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## AMEND TELECOMMUNICATIONS ACT

**House Bill 5721 (Substitute H-1)**  
**Sponsor: Rep. Mary Ann Middaugh**  
**Committee: Energy and Technology**

**Complete to 5-9-00**

### A SUMMARY OF HOUSE BILL 5721 (SUBSTITUTE H-1)

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 have the powers and duties prescribed by the act or that are necessary to implement the act. Finally, under the act, the PSC does not review or set rates for toll access services. However, the bill would specify that rates for intrastate subscriber line charges or end user line charges to basic local exchange customers could not be increased except as approved by the PSC after a contested case hearing.

Hearings. The bill would specify that an application or complaint would have to include all information, testimony, exhibits, or other documents and information within the applicant'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.

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.

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 10 business days from the date the complaint was filed. If an order was granted, it would have to

House Bill 5721 (5-9-00)

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 10 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, the bill would require that the PSC find that the applicant was able to provide basic local exchange service to all residential and commercial customers within the geographic area of the license and that it intended to provide service within one year from the date the license was granted. The PSC would also have the authority to revoke a provider's license if the PSC found that, within two years of the date the license was granted, the provider had not marketed its services to all potential customers or had refused to provide service to certain customers.

Rate setting requirements. The bill would exempt certain providers from some of the act's basic local exchange service rate setting requirements. The PSC would be required to exempt a provider who provided basic local exchange service to less than 15,000 subscribers under a permanent or temporary license issued before January 1, 1993 and offered its subscribers single party basic local exchange service, tone dialing, toll access service, including end-user common line services and dialing parity, and access to operator, telecommunications relay, and emergency services at a total price, including surcharges, of no higher than the amount charged as of May 1, 2000. Such a provider would also be exempt from the section of the law that allows a toll access service provider to set rates for toll access services, but states that access service rates and charges that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Under that section, providers may agree to a lower rate than is allowed by the federal government, but if they cannot agree on a rate, a provider may apply to the PSC.

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].

"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."

"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].

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

Rate Reductions. The bill would add a new article titled Rate Reductions. Notwithstanding any other provision of the act, when the bill's provisions took effect, the rate charged for every telecommunication service provided in the state would be required to be no higher than 95 percent of the rate charged for that service as of May 1, 2000. Rates for any new service that was functionally equivalent or substantially similar to an existing service would be set at no higher than the rate allowed for the existing service. The rates set under these provisions would remain in effect until December 31, 2003, or until the PSC determined that a service was competitive for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, whichever is earlier. Any complaint that arose under this section would be determined by the PSC through a contested hearing.

Sunset elimination, repeals. The bill would repeal the act's January 1, 2001 sunset date and the provisions of act that repealed earlier sections of the act.

Analyst: W. Flory

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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.