

SENATE BILL No. 528

May 24, 2005, Introduced by Senator JOHNSON and referred to the Committee on Technology and Energy.

A bill to promote deployment of and investment in communications services in this state; and to prescribe the powers and duties of certain state agencies and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "communication act".

3 Sec. 2. As used in this act:

4 (a) "Commission" means the Michigan public service commission.

5 (b) "Communications provider" or "provider" means a person who
6 provides a communications service for compensation. A
7 communications provider is not a public utility.

8 (c) "Communications service" means a telecommunications
9 service as that term is defined in 47 USC 153 and the implementing
10 orders and regulations of the federal communications commission.

1 (d) "End user" means the retail subscriber of a communications
2 service.

3 (e) "Person" means an individual, corporation, partnership,
4 association, or any other legal entity. Person does not include a
5 governmental entity.

6 (f) "Regulated services" means a wholesale service over which
7 the commission has authority under this act.

8 (g) "Telecommunications act of 1996" means 110 Stat. 56.

9 (h) "Wholesale service" means the provision of communications
10 service under the requirements of 47 USC 251 and 252.

11 Sec. 3. (1) The commission may not regulate the rates,
12 charges, terms, or conditions for, or entry into or exit from, the
13 provision of any communications service. This act does not prevent
14 any person from providing communications services in competition
15 with another person.

16 (2) A governmental entity shall not provide a communications
17 service except for the use of the entity itself.

18 (3) A person shall not provide a communications service in
19 this state without first registering with the commission. The
20 registration shall include all of the following information:

21 (a) The name of the provider.

22 (b) The address and telephone number of the provider's
23 principal office.

24 (c) If the provider is not located in this state, the address
25 and telephone number of the registered office and the name and
26 telephone number of the registered agent authorized to receive
27 service of process in this state.

1 (4) The registration shall be accompanied by a registration
2 fee of \$100.00.

3 (5) The registration is effective immediately upon filing with
4 the commission and the payment of the registration fee and shall
5 remain in effect for 1 year from its effective date.

6 (6) A registration may be renewed for 1 year by filing with
7 the commission a renewal registration on a form provided by the
8 commission and the payment of a renewal fee of \$100.00.

9 Sec. 4. (1) In administering this act, the commission is
10 limited to the express powers and duties prescribed by this act.

11 (2) Except as otherwise provided by this act, the commission
12 has the jurisdiction and authority to administer all federal
13 telecommunications laws, rules, orders, and regulations that are
14 delegated to the state. The commission shall exercise its
15 jurisdiction and authority consistent with this act and all federal
16 telecommunications laws, rules, orders, and regulations.

17 (3) The commission may promulgate rules under the
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
19 24.328, that are necessary to administer this act.

20 Sec. 5. (1) Upon receipt of an application or complaint filed
21 regarding a provision of this act, the commission shall conduct an
22 investigation, hold hearings, and issue its findings and orders in
23 accordance with the contested hearings provisions of the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328. An application or complaint filed under this section shall
26 contain all information, testimony, exhibits, or other documents
27 and information within the person's possession on which the person

1 intends to rely to support the application or complaint.
2 Applications or complaints that do not meet the requirements of
3 this subsection shall be dismissed or suspended pending the filing
4 with the commission of the required information. If the complainant
5 or applicant requires information in the possession of the
6 respondent, not within the complainant's or applicant's possession,
7 the commission may allow a reasonable opportunity for discovery to
8 allow the complainant or applicant to provide all relevant
9 information, testimony, exhibits, or other documents on which the
10 complainant or applicant intends to rely to support its application
11 or complaint. The burden of proving a case filed under this act is
12 with the party filing the application or complaint.

13 (2) The commission may administer oaths, certify to all
14 official acts, and compel the attendance of witnesses and the
15 production of papers, books, accounts, documents, and testimony.

16 (3) The commission shall issue a final order in a case filed
17 under this act within 90 days from the initiation date of the case.
18 In a contested case, the commission shall issue a final order
19 within 180 days from its initiation date.

