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RECODIFY TELECOMMUNICATIONS

House Bill 4343
Sponsor: Rep. Alma Stallworth
Committee: Public Utilities

Complete to 3-12-91

A SUMMARY OF HOUSE BILL 4343 AS INTRODUCED 2-20-91

Public Act 206 of 1913, which regulates telephone companies as common carriers, was amended in 1986 by Public Act 305 (enrolled House Bill 5158) to allow the Michigan Public Service Commission (PSC) to exercise flexible regulation of (and, in certain cases, to deregulate) local telephone companies. The 1986 amendment also provided for the repeal of the entire law (with the exception of the section that preserves the provision of affordable basic local exchange service) on January 1, 1992.

The bill, which would consist of nine articles, would create the "Michigan Telecommunications Act" (Article 1) and the Emergency Telephone Service Enabling Act (Article 9). In addition, the bill would do all of the following:

* Establish the "Michigan Telecommunications Commission" (MTC) to provide public oversight pertaining to telecommunications services.
* Provide for the MTC's licensure of local exchange service providers.
* Allow a provider to offer certain telecommunications services without a license.
* Establish the "Basic Telecommunication Service (BTS) Fund".
* Provide for a program that required telecommunication providers to accommodate the needs of the deaf or severely hearing impaired.
* Specify penalties for violations of the proposed act.
* Make certain legislative findings.
* Repeal and re-enact within the bill the Emergency Telephone Service Enabling Act (MCL 484.1101-484.1707); sections of Public Act 206 of 1913 that deal with the transmission of sexually explicit material (MCL 484.111a) and alternative operator service providers (MCL 484.103g); and a section of the Michigan Penal Code that prohibits the malicious use of telecommunications services (MCL 750.540e); and Public Act 48 of 1990, which prohibits the use of a facsimile (fax) machine to transmit unsolicited advertising measures.
* Repeal various acts.
* Require the legislature annually to appropriate a sum sufficient to implement the act.

The bill would take effect on October 1, 1991, and includes a sunset date of September 30, 1995.

Michigan Telecommunications Commission

Commission Membership and Operation. The MTC would be created within the Department of Commerce and would consist of three members appointed by the governor with the advice and consent of the Senate. No more than two of the members could belong to the same political party. Members could not have a financial interest in a telecommunication provider that was subject to the bill. During a member's term, he or she could not serve as a committee member or officer of a political party, hold an elected or appointed office, or be employed by another Michigan commission, department, board, or institution. A member would be prohibited from being employed or retained by a telecommunication provider subject to the bill during his or her service as a commissioner and for six months thereafter. MTC members would have to have at least three years of experience in the fields of law, economics, accounting, finance, engineering, physical or natural sciences, or related areas. At least one MTC member would have to be an attorney. Members would be appointed to staggered six-year terms. The MTC chairperson, designated by the governor, would be the chief executive officer and be responsible for the MTC's day-to-day operations.

Nominating Council. The bill also would create the "Telecommunications Commission Nominating Council" within the Department of Commerce. The council would consist of three members of the public appointed by the governor, a member of the public appointed by the Senate Majority Leader, and a member of the public appointed by the Speaker of the House. The council would have to be appointed no less than 120 days before an MTC member's term expired or more than 30 days after an MTC member died, resigned, or terminated service. The first council would have to be appointed within 30 days after the bill's effective date. Council members' terms would expire upon the confirmation of the MTC member for whom the council was appointed to submit recommendations. The council would have to do all of the following:

* Evaluate possible appointees to the MTC.

* Provide the governor with the names of four individuals whom the council found were qualified to serve on the MTC. (This would have to be accomplished no less than 60 days before an MTC member's term expired or more than 60 days after the death, resignation, or termination of a member.)

* Accept and consider comments made and information submitted by any person in evaluating appointees.

The governor could reject the initial candidates recommended by the council and request four new names within 30 days after the initial rejection. The governor would have to make his or her appointment from the names on either of the submitted lists.

Powers and Duties. The MTC would have to do all of the following:

* Determine and preserve the provision of high quality basic local exchange service. ("Basic local exchange service" would mean "the provision of an access line to customers within a local exchange area for, but not limited to, the transmission of high-quality 2-way interactive switched voice communication".)

