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BILL



ANALYSIS

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House Bill 4257 (Substitute H-6 as passed by the House)
Sponsor: Representative Tim Melton
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

Date Completed: 12-8-09

CONTENT

The bill would amend the Michigan Telecommunications Act to do the following:

- Eliminate a provision stating that rates set by an intrastate switched toll access service provider are just and reasonable if they do not exceed the rates allowed by the Federal government for the same interstate services.
- Require an "eligible" toll access service provider to set rates for intrastate switched toll access services that did not exceed the rates allowed by the Federal government for the same interstate services.
- Prohibit other providers from charging intrastate toll access service rates that exceeded those in effect on July 1, 2009, and require them to reduce the differential between rates for intrastate and interstate toll access services by 20% each year from 2011 to 2015.
- Establish an intrastate switched toll access rate restructuring mechanism, to exist for 12 years, from which an eligible provider could receive monthly disbursements to recover the lost intrastate switched toll access service revenue resulting from rate reductions.
- Require the Public Service Commission (PSC) to compute the size of the initial disbursement.
- Require the restructuring mechanism to be supported by a

mandatory monthly contribution by all providers of retail intrastate telecommunications services and commercial mobile service.

- Require the PSC to establish the initial contribution assessment percentage, and adjust the assessment as necessary to maintain sufficient funds.
- Require the PSC to recalculate the size of the restructuring mechanism every four years.
- Require the PSC to initiate an enforcement proceeding if a provider failed to make the required contributions.
- Allow, rather than require, the PSC to investigate providers who received a reduced toll access rate to ensure that they reduced customer rates by the same amount.
- Delete a provision exempting basic local exchange providers with 250,000 or fewer customers in Michigan from the section the bill would amend.

Toll Access Service Rates

Currently, under Section 310 of the Act, a provider of toll access services must set the rates for those services. Access service rates and charges set by a provider that do not exceed the rates allowed for the same interstate services by the Federal government are considered just and reasonable. The bill would delete these provisions.

Instead, a provider of toll access services would have to set the rates for intrastate switched toll access services at rates that did not exceed the rates allowed for the same interstate services by the Federal government, and would have to use the access rate elements for intrastate switched toll access services that were in effect for that provider and were allowed for the same interstate services by the Federal government. Eligible providers would have to comply with this provision as of the date established for the commencement of the operation of the proposed restructuring mechanism.

("Eligible provider" would mean an incumbent local exchange carrier as defined in the Section 251 of the Federal Telecommunications Act (47 USC 251) that as of January 1, 2009, had rates for intrastate switched toll access services, and that provided the services and functionalities identified by rules of the Federal Communications Commission (FCC) described in 47 CFR 54.101(a).

Under 47 USC 251, "incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that on February 8, 1996, provided telephone exchange service in the area; on that date, was deemed to be a member of the Exchange Carrier Association; and is a person or entity that, on or after that date, became a successor or assign of a member of the Association.

Under 47 CFR 54.101(a), the following services or functionalities must be supported by Federal universal service support mechanisms: voice grade access to the public switched network, local usage, dual tone multifrequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitations for qualifying low-income customers.)

Providers other than eligible providers could not charge intrastate toll access service rates in excess of those in effect as of July 1, 2009, and would have to reduce the differential, if any, between intrastate and interstate switched toll access service rates in effect as of that date in not more than

five steps of at least 20% each of the differential on the first of January in 2011, 2012, 2013, 2014, 2015.

The bill would retain a provision allowing providers to agree to a rate that is less than the rate allowed by the Federal government.

Restructuring Mechanism

Establishment & Administration. In order to restructure intrastate switched toll access service rates, the bill would establish within the Department of Energy, Labor, and Economic Growth (DELEG) an intrastate switched toll access rate restructuring mechanism as a separate interest-bearing fund. The State Treasurer would have to direct the investment of the fund. Money in the fund would remain in it at the close of the fiscal year and would not revert to the General Fund.

An eligible provider would be entitled to receive monthly disbursements from the restructuring mechanism in order to recover the lost intrastate switched toll access service revenue resulting from rate reductions.

The mechanism would be administered by the PSC. It would have to be established and begin operation within 270 days after the bill took effect. Subject to that requirement, the PSC would have to establish the date to begin operating the mechanism and notify the participants at least 30 days in advance. The PSC would have to recover its actual costs of administering the mechanism from assessments collected for operating it.