20 (4) An order of the commission shall be subject to review by
21 the filing of a claim of appeal with the court of appeals within 30
22 days of the date the order is issued.

23 (5) If a complaint filed under this section alleges facts that
24 warrant emergency relief, the complainant may request an emergency
25 relief order. On the date of filing, the complaint and request for
26 emergency relief shall be hand-delivered to the respondent at its
27 principal place of business in this state. The commission shall

1 allow 5 business days for a filing in response to the request for
2 emergency relief. The commission shall review the complaint, the
3 request for emergency relief, the response, and all supporting
4 materials and determine whether to deny the request for emergency
5 relief or to conduct an initial evidentiary hearing. The initial
6 evidentiary hearing shall be conducted within 5 business days from
7 the date of the notice of hearing, and the commission shall issue
8 an order granting or denying the request for emergency relief. An
9 order for emergency relief may require a party to act or refrain
10 from action to protect competition. Any action required by an order
11 for emergency relief shall be technically feasible and economically
12 reasonable, and the respondent shall be given a reasonable period
13 of time to comply with the order. At the hearing for emergency
14 relief, the respondent has the burden of showing that the order is
15 not technically feasible and not economically reasonable. If the
16 commission finds that extraordinary circumstances exist that
17 warrant expedited review before the commission's issuance of a
18 final order, it shall set a schedule providing for the issuance of
19 a partial final order as to all or part of the issues for which
20 emergency relief was granted within 90 days of the issuance of the
21 emergency relief order.

22 (6) An order for emergency relief may be granted under
23 subsection (1) if the commission finds all of the following:

24 (a) That the party has demonstrated exigent circumstances that
25 warrant emergency relief.

26 (b) That the party seeking relief will likely succeed on the
27 merits.

1 (c) That the party will suffer irreparable harm in its ability
2 to serve customers if emergency relief is not granted.

3 (d) That the order is not adverse to the public interest.

4 (7) The commission may require the complainant to post a bond
5 in an amount sufficient to make whole the respondent in the event
6 that the order for emergency relief is later found to have been
7 erroneously granted.

8 (8) An order for emergency relief shall expire upon the sooner
9 of any of the following:

10 (a) Ninety days after its issuance.

11 (b) Issuance of the commission's partial final order.

12 (c) An earlier date set by the commission. Notwithstanding
13 this subsection, the commission may extend the emergency relief
14 order to a date no later than the date on which the final order in
15 the proceeding is issued.

16 (9) An order granting or denying emergency relief under
17 subsection (1) shall be subject to immediate review in the court of
18 appeals as a matter of right by the party aggrieved. The court may
19 stay an order granting emergency relief upon the posting of a bond
20 or other security in an amount and on terms set by the court.
21 Regardless of whether an appeal is made under this subsection, the
22 commission shall proceed with the case and issue a final order as
23 otherwise required under this section.

24 (10) If a complaint is filed under this section by a provider
25 against another provider, the provider of service shall not
26 discontinue service during the period of the contested case if the
27 provider receiving the service has posted a surety bond, provided

1 an irrevocable letter of credit, or provided other adequate
2 security in an amount and on a form as determined by the
3 commission.

4 (11) The parties to a contested case may agree to use any
5 alternative means that will result in a settlement of the case,
6 including, but not limited to, settlement conferences, mediation,
7 and other informal dispute resolution methods.

8 (12) The commission shall provide for the electronic filing of
9 pleadings and other documents. The electronic filing of materials
10 shall be effective upon submission of the materials to the
11 commission.

12 (13) In addition to any other relief provided by this act, the
13 commission or a party may seek to compel compliance with a
14 commission order by proceedings in mandamus, injunction, or by
15 other appropriate civil remedies in the circuit court or other
16 court of proper jurisdiction.

17 Sec. 6. (1) If the commission finds that a party's position in
18 a proceeding under this act was frivolous, the commission shall
19 award to the prevailing party the costs, including reasonable
20 attorney fees, against the nonprevailing party.

