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BILL ANALYSIS

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House Bill 5721 (as enrolled)
Sponsor: Representative Mary Ann Middaugh
House Committee: Energy and Technology
Senate Committee: Technology and Energy

PUBLIC ACT 295 of 2000

Date Completed: 9-14-00

CONTENT

The bill amended the Michigan Telecommunications Act (MTA) to do all of the following:

- Freeze rates at their May 1, 2000, level until December 31, 2003, for telecommunications services, other than exempted rate alterations, services determined by the Public Service Commission (PSC) to be competitive, and rates charged under contract.
- Prohibit a basic local exchange service provider from assessing or imposing intrastate subscriber line charges or end-user line charges (known as "EUCL").
- Provide that a call made to a local calling area adjacent to the caller's local calling area must be considered and billed as a local call.
- Require that the PSC issue orders requiring, to the extent feasible, that all area code boundaries in Michigan conform with county boundaries.
- Require the PSC to ensure that a long-distance telecommunications provider comply with requirements to reduce customer rates when the toll access service rate is reduced.
- Grant the PSC regulatory authority over all directory assistance services, rather than just local directory assistance services.
- Increase fines for "slamming" (switching a customer's telecommunications provider without the customer's consent); prohibit "cramming" (the unauthorized addition of services); and provide that 10% to 50% of a fine for slamming or cramming may be payable to the customer.
- Prohibit a toll service provider from charging a mandatory minimum or flat-rate charge.
- Extend the MTA's prohibited practices for telecommunications providers.
- Exempt certain providers from the MTA's process for basic local exchange rate alteration.

- Revise licensure requirements for basic local exchange providers.
- Revise the MTA's complaint resolution process, by providing for emergency relief in complaints filed with the PSC, requiring use of an alternative dispute process for interconnection disputes between telecommunications providers, and making other changes.
- Grant the PSC jurisdiction over Federal telecommunications services delegated to the State, including area code changes.
- Require that, no sooner than July 1, 2002, the PSC begin an investigation to determine whether a fund should be created to subsidize telecommunications customers.
- Require the PSC to conduct a study regarding broadband Internet access.
- Require the PSC to issue an annual report on the status of competition in telecommunications services.
- Require the PSC and basic local exchange providers to establish a 2-1-1 dialing system for community resource information.
- Revise the Act's stated purposes.
- Extend the MTA's January 1, 2001, sunset to December 31, 2005.

Rate Freeze

The bill added Article 7, entitled "Telecommunication Service Rates", to the MTA. Under Article 7, except for certain rate alteration exemptions, services determined to be competitive, and rates charged under contract, the rate charged for every telecommunication service provided to an end-user in Michigan may be no higher than the rate charged as of May 1, 2000.

The rate for any new service not offered under contract, that is functionally equivalent or substantially similar to an existing service, must be set no higher than the rate allowed for the existing

service under the mandated rate freeze. Rates determined under the rate freeze are to remain in effect for each service until December 31, 2003, or until the PSC determines that a service is competitive for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, whichever is earlier.

The PSC must issue a determination as to whether a service is competitive (and, hence, exempt from the rate freeze) within 60 days from the date an application is filed. If the determination is not made within the 60-day period, the service will be considered competitive.

The PSC will have to determine complaints arising under Article 7 according to the MTA's complaint resolution procedures.

"EUCL" Rates, Long Distance Provider Charges, and Directory Assistance

EUCL. The bill specifies that a provider of basic local exchange service may not assess or impose on end-users an intrastate subscriber line charge or end-user line charge. The bill, however, also exempts from this provision basic local exchange providers that have 250,000 or fewer customers in Michigan.

Toll Access Rates. Under the MTA, except as otherwise provided in the Act, the PSC may not review or set the rates for toll access services. Toll access service providers must set the rates for access. The MTA specifies that access rates that exceed those allowed for the same interstate services by the Federal government are not just and reasonable, and that providers may agree to a rate less than that allowed by the Federal government. The Act also specifies that a provider of toll access service must offer services under the same rates, terms, and conditions, without unreasonable discrimination, to all providers. The bill specifies that in no event may end-user or subscriber line charges exceed the rates allowed for the same interstate services by the Federal government as of May 1, 2000.

