecommunications in the new "information economy," necessitates a new approach to regulating telecommunications. The new approach should encourage both competition and modernization of telecommunications networks.

The telecommunications infrastructure is becoming to the nation's (and the individual states') economic future what the railroads once were to the industrial revolution: as the economy moves from an industrial to a service (including information) base, telecommunication services and the infrastructure which supports it (the physical plant which enables voice, data, or video to move from one point to another, or several other points, by means of a publicly- or privately-owned transmission system) become as critical to the economic future as roads, bridges, and railroads have been to the economy's industrial past. Modernization and maintenance will be key factors to the vitality of telecommunications infrastructure in the future. But efforts to modernize the network will require a transition in thinking in the minds of state and local policymakers, from the reactive role of regulators to the more proactive role of developers of telecommunications. Over time, a regulatory environment that permits competition will produce a more modern and efficient telecommunications infrastructure. At the same time, regulators must

give established firms the opportunity and incentive to upgrade their networks as well as the flexibility to meet competition.

In the midwest and northeast, for example, a number of state legislatures have taken steps to encourage the development of the telecommunications infrastructure, most of which involve giving state regulators the authority to deregulate telecommunications services gradually as those services become competitive. Michigan began this process with the passage of Public Act 305 of 1986, and the time has come to take that process a step further and write a completely new telecommunications act that will take Michigan into the 21st century.

For:

Proponents of the bill also argue that the bill, in addition to providing adequate consumer protection and protection from cross subsidization, also would advance educational opportunities as well as saving and maybe even adding jobs in the state by allowing currently regulated local telephone companies to become more competitive.

Response:

Opponents of the bill argue that its cross subsidization language is not strong enough to protect existing unregulated businesses, and while the bill might save the jobs of existing local telephone company employees (or even increase them), it could have a devastating effect on the jobs of employees of unregulated businesses forced to "compete" with companies who retained monopoly power over certain services (and thus a pool of guaranteed revenue to use for competitive services). At the very least, local telephone companies' monopoly services ought to be regulated, while at the same time they should have to form fully separate entities if they want to compete with unregulated services.

For:

The legislature has been working on this bill for over two years now. As with virtually all controversial legislation, there always will be discontented parties who are unappreciative of the amount of work that has been done already and who wish to prolong discussion and thereby delay any eventual substantive action (especially if the proposed action is not seen as being in the group's own interests). It is time to move forward with this legislation, and if problems arise they can be addressed as they do come up. Further, the bill has

an expiration date, so that in five years the legislature will have to revisit this issue anyway. This is a built-in review process that can act as an added protection for those who feel that their issues have not been adequately addressed by the bill this time around.

Against:

A major concern that both consumer groups and long-distance telephone companies have with the bill centers on the likelihood of increased telephone rates, whether of local telephone service or of access to and through local exchanges (so-called "dial 1" access for long distance calls within area codes), which are controlled by local telephone companies.

Consumer opponents of the bill argue that it would increase monthly local telephone rates in any of a number of ways: by eliminating the current "reasonable cost of service" (or "rate of return") system of setting rates and instead instituting a "file and use" system of setting local telephone rates; and by eliminating the current flat rate service and instituting instead a "metered" (limiting the number of local calls per month) and/or "measured" (basing charges on duration and distance of local calls) rate service.

"File and use" system. Under the present regulation of local telephone service, a monopoly service, local rates are set under a system that requires the local telephone company to prove at a "contested case hearing" before the Public Service Commission that rate increases are needed. That is, if Michigan Bell wants to increase local telephone service rates, it must first prove to the Public Service Commission that the proposed rate increase is just and reasonable. The PSC must then determine that the increase is in the public interest before granting approval to a proposed rate increase and before the company can actually implement any such increase. In contrast to the present rate-setting system, which does not allow rate changes without prior PSC approval, the "file and use" system of rate setting allows the service provider simply to notify ("file") the regulator of whatever rate the provider intends to implement and then to use that new rate unless the regulator decides to challenge the change.

The bill would allow Michigan Bell to increase local telephone rates according to what it believed was in its best interests instead of, as is now the case, according to what is in the public interest. The PSC

would be allowed to contest any particular rate increase, but would not be required to do so, even if complaints were filed with it concerning the increase. But whether the PSC initiated a review or whether it acted upon a complaint, the burden of proof, should the PSC decide to challenge an increase, would fall on the commission to show that the increase was not "just and reasonable" -- rather than on the telephone company, to show that the increase was justified.

In addition, there is some question as to whether or not the bill would result in increased litigation against the PSC, since the bill would require the PSC to in effect make a finding -- namely, that a rate was unreasonable -- before holding a hearing.

Although Michigan Bell says the bill would not necessarily mean higher rates, it has repeatedly said that it loses hundreds of millions of dollars in its provision of local telephone services. Without having to get prior approval from the PSC, Bell would have little incentive to keep from increasing its local rates, and good corporate reasons to do just that.

Rates should continue to have some relation to costs, and mandatory contested case hearings should be kept for all proposed rate increases.

Measured/metered service. The bill also would increase monthly bills for local telephone service by ending unlimited flat rate calling and instead requiring local customers to choose either "metered" or "measured" service (or both). This complex rate structure would give the local telephone companies the opportunity to move people into rate structures that would provide less service than is now provided for more money than the companies currently get.