21 (2) As used in this section:

22 (a) "Frivolous" means that at least 1 of the following
23 conditions is met:

24 (i) The party's primary purpose in initiating the proceeding or
25 asserting the defense was to harass, embarrass, or injure the
26 prevailing party.

27 (ii) The party had no reasonable basis to believe that the

1 facts underlying that party's legal position were true.

2 (iii) The party's legal position was devoid of arguable legal
3 merit.

4 (b) "Prevailing party" means a party who wins in the
5 proceeding.

6 Sec. 7. (1) Except under the terms of a mandatory protective
7 order, trade secrets and commercial or financial information
8 submitted under this act are exempt from the freedom of information
9 act, 1976 PA 442, MCL 15.231 to 15.246.

10 (2) If information is disclosed under a mandatory protective
11 order, then the information may be included in the commission's
12 evidentiary record if admissible but it shall remain confidential.

13 (3) There is a rebuttable presumption that cost studies,
14 customer usage data, marketing studies, and contracts between
15 providers are trade secrets or commercial or financial information
16 protected under subsection (1). The burden of removing the
17 presumption under this subsection is with the party seeking to have
18 the information disclosed.

19 Sec. 8. Providers of a regulated service in this state shall
20 pay assessments in an amount equal to the expenses of the
21 commission under 1972 PA 299, MCL 460.111 to 460.120.

22 Sec. 9. (1) The commission shall issue orders that assign the
23 telephone digits 2-1-1 to community resource information and
24 referral answering points established under subsection (3) and
25 prescribe appropriate interconnection orders to carry out the
26 intent of this section.

27 (2) Each provider of basic local exchange service in this

1 state shall assign the telephone number 2-1-1 only to a community
2 resource information and referral answering point established under
3 subsection (3).

4 (3) The commission shall designate a community resource
5 information and referral entity to be the 2-1-1 answering point for
6 various geographical areas within this state. In making its
7 determination, the commission shall consider all of the following:

8 (a) The recommendations of the Michigan alliance for
9 information and referral systems.

10 (b) Whether the relevant state-endorsed multipurpose
11 collaborative bodies are in agreement.

12 (c) Whether the entity has established a framework to assure
13 the provision of coverage of the 2-1-1 telephone number 24 hours
14 per day, 7 days per week.

15 (d) Whether the entity meets 2-1-1 standards adopted by the
16 Michigan alliance for information and referral systems.

17 (4) Each community resource information and referral entity
18 designated by the commission to be the 2-1-1 answering point for a
19 particular geographical area within the state shall establish the
20 framework to provide sufficient resources to operate the 2-1-1
21 telephone number 24 hours per day, 7 days per week.

22 Sec. 10. (1) The commission shall require each provider to
23 make available a text telephone communications device for the deaf
24 at costs to each individual who is certified as deaf or severely
25 hearing or speech impaired by a licensed physician, audiologist, or
26 qualified state agency, and to each primary public safety answering
27 point or secondary public safety answering point as those terms are

1 defined in section 102 of the emergency telephone service enabling
2 act, 1986 PA 32, MCL 484.1102.

3 (2) The commission shall require each provider to make
4 available a communication relay service whereby persons using a
5 text telephone communications device for the deaf can communicate
6 with persons using a voice telephone through the use of third party
7 intervention or automated translation. Each provider shall
8 determine whether to provide a communication relay service on its
9 own, jointly with other providers, or by contract with other
10 providers. The commission shall determine the technical standards
11 and essential features of text telephone and communication relay
12 service to ensure their compatibility and reliability.

13 (3) The commission shall appoint a 3-person advisory board
14 consisting of a representative of deaf individuals, the commission
15 staff, and providers to assist in administering this section. The
16 advisory board shall hold meetings, open to the public, at least
17 once each 3 months, shall periodically seek input on the
18 administration of this section from individuals who are deaf or are
19 hearing or speech impaired, and shall report to the commission at
20 least annually. The advisory board shall investigate and make
21 recommendations on the feasibility of hiring a reasonable number of
22 individuals who are deaf or are hearing or speech impaired to work
23 in the provision of telecommunication relay service.

