

A SUMMARY OF HOUSE BILL 4804 (SUBSTITUTE H-2)

The bill would amend the Michigan Telecommunications Act (MCL 484.2101et al.) to do all of the following:

Powers and Duties of the Public Service Commission. The Public Service Commission (PSC) would have jurisdiction and authority to administer, not only the act, but all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. The commission would be allowed to (instead of required to) promulgate rules under the Administrative Procedures Act and could also issue orders it considered necessary to implement and administer the Telecommunications Act. In addition to its current duties, the PSC to would be required to:

- Resolve disputes between telecommunications providers and local units of government. The PSC could designate one of the commissioners to exercise that authority.

- Study and make an annual report to the legislature and the governor on matters that have an impact on the basic local exchange calling activities of all residential customers in the state. Current law requires the commission to make such a report on a one-time basis; the bill would require it to do so on an annual basis.

- Conduct a study of Internet service providers on an exchange by exchange basis to determine which end users are able to make a local call or a call priced the same as a local call in order to reach an Internet service provider, and make a recommendation to the legislature on how to allow all local exchange customers to access the Internet with a call priced the same as a local call. The PSC would have until January 1, 2002 to complete the study and make recommendations.

- Subject to the provisions regarding the fees or assessments for rights-of-way, enforce the federal telecommunications act's prohibition against local statutes, regulations, or legal requirements that might prohibit or effectively prohibit the ability of an entity to provide an interstate or intrastate telecommunication service.

- Institute an action before the Federal Communications Commission (FCC) regarding a local unit's violation of the requirements of 47 U.S.C. 253.

- Allow parties to intervene in contested case proceedings so that providers that may be affected by the commission's decision have the opportunity to participate in the proceedings.

- Determine which network elements, in addition to those listed in the act, must be unbundled.

The language providing for the creation of a task force to study the changes occurring in the federal universal service fund would be deleted.

Currently, one of the PSC's duties is to require that providers of regulated service make information about their rates, services, and conditions of service available for public inspection. The bill would include posting on the Internet as a means of making the information available.

Under current law, except as otherwise provided in the act, a provider of regulated telecommunication service may not charge a rate that is less than its total service long run incremental cost of providing that service. Under the bill, a provider of regulated telecommunication service, or an affiliate, that was prohibited by federal law from providing inter-LATA toll service in this state could not charge a rate for the regulated service that was greater than the lowest rate the provider charged for the same service in any other state where the provider did business. The PSC would set such a rate after notice and a hearing. These provisions would only apply until such time as that provider or its affiliate was no longer prohibited from providing inter-LATA toll service.

Finally, under the act, the PSC does not review or set rates for toll access services. However, the bill would specify that the PSC would set rates for intrastate subscriber line charges or end user line charges to basic local exchange customers.

Hearings. The PSC could conduct a hearing under contested hearing provisions of the Administrative Procedure Act without showing that direct injury resulted from the alleged violation. The bill would specify that an application or complaint would have to include all information, testimony, exhibits, or other documents and information within that person's possession. If a complainant or applicant needed information that was in the possession of the respondent, the PSC would have to allow that complainant or applicant a reasonable opportunity for discovery to allow him or her to provide all the information, etc. that he or she intends to rely on to support the application or complaint. A party would have the burden of proof with regard to facts that were in its possession.

Unless there was a request for emergency relief, the PSC would be required to compel parties to a complaint that involved an interconnection dispute between providers to use the act's alternative dispute resolution process. In addition, the bill would specify that, unless there was a request for emergency relief, the PSC would have an additional 45 days past the usual deadline for issuing an order in disputes involving \$1,000 or less.

In addition to any other relief allowed in the act, the PSC or any other interested person could seek to compel compliance with the act and other rules or orders by proceedings in mandamus, injunction, or by other appropriate civil remedies in the circuit court or other court of appropriate jurisdiction.

A court could not stay an order of the PSC until all of the following were met:

1) a hearing was held on a written motion for the stay that was supported by affidavit and stated with particularity the grounds for the stay.

2) The court issued a written opinion and order finding all of the following: that the public interest would be advanced if the stay was granted; that the applicant seeking the stay would suffer irreparable injury if a stay was not entered and has made a strong showing that it will likely prevail on the merits; and that the applicant seeking the stay would be harmed more than the other parties to the proceedings would be harmed if the stay were granted.

3) the applicant seeking the stay filed a bond in the amount required to protect the public and other parties, conditioned on both of the following: a) to prosecute the review to a decision and to obey and act in accordance with the decision or order as entered by the court; b) to obey and act in accordance with the order or decision if it is not set aside or revised.

