

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5721 (Substitute H-4 as passed by the House)
Sponsor: Representative Mary Ann Middaugh
House Committee: Energy and Technology
Senate Committee: Technology and Energy

Date Completed: 6-5-00

CONTENT

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

- Mandate a 5% rate cut 60 days after the bill's effective date, for telecommunications services except for services determined by the Public Service Commission (PSC) to be competitive and rates charged under contract.
- Provide that rates for intrastate subscriber line charges or end-user line charges (known as "EUCL") would have to be set by the PSC.
- Require that the PSC ensure that a long-distance telecommunications provider comply with requirements to reduce rates to customers when the toll access service rate was reduced.
- Prohibit the imposition of a charge for long-distance directory assistance.
- Increase fines for "slamming" (switching a customer's telecommunications provider without the customer's consent), add "cramming" (the unauthorized addition of services) to the slamming prohibition, provide that one-half of a fine imposed on a provider for slamming or cramming would be payable to the customer, and place the burden of proof on the telecommunications provider in a hearing for slamming or cramming.
- 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, by July 1, 2001, the PSC begin an investigation to determine whether a fund should be created to subsidize telecommunications customers.
- 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.
- Repeal the MTA's January 1, 2001, sunset.

Rate Reduction

The bill would add Article 7, entitled "Rate Reductions", to the MTA. Under Article 7, except for services determined to be competitive and except for rates charged under contract, 60 days after the bill's effective date, the rate charged for every telecommunication service and services listed in Section 401 of the MTA provided to an end-user in Michigan could be no higher than 95% of the rate charged for those services as of May 1, 2000. (Section 401 lists services over which the PSC does not have authority, except as otherwise provided by law or preempted by Federal law. The listed services include: enhanced services; paging, cellular, and answering services; video; cable service; pay-per-view; shared tenant; private networks; financial services networks; radio and television; WATS; personal communication networks; municipally owned telecommunication systems; 800-prefix services; burglar and fire alarm services; energy management services; the reselling of centrex or its

equivalent, except for State institutions of higher education; and the reselling of an unlicensed telecommunication service.)

The rate for any new service not offered under a contract that was functionally equivalent or substantially similar to an existing service would have to be set no higher than the rate allowed for the existing service under the mandated rate reduction. Rates determined under the bill's mandated rate reduction would have to remain in effect for each service 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 was earlier.

The PSC would have to issue a determination as to whether a service was competitive (and, hence, exempt from the bill's rate reduction requirement) within 60 days from the date an application was filed. If the determination were not made within the 60-day period, the service would be considered competitive.

Complaints arising under Article 7 would have to be determined by the PSC under the MTA's complaint resolution procedures.

"EUCL" Rates and Long Distance Provider Charges

EUCL. The bill specifies that rates for intrastate subscriber line charges or end-user line charges to basic local exchange customers would have to be set by the PSC.

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 services 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.

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 would require that the PSC investigate and ensure that a provider had complied with the requirement to pass along rate reductions to its customers.

Long Distance Directory Assistance. The bill provides that a residential customer could not be charged for a directory assistance call for a number

outside the local access and transport area (LATA) in which the customer's service address was located. Customers could be assessed a charge for a directory assistance call made for a number within the LATA of their service address.

Mandatory Minimum Charge Prohibition. The bill would prohibit 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"

Current Law. 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 could 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 could conduct a contested case hearing. If the PSC found that a cramming violation had occurred, it would have to order remedies and penalties to protect and make whole end users and others who had suffered damages as a result of the violation, including one or more of the following:

- Order the violator to pay a fine for the first offense of at least \$10,000 but not more than \$25,000. For a second or subsequent offense, the PSC would have to order the violator to pay a fine of at least \$25,000 but not more than \$45,000. If the PSC found that the second or any subsequent offense was knowingly made in violation of the cramming prohibition, the PSC would have to order the person to pay a fine of up to \$60,000.
- Order the provider to refund to the end-user any amount the end-user paid to the provider for the

- unauthorized services.
- If the violator were licensed under the MTA, revoke the license if the PSC found a pattern of cramming violations.
- Issue cease and desist orders.

One-half of any fines ordered for cramming would have to be paid to the end-user who filed the complaint.

Slamming and Cramming Complaints and Hearings.

The bill would require 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 would have to be conducted in a manner that optimized 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 would have to hold the hearing at a location near the end-user's residence or place of business. If the complainant had submitted an affidavit, on the form supplied by the PSC or otherwise, the respondent would have the burden of proving that no violation had occurred.

Increased Fines. Currently, a first offense of slamming is subject to a fine of at least \$10,000 but not more than \$20,000; a second or subsequent offense is subject to a fine of at least \$25,000 but not more than \$40,000. If the PSC finds that a second or subsequent slamming offense is made knowingly in violation of the prohibition, the maximum fine is \$50,000. Each switch made in violation of the MTA is a separate offense. The bill would increase the fines and apply them both to slamming and cramming (even though the proposed cramming provision specifies other fine levels). Under the bill, a first slamming or cramming offense would be punishable by a fine of at least \$20,000 but not more than \$30,000; a second or subsequent offense would be 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 would be \$70,000.

In addition, the bill specifies that one-half of the fines ordered would have to be paid to the person who was the subject of the slamming or cramming violation.