If a toll access service rate is reduced, the MTA requires the provider receiving the reduced rate to reduce its rate to its customers by an equal amount. The bill requires that the PSC investigate and ensure that providers comply with the requirement to pass along rate reductions to customers.

Directory Assistance. Previously, the PSC was required to determine the manner in which *local* directory assistance service was to be regulated including rates and quality of service. Under the bill, the PSC must determine the manner in which *all*

directory assistance service is to be regulated including rates, if any, and quality of service. The requirement will apply until the PSC determines directory assistance to be a competitive service.

Mandatory Minimum Charge Prohibition. Except as otherwise approved by the PSC, the bill prohibits a toll service provider from charging a mandatory minimum monthly or mandatory flat-rate charge for toll calls, except in connection with an optional discount toll calling plan.

"Slamming" and "Cramming"

Overview. Public Acts 259 and 260 of 1998 added slamming prohibitions and penalties to the MTA. ("Slamming" is the term commonly used to refer to the unauthorized switching of a telecommunications subscriber from one provider to another.) Under the slamming provisions, the PSC must issue orders to ensure that an end user is 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 has authorized the specific details of the switch.

The PSC may conduct a contested case upon receiving a complaint alleging a slamming violation. If the PSC finds that a slamming violation has occurred, it must order remedies and penalties to protect and make whole end users and other persons who suffered damages as a result of the violation.

Cramming. Under the bill, a telecommunications provider may not include or add optional services in an end-user's telecommunications service package without the express oral or written authorization of the end user. Upon receiving a complaint filed by a person alleging a cramming violation or upon the PSC's own motion, the PSC may conduct a contested case hearing.

Slamming and Cramming Complaints and Hearings. The bill requires that the PSC create and, upon request, supply a form affidavit designed to enable an end-user to provide all information necessary to promote efficient resolution of slamming and cramming complaints. Hearings are to be conducted in a manner that optimizes expediency, convenience, and the ability of the end-user to bring and prosecute, without assistance of counsel, complaints alleging slamming or cramming while preserving the rights of the parties. If possible, the PSC must hold the hearing at a location near the end-user's residence or place of business.

Increased Fines. Previously, a first offense of slamming was subject to a fine of at least \$10,000

but not more than \$20,000; a second or subsequent offense was subject to a fine of at least \$25,000 but not more than \$40,000. If the PSC found that a second or subsequent slamming offense was made knowingly in violation of the prohibition, the maximum fine was \$50,000. Each switch made in violation of the MTA is a separate offense. The bill increased the fines and applies them to both slamming and cramming. Under the bill, a first slamming or cramming offense is punishable by a fine of at least \$20,000 but not more than \$30,000; a second or subsequent offense is punishable by a fine of at least \$30,000 but not more than \$50,000. For a slamming or cramming offense committed knowingly in violation of the MTA, the maximum fine is \$70,000.

In addition, the bill specifies that the PSC may order between 10% and 50% of a fine assessed for slamming or cramming to be paid directly to the customer who suffered the violation.

Prohibited Practices

The MTA lists practices in which a provider of telecommunication service may not engage. The bill added to that list all of the following:

- Disparaging the services, business, or reputation of another by false or misleading representation of fact.
- Representing to a party to whom services are supplied that the services are being supplied in response to a request made by or on behalf of the party when they are not.
- Causing a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- 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 knows or has reason to know it will not be so provided.
- Causing coercion and duress as a result of the time and nature of a sales presentation.

Under the bill, when the PSC has authority to bring a proceeding for a violation of the MTA's prohibited practices provision, the PSC may accept an assurance of discontinuance of a method, act, or practice from the person alleged to have violated the provision. The assurance is not an admission of guilt nor may it be introduced in any other proceeding. Unless rescinded by the parties or voided by a court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. An assurance under the bill may include a stipulation for any of the following:

- The voluntary payment by the person for the cost

of investigation.

- An amount to be held in escrow pending the outcome of an action.
- An amount for restitution to an aggrieved person.