Emergency Relief. If the facts alleged in a complaint warranted emergency relief, the complainant could request an emergency relief order. Such an order would have to be issued within 15 business days from the date the complaint was filed. If an order was granted, it would have to include the basis for the finding that exigent circumstances existed warranting the emergency relief. An emergency relief order could require a party to act or refrain from acting to protect the provision of competitive service offerings to customers under the act. The order granting or denying the request for emergency relief could include an order for the payment of the reasonable attorney fees and costs to the prevailing party.

An order for temporary emergency relief could be granted without a hearing if the complaint included a verified factual showing of all of the following: exigent circumstances warranting emergency relief; that the party seeking the relief will likely succeed on the merits; that the party will suffer irreparable harm in its ability to serve customers if the emergency relief is not granted; and the order is not adverse to the public interest. If a temporary emergency relief order was issued, the PSC would be required to conduct an evidentiary hearing to review the order within 15 days of the date the order was issued to determine whether the order should become a final order or be terminated.

License Approval. As part of the findings necessary for the PSC to grant a license for a telecommunication provider to provide or resell basic local exchange service, the bill would require that the PSC find that the applicant intended to provide service within one year from the date the license was granted. If, after the license was granted, the PSC found that the provider was not actively engaged in providing basic local exchange service, the PSC could revoke the license after notice and a hearing.

Rate plans. Current law contains a requirement that a provider of basic local exchange service must offer various rate plans to residential customers. Under the bill, this provision would no longer include an exception for providers based on technological infeasibility. Further, the bill would clarify that a flat rate calling plan could have call maximums of 50, 200, and 400 calls per month. In addition, the bill would allow providers to offer a flat rate for plain old telephone service (POTS).

Universal Service. “Universal service” would mean the provision of supported telecommunication services by any carrier serving customers in a geographic area currently served by an incumbent local exchange carrier that has a basic local exchange area with fewer than 35,000 subscribers.

“Affordable Rates” would be defined as, at a minimum, rates in effect on January 1, 2001 or as determined by the PSC.

“Incumbent Local Exchange Carrier” or “ILEC” would mean a provider that was granted a basic local exchange service license before January 1, 1993.

“Intrastate Universal Service Fund” would be a fund created by the commission to provide a subsidy for helping to support the provision of telecommunication services provided by any telecommunication carrier that furnished service within a geographic area currently served by an ILEC whose basic local exchange area has fewer than 35,000 subscriber access lines.

“Supported communications services” would mean primary residential lines and a minimum level of local usage on those lines, as determined by the PSC.

No later than July 1, 2001, the PSC would be required to initiate an investigation to determine whether an intrastate universal service fund should be created. The investigation would have to be completed by December 1, 2001. All ILECs with fewer than 35,000 subscriber access lines would have to be made respondents in the proceeding, and in addition any other interested party could participate and intervene in the proceeding.

The PSC would make a determination for each provider regarding whether and to what extent the affordable rate level for the provision of services would be below a provider’s forward looking economic cost for the supported services. If, for some or all of the providers, provision of the supported services at an affordable rate would be below the forward looking economic cost of the supported services, the PSC would be required to create a universal service fund to subsidize the difference between the affordable rate set by the PSC and the forward looking cost of the services, less any federal universal service support received. After consulting with all the telecommunications carriers, the PSC would select an independent third party administrator to administer the fund.

Eligibility to receive intrastate universal service support would be consistent with the act and with the rules and regulations of the FCC. To the extent a fund was established, the PSC would have to require that the costs of the fund be recovered from all telecommunications providers on a

competitively neutral basis. Providers who contributed to the fund could recover costs from end-users through billing surcharges.

Number portability. A provider of basic local exchange service would have to provide number portability on a nondiscriminatory basis in accordance with the federal telecommunications act. ("Number portability" would mean the capability for a local exchange customer at a particular location to change providers of basic local exchange service without any change in the customer's telephone number, while preserving the full range of functionality that the customer could obtain by changing telephone numbers.)

Prohibition against labor interference. The bill would specifically prohibit a provider of telecommunication service from violating state or federal labor laws by taking any actions to discourage or prevent its employees from seeking union representation, pursuing collective bargaining, or engaging in any other "activities protected", including, but not limited to, closing an office or facility in Michigan to prevent organization. (Current law applies this only to providers of inter-LATA toll services.)

Operator Service Providers. The PSC is required to adopt requirements for operator service providers. Violation of these requirements may result in a civil action for actual damages or \$250, whichever is greater, plus all reasonable attorney fees. The bill would add actual costs to what could be recovered in such an action.