* Participate in programs intended to preserve or extend "universal telecommunications service". ("Universal service" would mean basic local exchange service and any other telecommunication services that the MTC determined to be necessary to meet the bill's objectives.)

* Monitor the level of telecommunications subscriber connection within each Michigan exchange, and continually report to the legislature the results of the monitoring and any actions taken to maintain or increase subscriber levels.

* Prescribe the form and manner in which Michigan telecommunication providers would have to keep accounts, records, and memoranda. (The MTC requirements could not conflict with, or add to, any federal requirements.)

* Report on a continual basis to the legislature and governor on the status of the telecommunication industry and regulation.

* Establish by order the telecommunication services that would have to be included within the basic local exchange service and universal services.

* Develop and participate in programs related to the telecommunications industry and designed to enhance Michigan's economic development.

* Establish by order that any provider could offer message telecommunication service (MTS) between any two points in Michigan. ("Message telecommunication service" would mean "the transmission of 2-way interactive switched voice communication between local exchange areas for which charges are made on a per unit basis". The term would not include "wide area telecommunications service or individually negotiated contracts for similar telecommunication services".)

* Promulgate rules for the bill's implementation and administration.

The MTC also would have to establish by order the quality of service for each telecommunication service offered in Michigan. The initial order would have to be issued by January 1, 1993. Each provider would have to maintain the quality of service that was required on the bill's effective date until the MTC's initial order was issued. If the order were not issued by the deadline, the MTC would have no authority to regulate quality of service until the order was entered.

In addition, the MTC would have to issue an annual report that included all of the following information:

* A review of MTC decisions and actions and a description of pending cases.

* A description of the trends and changes in the telecommunications industry including the number, size, and type of providers who offered telecommunications services; what providers were subject to regulation; technologies in place and under development; variations in the geographic availability of services; prices for services; penetration levels of subscriber access to local exchange service in each exchange; and issues related to the local exchange service.

* The status of compliance by providers and the MTC with the bill's requirements.

* The effects and projected effects of regulatory practices and policies on telecommunications providers, services, and customers.

* The status of market-share concentration, availability of alternative services, patterns of price leadership, financial viability of providers, and all barriers to competition.

* Recommendations for legislation.

* Other information or analysis pertaining to telecommunications that the MTC was required to provide or considered important.

Information disclosed to the MTC under the bill by providers would have to be given appropriate safeguards for the protection of business and trade secrets. Upon the request of a provider, and if determined necessary by the MTC, the information could be exempt from the Freedom of Information Act.

Local Exchange Control. A telecommunication provider of basic local exchange service could not "sell, lease, merge, acquire, or separate into subsidiary lines, facilities, or operations" either within its own company or with any other provider unless the provider filed an application with, and received approval from, the MTC. An application would have to contain the terms and conditions, a description of the operations or property, and an affidavit of a representative of the provider that stated the fair market value of the operations or property to be sold, merged, leased, separated, or acquired. The MTC would have to hold a hearing within 30 days after the filing date and could approve the transaction by order if the proposed action were in the public interest and did not violate the bill.

Conflict Resolution. If two or more providers were unable to agree on a matter pertaining to a telecommunications issue between the parties, then any of the parties could apply to the MTC for resolution of the matter. The MTC also would have the authority to investigate and resolve subscribers' complaints about the quality and availability of services, price and condition of service, deposit requirements, disconnection of services, or any other provision of the bill. Upon receiving an application or complaint, or on its own motion, the MTC would have the jurisdiction to investigate, hold hearings, and issue findings and orders in accordance with the Administrative Procedures Act's contested hearings provisions.

PSC to MTC Transition. The MTC would have and could exercise all the rights, powers, and duties conferred on the Public Service Commission (PSC) for all matters relating to telecommunications. References in law to the PSC relating to telecommunications matters would be construed to mean the MTC. All records, books, papers, files, documents and other property of the PSC relating to telecommunications would be transferred to the MTC.

The powers and duties of the Public Service Commission would continue after the bill's effective date until the MTC gave the PSC written notice that the MTC was assuming the powers and duties prescribed by the bill. All complaints pending before the PSC on the bill's effective date and all investigations, examinations, proceedings begun by the PSC could be continued to final determination by the Public Service Commission.