24 (4) Rates and charges for calls placed through a communication
25 relay service shall not exceed the rates and charges for calls
26 placed directly from the same originating location to the same
27 terminating location. Unless ordered by the commission, a provider

1 of a communication relay service is not required to handle calls
2 from public telephones except for calls charged collect, cash, to a
3 credit card, or third-party number.

4 Sec. 11. (1) As used in this section:

5 (a) "Attachment" means any wire, cable, facility, or other
6 apparatus installed upon any pole or in any duct or conduit, owned
7 or controlled, in whole or in part, by a provider.

8 (b) "Usable space" means the total distance between the top of
9 a utility pole and the lowest possible attachment point that
10 provides the minimum allowable grade clearance and includes the
11 space which separates communication and power lines.

12 (2) A provider shall allow and establish the rates, terms, and
13 conditions for attachments by another provider, a cable service, or
14 an educational institution. The rates, terms, and conditions shall
15 be just and reasonable. A rate is just and reasonable if it assures
16 the provider recovery of not less than the additional costs of
17 providing the attachments, or more than an amount determined by
18 multiplying the percentage of the total usable space, or the
19 percentage of the total duct or conduit capacity, which is occupied
20 by the attachment, by the sum of the operating expenses and actual
21 capital costs of the provider attributable to the entire pole,
22 duct, or right-of-way.

23 (3) An attaching provider or cable service shall obtain any
24 necessary authorization before occupying public ways or private
25 rights-of-way with its attachment.

26 (4) This section does not limit the commission's authority to
27 regulate the rates, terms, and conditions of attachments upon poles

1 or in ducts or conduits owned or controlled by utilities engaged in
2 the transmission of electricity for light, heat, or power.

3 Sec. 12. (1) An end user of a provider shall not be switched
4 to another provider without the end user's oral authorization,
5 written confirmation, confirmation through an independent third
6 party, or other verification procedures subject to commission
7 approval, confirming the end user's intent to make a switch and
8 that the end user has approved the details of the switch.

9 (2) A provider shall not include or add optional services in
10 an end user's telecommunications service package without the end
11 user's oral authorization, written confirmation, confirmation
12 through an independent third party, or other verification
13 procedures subject to commission approval.

14 (3) The commission shall adopt rules to enforce this section.
15 The rules shall require that all providers comply with the
16 regulations established by the federal communications commission on
17 verification procedures for the switching of an end user's
18 communications provider.

19 Sec. 13. A provider that receives federal universal service
20 support for telecommunications services provided to eligible
21 elementary and secondary schools or libraries under the
22 telecommunications act of 1996 shall provide those intrastate
23 services at discounts equal to the discounts applicable for
24 eligible interstate services.

25 Sec. 14. (1) A provider shall not do any of the following:

26 (a) Make a statement or representation, including the omission
27 of material information, regarding the rates, terms, or conditions

1 of providing a telecommunication service that is false, misleading,
2 or deceptive.

3 (b) Charge an end user for a subscribed service that the end
4 user did not make an initial affirmative order for. Failure to
5 refuse an offered or proposed subscribed service is not an
6 affirmative order for the service.

7 (c) If an end user has cancelled a service, charge the end
8 user for service provided after the effective date the service was
9 canceled.

10 (d) If a residential end user has orally ordered a service,
11 fail to confirm the order in writing within 15 days after the
12 service is ordered.

13 (e) Disparage the services, business, or reputation of another
14 by false or misleading representation of fact.

15 (f) Represent to a party to whom services are supplied that
16 the services are being supplied in response to a request made by or
17 on behalf of the party when they are not.

18 (g) Cause a probability of confusion or a misunderstanding as
19 to the legal rights, obligations, or remedies of a party to a
20 transaction.