Basic Local Exchange Rate Alteration and Adjacent Calling Area

Rate Alteration. The bill requires that the PSC exempt a provider from the MTA's provisions governing basic local exchange rate alteration and the setting of toll access rates if it finds that the provider does all of the following:

- Provides basic local exchange service or basic local exchange and toll service to fewer than 250,000 end-users in Michigan.
- Offers to end-users single-party basic local exchange service, tone dialing, toll access service, including end-user common line services and dialing parity, at a total price of no more than the amount charged as of May 1, 2000.
- Provides all basic local exchange end-users with dialing parity access to operator, telecommunication relay, and emergency services.

Adjacent Calling Areas. The bill requires that a call made to a local calling area adjacent to the caller's local calling area be considered a local call and be billed as a local call.

Licensure Requirements

The MTA previously provided that, after notice and a hearing, the PSC had to approve an application for a license as a basic local exchange provider if it found that the applicant possessed sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to "every person" within the geographic area of the license and that granting a license would not be contrary to the public interests. The bill retained that requirement but changed "every person" to "all residential and commercial customers", and requires the PSC to find that the applicant intends to provide service within one year from the date the license is granted.

Emergency Relief

The bill allows a complainant to request an emergency relief order, if a complaint filed under the MTA alleges facts that warrant emergency relief. On the date of a filing, the complaint and request for emergency relief must be hand-delivered to the respondent at its principal place of business in Michigan. The PSC must allow five business days for a filing in response to the emergency relief request. The PSC is to review the complaint, the request for emergency relief, the response, and all

supporting materials and determine whether to deny the request or to conduct an initial evidentiary hearing.

An order for emergency relief may require a party to act or refrain from action to protect competition. Any action required by an order for emergency relief must be technically feasible and economically reasonable, and the respondent is to be given a reasonable period to comply. At a hearing for emergency relief, the respondent has the burden of showing that the order is not technically feasible or economically reasonable.

An order for emergency relief may be granted if the PSC finds all of the following:

- The party has demonstrated exigent circumstances that warrant emergency relief.
- The party seeking relief will likely succeed on the merits.
- The party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted.
- The order is not adverse to the public interest.

The PSC may require the complainant to post a bond in a sufficient amount to make whole the respondent if the emergency relief order later is found to have been erroneously granted. An emergency relief order will expire upon the soonest of the following: 90 days after its issuance; issuance of the PSC's partial order; or an earlier date set by the PSC. The PSC may extend the emergency relief order up to the date on which a final order is issued in the proceeding.

An order granting or denying emergency relief is subject to immediate review in the Court of Appeals as a matter of right of the aggrieved party. The review must be de novo (that is, a new proceeding). The Court may stay an order upon the posting of a bond or other security. Regardless of whether an appeal is made, the PSC must proceed with the case and issue a final order as otherwise required under the MTA.

Alternative Dispute Process

The MTA requires the use of an alternative dispute process for disputes involving an amount of \$1,000 or less. The bill requires that the alternative dispute process also be used if the a complaint filed with the PSC involves an interconnection dispute between telecommunications providers, except if there is a request for emergency relief under the bill.

PSC Jurisdiction and Area Codes

Jurisdiction. The MTA provides that the PSC has the jurisdiction and authority to administer the Act and is limited to the powers and duties prescribed in it. Under the bill, the PSC also has the jurisdiction and authority to administer all Federal telecommunications laws, rules, orders, and regulations delegated to states. The PSC is required

to exercise its jurisdiction and authority consistent with the MTA and all Federal telecommunications laws, rules, orders, and regulations.

Area Codes. The bill specifies that the PSC has the authority to approve or deny a proposed addition, elimination, or modification of an area code in Michigan. The PSC must give public notice and conduct a public hearing in the affected geographic area before an area code is added, eliminated, or modified.

In addition, the bill specifies that, to the extent it is technically and economically feasible, the PSC must issue orders requiring the modification of all area code boundaries in Michigan to conform to county lines.