Each telecommunication provider in Michigan would have to pay an assessment in an amount equal to the MTC's expenses pursuant to Public Act 299 of 1972, which provides for assessments to be made against public utilities in order to pay the PSC's cost of regulating them.

Local Exchange Service

Licensure. A telecommunication provider that did not possess a license on October 1, 1991, could not provide basic local exchange service in Michigan until it had obtained a license from the MTC. A license granted before that date by the PSC would remain in effect and the licensee would not have to apply for a new license to continue offering authorized services. A previously licensed provider would have to apply for a new license, however, before "substantially altering the nature or scope of the basic local exchange services" provided under the license. After a notice and hearing, a license could be altered, modified, or revoked by the MTC upon the application of any affected person, or upon its own motion. Without notice and hearing, the MTC could issue a temporary license for up to one year in cases of emergency, in order to assure adequate service or to serve particular customers. The MTC also could exempt from the bill's licensure requirements temporary acts or operations that were in the public interest.

After notice and hearing, the MTC would have to approve an application if it found that the applicant possessed sufficient financial, technical, and managerial abilities and resources to provide basic local exchange services to each person within the local exchange and to assure that each had access to all universal services. Before granting a license, the MTC also would have to find that granting a license to the applicant would not adversely affect prices or be contrary to the public interest.

A license would grant an "exclusive service area franchise" within the exchange area. The MTC could alter or amend the geographic area of licensure if it found that such an action was in the public interest. A telecommunication provider could not provide basic local exchange service to customers or end-users located within another provider's licensed service area except through interconnection arrangements consented to by the licensee or required by the MTC.

Rates. The MTC would have to set the residential and general local exchange rate for each provider. The rate could not be more than any rate charged by any provider before November 1, 1990. If the MTC found that it was in the public interest to lower either residential or general local exchange rates, it could do so.

Providers' Responsibilities. Unless otherwise provided in the bill, a local exchange service provider could do any of the following:

* Provide any telecommunication service.
* Manufacture telecommunication products and equipment in Michigan.
* Provide, sell, or lease telecommunication products and equipment.
* Provide telecommunication information services, including content-based information services.
* Conduct and perform telecommunications research and development within Michigan.

A provider of basic local exchange services could not do any of the following:

* Discriminate against other providers by refusing access to the local exchange.
* Charge other providers an access rate greater than the provider's actual cost for the functional element that other providers used in providing a service. (Actual cost would not include profit or rate of return.)
* Delay interconnections or provide inferior connections to other providers; manipulate the quality of access lines for other providers; or impair the speed, quality, and efficiency of dedicated private lines used by other providers.
* Develop new services to take advantage of planned, but not publicly known, changes in the underlying network.
* Refuse other providers the benefit of the knowledge of the local network's nature, design, geographic coverage, equipment capabilities, and traffic patterns.
* Refuse access or be unreasonable in connecting other providers to a local exchange whose service or product required novel or specialized access requirements.
* Fail to disclose fully and in a timely manner all information that was necessary for the design of equipment that would meet the local exchange network's specifications.
* Discriminate against other providers in the availability of customer proprietary information, refuse access by a user to another provider, or perform an act prohibited by the bill or an MTC order.

A local exchange service provider would have to provide to governmental and educational customers, at actual cost, services that were necessary for those customers to perform legally mandated programs. (Actual cost would not include profit or rate of return.)

A basic local exchange service provider would not have to provide message telecommunication service, but if it did not provide such services or have interconnection with an MTS provider, the MTC could order an MTS provider to interconnect with the basic local exchange service provider on terms that were fair to both providers. A telecommunications provider that offered either basic local exchange service or MTS, or both, could not discontinue either service unless one or more alternative providers furnished the same service in the local exchange area. A provider that proposed to discontinue service to a local exchange area would have to file a notice of discontinuance with the MTC, publish the notice in a newspaper of general circulation within the local exchange area, and provide other reasonable notice required by the MTC. A person or provider affected by a discontinuance of service could apply to the MTC, within 30 days after the notice's publication, to determine if the discontinuance were authorized under the bill.

