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SFA BILL ANALYSIS

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Senate Bill 837 (Substitute S-4 as passed by the Senate)
House Bill 5280 (Substitute S-6 as passed by the Senate)
Sponsor: Senator Mike Rogers (Senate Bill 837)
Representative Agnes Dobronski (House Bill 5280)
Senate Committee: Technology and Energy
House Committee: Public Utilities (House Bill 5280)

Date Completed: 6-17-98

RATIONALE

Since the deregulation of the telecommunications industry, the competition for phone customers has led to an illegal activity called "slamming". This term is used to describe a practice that changes a consumer's telecommunications provider without the customer's knowledge or consent. Slamming, which primarily affects long distance service, appears to be escalating. According to the National Consumers League, the Federal Communications Commission (FCC) received 11,278 slamming complaints in 1995 and more than 16,000 in 1996. The National Consumers League also has reported that Ameritech (which offers local exchange service in five Midwestern states, including Michigan) received 45,754 slamming complaints from January to June 1997, nearly double the 25,285 slamming complaints the company received during the same period in 1996. Ameritech reportedly received 70,204 additional slamming complaints in the last six months of 1997, and more than 15,000 during January 1998.

Slamming is practiced in a number of ways. Some long distance carriers evidently use sweepstakes forms, promotions, and real or bogus checks to trick customers into switching their service. Others apparently use verbal authorizations of relatives and children as grounds for requesting a switch in providers, or simply forge the signatures of potential customers. According to the National Consumers League, the most common ploy appears to be the billing consolidation switch. This involves a call placed to a residence or business by someone purporting to be from AT&T or the local telephone company, who informs the person answering the phone that it is now possible (or mandatory) to have all carriers consolidated on one bill. In another scheme, the caller pretends to be the customer's existing carrier and announces that he or she is eligible for special discounted rates for being such a good customer. In either case, when the customer responds positively, the service is switched.

Current FCC policies and rules prohibit slamming and require long distance companies to obtain a customer's authorization in order to change his or her long distance service. Consumers who receive higher bills as a result of being slammed are required to pay only the toll charges they would have paid to the original long distance carrier. In addition to these Federal policies, many people believe that protection against slamming is needed at the State level. To combat the practice of slamming, it has been suggested that the Michigan Public Service Commission should have the authority to penalize companies that switch providers without authorization.

CONTENT

The bills would amend the Michigan Telecommunications Act to provide that an end user (retail subscriber) of a telecommunications provider could not be switched to another provider without the end user's authorization; require the Public Service Commission (PSC) to issue orders to ensure that an end user was not switched without authorization; and prescribe penalties for unauthorized switching. The bills are tie-barred to each other.

House Bill 5280 (S-6)

The bill would add Section 505 to the Michigan Telecommunications Act to require the PSC to issue orders to ensure that an end user of a telecommunications provider was not switched to another provider without the end user's oral authorization, written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval, confirming the end user's intent to make a switch and that the end user had authorized the specific details of the switch. The orders would have to require that all providers comply with the regulations established by the FCC on verification procedures for the switching of an end user's telecommunications provider.

The bill would define "telecommunications provider" as a person that provided one or more telecommunications services for compensation; it would not include a provider of commercial mobile service as defined in the Federal Communications Act.

Senate Bill 837 (S-4)

The bill provides that the PSC could conduct a contested case upon the receipt of a complaint filed by a person alleging a violation of Section 505, an end user who had been switched to another provider in violation of that section, or a provider who had been removed as an end user's provider without the end user's authorization, or upon the Commission's own motion.

If the PSC found that a person had violated Section 505 or an order issued under that section, the Commission would have to order remedies and penalties to protect and make whole end users and other persons who had suffered damages as a result of the violation, including but not limited to one or more of the following:

- -- Order the person to pay a fine of at least $10,000 but not more than $20,000 for a first offense, or at least $25,000 but not more than $40,000 for a second or subsequent offense. If the PSC found that a second or subsequent violation had been made knowingly in violation of Section 505, the maximum fine would be $50,000. Each switch made in violation of Section 505 would be a separate offense.
- -- Order an unauthorized provider to refund to the end user any amount greater than the end user would have paid to an authorized provider.
- -- Order an unauthorized provider to reimburse an authorized provider an amount equal to the amount paid by the end user that should have been paid to the authorized provider.
- -- Revoke the license of a person licensed under the Michigan Telecommunications Act, if the PSC found a pattern of violations.
- -- Issue cease and desist orders.

A fine could not be imposed for a violation of Section 505 if the provider had otherwise fully complied with the section and showed that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error would include a clerical, calculation, computer malfunction, programming, or printing error. An error in legal judgment with respect to a person's obligations under Section 505 would not be a bona fide error. The burden of proving that a violation was an unintentional and bona fide error would be on the provider.

If the PSC found that a party's complaint or defense was frivolous, the Commission would have to award the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and the party's attorney.

Proposed MCL 484.2505 (H.B. 5280)
Proposed MCL 484.2506 (S.B. 837)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Telephone customers have the right to use any long distance carrier they choose and to change carriers whenever they wish, especially because different companies charge different rates. Slamming takes choices away from consumers, often without their knowledge, and distorts the long distance competitive market by rewarding companies that engage in deceptive practices. Current Michigan law, however, does not contain a prohibition against slamming, and the PSC does not have the authority to penalize carriers that engage in this practice. The PSC presently can do little more than record complaints, attempt to get credit for people who have been slammed, and/or forward complaints to the FCC. By requiring the PSC to issue orders ensuring that customers were not switched without their authorization, the bills would empower the Commission to select the best way to protect against slamming. The PSC also could make sure that violators paid substantial economic penalties, and that slamming victims received a refund for overcharges or reimbursement for lost revenue. By providing for regulatory authority at the State level, the bills also could help to educate customers about their rights under the law.

Response: Some people believe that the only enforceable way to prevent slamming would be to require written authorization of a switch in long distance carriers.

Legislative Analyst: S. Lowe

FISCAL IMPACT

According to the Public Service Commission, the bills would require the Commission to issue orders and hold hearings regarding unauthorized switching of a telecommunications provider. These additional administrative responsibilities could result in additional costs to the Commission. Additionally, the bills would authorize the Commission to impose a fine of not less than $10,000 or more than $20,000 for a first offense, not less than $25,000 or more than $40,000 for a second offense, and up to $50,000 for a subsequent offense that was knowingly made, on those companies found to be in violation, which would be deposited into the General Fund. The number of violators that would be assessed a monetary penalty is unknown; therefore, the amount of revenue that would be generated is indeterminate.

Fiscal Analyst: M. Tyszkiewicz