Intrastate Universal Service Fund

The bill requires the PSC, no sooner than July 1, 2002, to initiate an investigation to determine whether an "Intrastate Universal Service Fund" should be created. The investigation will have to be completed no sooner than December 1, 2002. All providers must be made respondents in the proceeding and any other interested party may participate and intervene. (The bill defines "Intrastate Universal Service Fund" as a fund created by the PSC to provide a subsidy to customers for the provision of supported telecommunication services provided by any telecommunications carrier. "Supported telecommunication services" means primary residential access lines and a minimum level of local usage on those lines, as determined by the PSC.)

The PSC must determine for each provider "whether and to what extent the affordable rate level to provide supported telecommunication services is below each provider's forward looking economic cost of the supported telecommunication services". If a Universal Service Fund is created, to the extent telecommunication services are provided at an affordable rate that is below the forward looking economic cost of the supported services, the fund must provide a subsidy for customers in an amount equal to the difference between the affordable rate and the forward looking economic cost, less any Federal universal support received for those services.

Eligibility for customers to receive universal service support must be consistent with the eligibility guidelines under the Federal Telecommunications Act and the rules and regulations of the Federal Communications Commission. The Fund will have to be administered by an independent third party administrator selected by the PSC. The PSC will have to require that the costs of the Fund be recovered from all telecommunication providers on a competitively neutral basis. Providers may recover

the costs through surcharges assessed to end-users. Upon request or on its own motion, the PSC must determine if, based on changes in technology and other factors, the findings should be reviewed.

Unless otherwise approved by the PSC, these provisions do not apply if an interstate universal service fund exists on the Federal level.

Internet Access

The bill requires that the PSC study whether Michigan should require each wireline broadband Internet access transport provider who is, or is an affiliate of, an Internet service provider (ISP) to provide any other requesting ISP access to its broadband Internet access transport services, unbundled from the provision of content, on rates, terms, and conditions that are at least as favorable as those on which the broadband provider provides Internet access to itself, its affiliate, or any other person. The PSC must report to the Legislature and the Governor by July 1, 2001.

Competitiveness Report

The bill requires that the PSC submit to the Governor and the Senate and House standing committees with oversight of telecommunications issues, an annual report describing the status of competition in telecommunication services in Michigan, including the toll and local exchange service markets.

2-1-1 Service

The bill requires the PSC to issue orders that assign the telephone digits 2-1-1 only to community resource information and referral answering points established under the bill and prescribe appropriate interconnection orders to carry out the service. Each basic local exchange service in Michigan must assign those telephone numbers only to a community resource information referral answering point.

The bill requires the PSC to designate a community resource information and referral entity to be the 2-1-1 answering point for various geographical areas within Michigan. In making its determination, the PSC must consider the recommendations of the Michigan Alliance for Information and Referral Systems; whether the relevant State-endorsed multipurpose collaborative bodies are in agreement; whether the entity has established a framework to assure the provision of coverage of the 2-1-1 telephone number 24 hours per day, seven days per week; and whether the entity meets 2-1-1 standards adopted by the Michigan Alliance for Information and Referral Systems.

Each community resource information and referral entity designated to be a 2-1-1 answering point must establish the framework to provide sufficient resources to operate the system 24 hours per day, seven days per week.

Purposes of the Act

The MTA lists the purpose of the Act. The first of these is to ensure that every person has access to basic residential telecommunication service. The bill refers to “just, reasonable, and affordable” basic residential telecommunication service. The bill added to the list “authorize actions to encourage the development of a competitive telecommunication industry”.

MCL 484.2101 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The elimination of the end-user line charge (EULC) and the freezing of telephone rates at their May 1, 2000, levels, will reduce telephone rates from what they otherwise would be, and as a result, use tax collections will decline an estimated \$18.0 million in FY 2000-01. This loss in use tax revenue will reduce General Fund/General Purpose (GF/GP) revenue \$12.0 million and School Aid Fund revenue \$6.0 million. In addition, the provisions in this bill are expected to diminish the value of the real property owned by the telecommunications industry, which will reduce the State’s utility property tax receipts by an estimated \$4.6 million from what they otherwise

would be in FY 2000-01. This loss in utility property tax revenue will affect GF/GP revenue.

This bill increases the regulatory responsibilities of the Public Service Commission, while not providing additional revenue sources to cover the cost. The Commission will cover these costs with existing resources and no General Fund money will be appropriated for these costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.