Unregulated Telecommunication Services

Notice. After filing a notice with the MTC, a telecommunication provider could offer, without a license, any of the telecommunication services allowed under the bill, with the exception of basic local exchange service. The notice would have to include all of the following information:

* The name of the telecommunication provider and the address of its principal place of business in Michigan.
* A description of the telecommunication services offered by the provider and the area served by it or in which it offered those services.
* The terms and conditions, including rates and charges, that the provider would impose for the services offered.

The provider would have to notify the MTC within 10 days of any changes in the information required in the notice. The notice would have to be filed annually with the MTC on or before January 1.

MTC Oversight. The MTC would have the authority to review the quality of service, its general availability, and the conditions and terms under which the service was offered. If the MTC found, after notice and hearing, that the service's quality, availability, or terms were adverse to the public interest and the intent of the bill, the MTC could require changes in how the services were provided. The MTC's authority would include, but would not be limited to, issuing cease and desist orders.

A provider that offered MTS or "wide area telecommunications service" (WATS) service, or access to a local exchange network for the use of special access or private lines and switched access, would have to file a notice with the MTC at least 10 days before a change in the rate, terms, or conditions for such services. Unless the MTC ordered otherwise, the changes contained in that notice would be considered approved 10 days after their filing.

An MTS provider that offered service to all points within Michigan would have to average its rates on its routes of similar distance within the state unless otherwise authorized by the MTC. This requirement would not prohibit volume or promotional discounts. If an MTS provider did not offer service to all points within Michigan, the MTC would have to set the rates for the services in order to ensure fair competition within the provider's service area.

A telecommunication provider of basic local exchange service and MTS would have to "impute to itself its prices of special access or private line and switched access for the use of essential facilities used in the provision of intrastate special access or private line access services, MTS, and WATS". The imputation would have to be "in the aggregate on a service by service basis". Other providers of intrastate private line access or special access services, MTS, and WATS would have to "impute to themselves in the aggregate on a service by service basis their individual cost of special or switched access or its equivalent in their pricing". The MTC would have to determine what were "essential facilities" for the purposes of the imputation requirement and would have to resolve disputes that arose under this provision.

Telecommunication services that used special or switched access would have to be made available for resale by the provider that offered the service. The provider could not grant a preference or advantage to any other provider pertaining to its prices or charges for services, or subject any provider to any prejudice or competitive disadvantage with respect to those prices or charges. Disputes between providers relating to this provision would have to be resolved by the MTC.

If a telecommunication provider imposed a special charge, rate, or fee that was not yet established by the MTC or agreed to by the user, the provider could not connect or otherwise provide the service without first giving the user notification of the rate, fee, or charge. Unless approved by the MTC, a provider could not offer a package of one or more unregulated services at a discount with a regulated service. If a provider offered one-way or two-way transmission to subscribers of video programming or other programming services, the provider could not offer the service unless it included, without payment to the provider, access channels for public, local government, and educational programming.

Basic Telecommunication Service Fund

The BTS Fund would be created in the state treasury "for the purpose of maintaining the availability of basic local exchange service at affordable rates, providing the accessibility of universal services, promoting the availability of message telecommunications service at reasonably comparable prices throughout this state, and making distributions" to telecommunication providers. The fund would be administered by the MTC, but could not be used for expenses incurred in the administration of the bill.

The state treasurer would have to credit to the BTS fund all amounts collected and appropriated from public or private sources. The treasurer would have to direct the fund's investment, and all interest and earnings would have to be credited to the fund. Money in the fund at the end of a fiscal year could not revert to the general fund, but would have to be carried over to succeeding fiscal years. The Department of Treasury annually would have to calculate for each provider an amount equal to 5% of the provider's single business tax. The calculated amount would have to be credited to the BTS Fund.

Distributions from the fund could be made to telecommunications providers in Michigan for any of the following:

* Reimbursement for costs that exceeded the regulated residential local exchange rate.
* Reimbursement for costs that exceeded the reasonable rate of providing universal services.
* Reduction of a provider's regulated residential local exchange rate.
* Provision of certain health, safety, or other universal telecommunication services to qualified individuals as determined by the MTC to be in need of such services.