Prohibited practices. In addition to the existing prohibitions, a provider of telecommunication services would be prohibited from the following:

- Disparaging the services, business, or reputation of another by false or misleading representations of fact.
- Representing that unrequested services are being supplied in response to a request made by or on behalf of the party receiving the services.
- Causing a probability of confusion or a misunderstanding as to a party's legal rights, obligations or remedies.
- Representing or implying that the subject of a transaction will be provided promptly or at a specified time, or within a reasonable time, if the provider knew or has reason to know that it will not be so provided.
- Causing coercion and duress as a result of the time and nature of a sales presentation.

For alleged violations of these prohibitions, the PSC could accept an assurance that the accused provider would discontinue the allegedly unlawful method, act, or practice. Such an assurance would not be an admission of guilt nor could it be introduced in any other proceeding. An assurance could be enforced in the circuit court by the parties to the assurance, unless it had been rescinded by the parties or was voided by the court for good cause. An assurance could include

stipulations for the voluntary payment of the costs of the investigation, an amount to be held in escrow pending the outcome of an action, or an amount for restitution to an aggrieved person.

The bill would also prohibit a telecommunications provider from adding to or otherwise altering a retail subscriber's service package without that subscriber's authorization. The PSC would be required to issue orders to establish procedures that telecommunications providers would have to adopt to ensure that the services are not added to a subscriber's service package without his or her authorization.

All billings for a telecommunications provider would have to be written in a clear and conspicuous manner and provide all necessary information to allow a subscriber to make informed decisions regarding services and service providers. Bills would have to be clearly organized and would have to include, but not be limited to, all of the following:

- Identification of any new charges or changes to the subscriber's services from the prior billing period.
- Complete descriptions of all the charges and the service provider responsible for each charge, including the provider's address and toll-free telephone number.
- Information on how a subscriber could dispute a charge and how to file a complaint with the PSC.

The PSC could conduct a contested case hearing on an alleged violation of these provisions on its own motion, or upon the receipt of a complaint. If the PSC found that a violation had occurred, the commission would be required to order remedies and penalties as provided by the act. If the commission determined that a party had filed a complaint or defense that was frivolous, the commission would be required to award costs to the prevailing party, including reasonable attorney fees, against the losing party and their attorney.

Penalties. If, after notice and a hearing, the PSC found that a violation of the act had occurred, the PSC could, in addition to the penalties already provided under the act, order actual fees and actual costs. In addition, when determining whether to award compensatory damages and determining the amount of compensatory damages that would make the ratepayers and other persons whole, the PSC would have to resolve any doubts as to the certainty of damages against the wrongdoer.

Purposes of the act. The act includes a section that specifies the purposes of the act. The bill would amend that section to provide, among other items, that the act's purpose is to:

"Ensure that every person has access to *affordable* basic residential telecommunication service" [emphasis added].

"Supplement existing state and federal law regarding antitrust, consumer protection, and fair trade to provide additional safeguards for competition and consumers" [deleting language specifying

the purpose of restructuring regulation to focus on price and quality of service and not on the provider].

"Streamline the process for setting and adjusting the rates for regulated services that will ensure effective rate review and reduce the costs and length of hearings associated with rate cases."

"Authorize the commission to take actions to encourage the development of a competitive telecommunications industry."

[Note: The amendments in this section are also included in House Bill 5721.]

Definitions. The definitions section of the act would be amended to specify that it would apply to terms used in the act, unless otherwise provided in the act. "Commission" would be clarified to mean the Michigan Public Service Commission *in the Department of Consumer and Industry Services*. "Inter-LATA Prohibition" and "LATA" would mean those terms as defined in the Telecommunications Act of 1996, rather than referring to the consent decree in *U.S. v American Telephone and Telegraph, Co.*, 552 F. Supp. 131 (D.D.C. 1982). "Plain old telephone service" or "POTS" would mean a basic telephone service package offered by a provider of basic local exchange service to residential customers that would include only the minimum network elements required for telephone access to the local exchange. "Telecommunications Act of 1996" would refer to the federal telecommunications act, Public Law 104-1-4, 110 Stat. 56.

Sunset elimination, repeals. The bill would remove the act's sunset provision and would repeal section 311 and 351 of the existing act. Section 311 provides for the imputation of prices to telecommunications providers of both basic and local exchange service and toll service for special toll access service and switched access for the use of essential facilities in its provision of toll, WATS, or other service where toll access is a component. Section 351 excludes providers with less than 250,000 end-users in the state from the act (this provision was only in effect until January 1, 2000). The bill would also remove several references throughout the act to dates and deadlines that have already passed.

Tie-Bar. The bill is tie-barred to House Bill 5721 (which also amends the Michigan Telecommunications Act); neither would take effect unless both bills were enacted.

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■ 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.