21 (h) Represent or imply that the subject of a transaction will
22 be provided promptly, or at a specified time, or within a
23 reasonable time, if the provider knows or has reason to know it
24 will not be so provided.

25 (i) Cause coercion and duress as a result of the time and
26 nature of a sales presentation.

27 (2) The commission may accept an assurance of discontinuance

1 of a method, act, or practice which is alleged to be unlawful under
2 this section from the person who is alleged to have engaged, be
3 engaging, or be about to engage in the method, act, or practice.

4 The assurance shall not be an admission of a violation of this act
5 or be introduced in any other proceeding. Unless rescinded by the
6 parties or voided by the court for good cause, the assurance may be
7 enforced in the circuit court by the parties to the assurance. The
8 assurance may include a stipulation for any of the following:

9 (a) The voluntary payment by the person for the cost of
10 investigation.

11 (b) An amount to be held in escrow pending the outcome of an
12 action.

13 (c) An amount for restitution to an aggrieved person.

14 Sec. 15. A provider shall not refuse, charge, delay, or impair
15 the speed of connection of a person to a communications emergency
16 service.

17 Sec. 16. (1) If after notice and hearing under section 5 the
18 commission finds that a person has violated this act or rules
19 promulgated under this act, the commission shall order remedies and
20 penalties where applicable as follows:

21 (a) Except as provided in subdivision (b), order the person to
22 pay a fine for the first violation of not less than \$1,000.00 or
23 more than \$20,000.00, and for each subsequent offense, a fine of
24 not less than \$2,000.00 or more than \$40,000.00.

25 (b) If the provider has less than 250,000 access lines, order
26 the provider to pay a fine for the first violation of not less than
27 \$200.00 or more than \$500.00, and for each subsequent violation, a

1 fine of not less than \$500.00 or more than \$1,000.00.

2 (c) Order the revocation of the person's registration.

3 (d) Order the person to cease and desist.

4 (2) Except as provided in subsection (3), the commission shall
5 not have authority to award compensatory damages for any violation
6 of this act.

7 (3) If after notice and hearing the commission finds that a
8 person has violated sections 12 through 15 or rules promulgated
9 under those sections, the commission shall order remedies and
10 penalties to protect and make whole end users and other persons who
11 have suffered damages as a result of the violation, including, but
12 not limited to, 1 or more of the following:

13 (a) Order the person to pay a fine for the first violation of
14 not less than \$20,000.00 or more than \$30,000.00. For a second and
15 any subsequent violation, the commission shall order the person to
16 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
17 the commission finds that the second or any of the subsequent
18 violations were knowingly made in violation of section 13, 14, or
19 15, the commission shall order the person to pay a fine of not more
20 than \$70,000.00. Each switch made or service added in violation of
21 section 12 or 14 shall be a separate violation under this
22 subdivision.

23 (b) Order an unauthorized provider to refund to the end user
24 any amount greater than the end user would have paid to an
25 authorized provider.

26 (c) Order that a portion between 10% and 50% of the fine
27 assessed under subdivision (a) be paid directly to the customer who

1 suffered the violation of section 12 or 14.

2 (d) Order an unauthorized provider to reimburse an authorized
3 provider an amount equal to the amount paid by the end user that
4 should have been paid to the authorized provider.

5 (e) Revoke the registration if the commission finds a pattern
6 of violations of section 12 or 14.

7 (f) Issue cease and desist orders.

8 (3) Notwithstanding subsection (2), a fine shall not be
9 imposed for a violation of section 12 if the provider has otherwise
10 fully complied with section 12 and shows that the violation was an
11 unintentional and bona fide error notwithstanding the maintenance
12 of procedures reasonably adopted to avoid the error. Examples of a
13 bona fide error include clerical, calculation, computer
14 malfunction, programming, or printing errors. An error in legal
15 judgment with respect to a person's obligations under section 12 is
16 not a bona fide error. The burden of proving that a violation was
17 an unintentional and bona fide error is on the provider.

18 Sec. 17. This act takes effect January 1, 2006.