Currently, residential customers are charged a flat monthly fee, and can make an unlimited number of local (so-called "free") calls. The bill would force customers to choose either metered service (with a monthly "cap" of 300 calls a month) or "measured" service (to be charged either according to how long they talked or how far the local call was, or both).

Yet these multiple ways of billing have no relevance to the price of the technology needed to provide the service. There is no cost sensitivity for time and distance, which is to say, it doesn't cost the telephone company any more to provide local

customers service for calls of varying duration or distance. So why should customers have to pay extra?

The bill, moreover, does not say what rate the local telephone company could charge for this "metered" service, nor does it prohibit the local companies from charging for local service based on duration (length of the call) or distance (between the local parties).

Unlimited, flat rate calling should be provided as part of local basic service.

Response:

With regard to the issue of metered, measured service, local telephone companies argue that they should be allowed to charge according to use, just like electric utilities. Customers should pay for local telephone service they way households pay for electricity or natural gas or water. The more you use, the more you pay. It is only fair that customers pay for service based on how often they call (the more calls made, the more paid), the distance called, and how long they talk.

Reply:

The fallacy in this comparison with other regulated utilities is that telephone service, unlike electricity or gas or water, is not a commodity that gets used up the more it is used. And telephone rates are not "past due" bills. Once the infrastructure is in place, the costs to the telephone companies to provide basic local service is minimal (and current rates not only take into account the telephone company's infrastructure costs but also provide for a reasonable profit or "rate of return"). The infrastructure of telecommunications services can be compared to a house, where one does want to take into account the costs of building and to allow for depreciation. But once the house is built it doesn't "cost" any more to walk in and out of the door ten times than it "costs" to walk in and out only once or twice.

Against:

Some other concerns that have been raised about the bill include:

- * The lack of funding for ratepayer intervention -- funding should be provided to enable representation for ratepayers to contest proposed rate increases.
- * The senior citizen exemption from the 300-call cap is not means-based -- exemptions to the 300-call cap should be based on household income, not age

(the bill already has a "lifeline services" provision for low income customers).

* The bill should require telephone companies to provide not only services for the hearing-impaired (so-called TDD services), but the equipment enabling customers to use these services.

* The bill would create a new act, not just amend existing law, so all case law based on the existing law would no longer apply. This may result in problems. For example, although the bill would prohibit "unreasonable" discrimination in the provision of services, it does not define "unreasonable" and there is no applicable case law to clarify the term.

* More time and care should be given to ensuring that the bill's language will actually do what it's proponents argue it will do, and in particular more attention should be given to rate protection for consumers (captive residential rate payers) forced to use a monopoly service (namely, local telephone exchange services). Even though the existing act regulating telephone companies is due to expire shortly, the legislature could simply extend the sunset while it finished working on the bill.

* The bill would, in effect, create two sets of "Freedom of Information" acts for the PSC to follow: The existing Freedom of Information Act (Public Act 442 of 1976) and section 210 which defines "commercial information," "financial information," and "trade secret" and exempts this information from access under the Freedom of Information Act. Trade secrets and financial information could be adequately protected with proper reference to the existing law.

* Although proponents present the bill as a "pro-competitive" measure, the bill nowhere defines "competition" or "competitive market" -- even though the bill would allow the PSC to deregulate services where competition was "sufficient to protect the public interest" and adopt flexible regulation "where a competitive market" existed.

* Part of the bill is in direct conflict with existing federal prohibitions on local telephone companies. Currently, local telephone companies are prohibited by the federal government from providing inter-LATA services, yet the bill would require these companies to provide just such services should an educational institution request them.

* As the result of a House committee amendment, the bill would impose state regulation on cellular communications for the first time (the Federal Communications Commission currently regulates these services and the state does not as a result of a ten-year-old court case). Yet cellular service providers did not testify before the committee on this issue and more consideration should be given it.

* The bill does not address regulation over consumer services such as caller ID and billing practices.

POSITIONS:

Michigan Bell Telephone Company supports the bill. (10-30-91)

The Telephone Association of Michigan supports the bill. (10-30-91)

Communications Workers of America supports the bill. (10-30-91)

The American Association of Retired People opposes the bill. (10-30-91)

The Michigan Citizens Lobby opposes the bill. (10-30-91)

The Michigan Cable Television Association opposes the bill. (10-30-91)

Others that testified in support of the bill earlier in the hearing process before the Public Utilities Committee include:

- * GTE North
- * ANR Pipeline
- * Michigan Minority Business Development Council
- * Michigan State Conference of the National Association for the Advancement of Colored People
- * Michigan Council of Urban Leagues
- * The Department of Commerce

Others that testified in opposition to the bill (or indicated that they could support the bill with certain amendments, which were not adopted) earlier in the House committee hearing process include:

- * Michigan Senior Advocates Council
- * American Telephone and Telegraph
- * U.S. SPRINT
- * MCI

- * Michigan Centrex Association
- * Allnet Communications Services, Inc.
- * City Signal Inc. of Grand Rapids
- * The Michigan Press Association
- * The Michigan Telemessaging Association
- * Teledial America, Inc.
- * Electronic Data Service (EDS)
- * Domino's Pizza