Prohibited Practices

The MTA lists practices in which a provider of telecommunication service may not engage. The bill would add 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 were supplied that the services were being supplied in response to a request made by or on behalf of the party when they were 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 would be provided promptly, or at a specified time, or within a reasonable time, if the provider knew or had reason to know it would 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 had authority to bring a proceeding for a violation of the MTA's prohibited practices provision, the PSC could accept an assurance of discontinuance of a method, act, or practice from the person alleged to have violated the provision. The assurance would not be an admission of guilt nor could it be introduced in any other proceeding. Unless rescinded by the parties or voided by a court for good cause, the assurance could be enforced in the circuit court by the parties to the assurance. An assurance under the bill could 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

The bill would require 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 found that the provider did all of the following:

- Provided basic local exchange service or basic local exchange and toll service to fewer than 250,000 end-users.
- Offered 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.
- Provided dialing parity access to operator, telecommunication relay, and emergency services to all basic local exchange end-users.

Licensure Requirements

The MTA provides that, after notice and a hearing, the PSC must approve an application for a license as a basic local exchange provider if it finds that the

applicant possesses 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 would change "every person" in that requirement to "all residential and commercial customers", and would require the PSC to find that the applicant intended to provide service within one year from the date the license was granted.

Emergency Relief

The bill would allow a complainant to request an emergency relief order, if a complaint filed under the MTA alleged facts that warranted emergency relief. On the date of a filing, the complaint and request for emergency relief would have to be hand-delivered to the respondent at its principal place of business in Michigan. The PSC would have to allow five business days for a filing in response to the emergency relief request. The PSC would have 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 could require a party to act or refrain from action to protect competition. Any action required by an order for emergency relief would have to be technically feasible and economically reasonable, and the respondent would have to be given a reasonable period to comply. At a hearing for emergency relief, the respondent would have the burden of showing that the order was not technically feasible or economically reasonable.

An order for emergency relief could be granted if the PSC found all of the following:

- The party had demonstrated exigent circumstances that warranted emergency relief.
- The party seeking relief would likely succeed on the merits.
- The party would suffer irreparable harm in its ability to serve customers if emergency relief were not granted.
- The order was not adverse to the public interest.

The PSC could require the complainant to post a bond in a sufficient amount to make whole the respondent if the emergency relief order later were found to have been erroneously granted. An emergency relief order would 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 could extend the emergency relief order up to the date on which a final order was issued in the proceeding.

An order granting or denying emergency relief would be subject to immediate review in the Court of Appeals as a matter of right of the aggrieved party. The review would have to be de novo (that is, a new proceeding). The Court could stay an order upon the posting of a bond or other security. Regardless of whether an appeal was made, the PSC would have to 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 would require that the alternative dispute process also be used if the a complaint filed with the PSC involved an interconnection dispute between telecommunications providers, except if there were a request for emergency relief under the bill.

PSC 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 the MTA. Under the bill, the PSC also would have the jurisdiction and authority to administer all Federal telecommunications laws, rules, orders, and regulations delegated to states. The PSC would have to exercise its jurisdiction and authority consistent with the MTA and all Federal telecommunications law, rules, orders, and regulations.

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

Intrastate Universal Service Fund

By July 1, 2001, the PSC would have 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 providers would have to be made respondents in the proceeding and any other interested party could participate and intervene. ("Intrastate Universal Service Fund" would mean a fund created by the PSC to provide a subsidy to customers for the provision of supported telecommunications services provided by any telecommunications carrier. "Supported telecommunications services" would mean primary residential access line and a minimum level of local usage on those lines, as determined by the PSC.)

The PSC would have to 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 telecommunications services”. If telecommunication services were provided at an affordable rate that was below the forward looking economic cost of the supported services, the PSC would have to create a universal service fund to subsidize for customers 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 under the bill would have to be consistent with the eligibility guidelines under the Federal Telecommunications Act and the rules and regulations of the Federal Communications Commission. The State fund would have to be administered by an independent third party administrator selected by the PSC. The PSC would have to require that the costs of the fund be recovered from all telecommunication providers on a competitively neutral basis. Providers could recover the costs through surcharges assessed to end-users. Upon request or on its own motion, the PSC would have to determine if, based on changes in technology and other factors, the findings should be reviewed.

Competitiveness Report

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

2-1-1 Service

The PSC would have to issue orders that assigned 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 would have to assign those telephone numbers only to a community resource information referral answering point.

The PSC would have 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 would have to consider the recommendations of the Michigan Alliance for Information and Referral Systems; whether the relevant state-endorsed

multipurpose collaborative bodies were in agreement; whether the entity had 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 met 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 would have to 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 would refer to “just, reasonable, and affordable” basic residential telecommunications service. The bill would add 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 5% rate reduction required under this bill for all telecommunication services would reduce use tax collections in the range of \$5 million to \$9 million. The exact amount by which sales tax collections would be affected would depend on how much of the current telecommunication services were determined by the Public Service Commission to be operating in competitive markets, and therefore not subject to the rate reduction. This bill also would require that the Public Service Commission set the level of end-user line charges, but there is no way to know how this would change the level of these charges, or what the resulting effect would be on use tax collections. Use tax collections are earmarked to the General and School Aid Funds. For example, a \$5 million reduction in use tax collections would reduce General Fund General Purpose revenue by \$3.3 million and School Aid Fund revenue \$1.7 million.

In addition, the bill would require the Public Service Commission to: compile and submit an annual report on the status of competition; perform an investigation to determine whether an intrastate universal service fund should be created and, if so, administer or contract for administration of the fund; hold emergency relief and other complaint hearings; and assess and collect fines for noncompliance with the Act. All of these would be additional responsibilities for the Commission, which could be offset by the fine revenue; without knowledge of the number of complaints for which penalties would be assessed, however, it is difficult to determine the fiscal impact of this bill.

Fiscal Analyst: J. Wortley
M. Tyszkiewicz

S9900\5721sa

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.