Services for the Hearing Impaired

The MTC would have to design and implement a program that would require each telecommunication provider that offered basic residential local exchange service to provide a device capable of accommodating the needs of the deaf or severely hearing-impaired. The device would have to be offered, together with a single party line and at no extra cost, to each subscriber who was certified by a licensed physician, audiologist, or a qualified state agency as deaf or severely hearing-impaired. The device also would have to be offered to organizations that represent the deaf or severely hearing-impaired.

The MTC would have to design and implement a program that required each basic local exchange service provider to offer a dual party system that used third party intervention to connect deaf or severely hearing-impaired persons and offices of organizations that represented them with persons of normal hearing via intercommunications devices. In order to design such a system that was available at a reasonable rate, the MTC would have to investigate and conduct public hearings to determine the most cost-effective means of providing the service. The MTC would have to solicit the advice, counsel, and physical assistance of nonprofit consumer organizations that service the deaf.

The MTC would have to establish a rate of up to three cents per month for each subscriber line in order to allow providers to recover the costs of providing the hearing-impaired devices. The MTC would have to determine which statewide organizations representing the deaf and severely hearing-impaired would receive the devices and in which offices such equipment would be installed, if an organization had more than one office.

Penalties

In addition to other penalties and remedies provided for in the bill, if after notice and hearing, the MTC found that a person violated the bill, could order that the person pay a fine of $500 to $10,000 for a first offense and $1,000 to $20,000 for each subsequent offense, or that the person's license be revoked, or both.

Legislative Findings

The bill specifies that Michigan's telecommunication needs "require a new regulatory approach to insure the development of a modern, high-quality telecommunications infrastructure" that would allow the state to remain nationally and internationally competitive in the information economy while also "insuring that basic and universal telecommunication service is available to each individual" in Michigan. The bill further specifies that the "'modified final judgment' that resulted in the restructuring and divestiture of the telephone industry in this country had a valid purpose when entered, but is now causing unintended consequences that are detrimental to the industry and citizens of this state". In addition, under the bill the legislature would find all of the following:

* Michigan's telecommunications industry is in danger of losing ground to international and national competitors.
* The telecommunications industry is restricted from using fully the resources that are available to insure its competitive position.
* Michigan's citizens' safety and well-being require that everyone have access to affordable essential telecommunication services.
* Access to essential telecommunication services is necessary "to prevent a society of information haves and have-nots".
* The improved telecommunications infrastructure has been designed for the enhanced services users and those users should bear the system's primary costs.

The bill states that its purpose is "to create an environment that will place Michigan on the leading edge of telecommunication technology, provide incentives to develop new products and services, improve the quality of the Michigan telecommunications infrastructure, provide viable alternatives to national and international penetration, to insure certain services are universally available at a reasonable rate, and to provide affordable, high-quality basic local service to every citizen of the state".

Repeals

The bill would repeal and re-enact the "Emergency Telephone Service Enabling Act", which provides a process for county boards of commissioners to establish local 9-1-1 systems. Within the re-enactment, the bill provides that the emergency telephone charge payable monthly by a service user for recurring costs and charges could not exceed 4 percent (instead of the 2 percent currently allowed) of the highest monthly base rate charged by the service supplier for one-party unlimited calling within a 9-1-1 service district. Also, under the bill, the 9-1-1 systems would fall under the purview of the MTC rather than the Public Service Commission.

The bill also would repeal and re-enact Public Act 48 of 1990, which prohibits the use of a fax machine to transmit unsolicited advertising. The re-enacted fax advertising regulation and enforcement would fall under the responsibilities of the MTC rather than the attorney general.

The bill would repeal several acts that would be made obsolete by the passage of the bill. These include:

* Public Act 72 of 1883, which regulates the receipt and transmittal of telegraph and telephone messages.
* Public Act 129 of 1883, which regulates the incorporation of telephone and messenger service companies.
* Public Act 206 of 1913, which regulates the operation of telephone services. (Sections 484.11a and 484.103g of Public Act 206, which allow the issuance of an injunction to prohibit the transmission of sexually explicit matter harmful to minors, and regulate alternative operator service providers, respectively, would be re-enacted in the bill.)
* Public Act 383 of 1913, which requires railroad companies to furnish telephone connections.