The Commission would have to establish the procedures and timelines for organizing, funding, and administering the restructuring mechanism. The Commission would have to report to the Legislature and the Governor annually regarding the administration of the mechanism. The report would have to include the total amount of money collected from contributing providers, the total amount of money disbursed from the restructuring mechanism annually to each eligible provider, the costs of administration, and any other information the PSC considered relevant. Any company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities,

contributions, and intrastate telecommunications services revenue submitted to the PSC would be confidential commercial or financial information and exempt from public disclosure pursuant to the Act.

Initial Size. Within 60 days after the bill took effect, each eligible provider would have to submit to the PSC information and all the supporting documents that established the amount of the reduction in annual intrastate switched toll access revenue that would result from the required rate reduction. The reduction would have to be calculated for each eligible provider as the difference between intrastate and interstate switched toll access services rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for calendar year 2008.

The PSC would have to compute the size of the initial restructuring mechanism disbursements for each eligible provider and would have to inform each eligible provider of that computation within 60 days after receiving the information and supporting documentation.

Monthly Contribution. The restructuring mechanism would have to be created and supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service. Interconnected voice over internet protocol (VoIP) services could not be considered an intrastate telecommunications service for this purpose and VoIP service providers could not be required to pay, directly or indirectly, the mandatory monthly contributions. A provider of telecommunications services to an interconnected VoIP provider would not have to pay a mandatory monthly contribution related to those VoIP services and could not attempt to pass through any monthly contributions, directly or indirectly, to a VoIP provider. Nothing in the Act would grant the PSC authority over commercial mobile service providers or VoIP providers except as was strictly necessary for administration of the restructuring mechanism.

Within 60 days of the bill's effective date, each contributing provider would have to report to the PSC its 2008 intrastate retail

telecommunications services revenue. Notwithstanding the provisions excluding VoIP providers, if the FCC determined that interconnected VoIP services could be subject to state regulation for universal services purposes, the PSC could open a proceeding to determine who was required to participate in a universal service fund.

Initial Assessment. The initial contribution assessment percentage would have to be a uniform percentage of retail intrastate telecommunications services revenue determined by projecting the total amount necessary to cover the initial intrastate switched toll access rate restructuring mechanism disbursement levels for 12 months, including projected cash reserve requirements, actual and projected administrative costs, and projected uncollectible contribution assessments, divided by the 2008 calendar year total retail intrastate telecommunications services revenue in Michigan, less projected uncollectible revenue, reported to the PSC. The Commission would have to issue an order establishing the initial calculation within 150 days of the bill's effective date. The Commission could increase or decrease the contribution assessment on a quarterly basis or other basis as necessary to maintain sufficient funds for disbursements.

Each contributing provider would have to remit to the PSC on a monthly basis an amount equal to its intrastate retail telecommunications services revenue, less uncollectible revenue, multiplied by the contribution assessment determined by the PSC, according to a time frame established by the Commission. These contributions would have to continue until the end of the period for which eligible providers were entitled to receive monthly disbursements from the restructuring mechanism.

Recalculation. The PSC would have to recalculate the size of the restructuring mechanism for each eligible provider four years from the date the initial mechanism became operational and again four years after that.

The restructuring mechanism would have to be recalculated each time as the difference between the intrastate switched toll access rates in effect as of July 1, 2009, and the interstate switched toll access rates in effect at the time of the recalculation, multiplied

by the intrastate switched toll access minutes of use and other switched access demand quantities for calendar year 2008.

The recalculated restructuring mechanism would have to be further adjusted during the first recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31, 2008, to December 31 of the year immediately preceding the year in which the adjustment was made.

The recalculated restructuring mechanism would have to be adjusted during the second recalculation by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31 of the year of the first recalculation to December 31 of the year immediately preceding the second calculation.

Disbursements & Use. Each eligible provider would be entitled to receive monthly disbursements from the restructuring mechanism for up to 12 years from the date it was established, at which time the mechanism would cease to exist.

The money received and administered by the PSC for the support and operation of the mechanism could not be used by the Commission or any department, agency, or branch of government of Michigan for any other purpose. That money would not be subject to appropriation, allocation, assignment, expenditure, or other use by any department, agency, or branch of government of Michigan.

Federal Action

If the Federal government adopted intercarrier compensation reforms or took any action that caused or required a significant change in interstate switched toll access service rates, the PSC could initiate, or any interested party could file an application for, a proceeding pursuant to the Act within 60 days of that action to determine whether any modifications to the size, operation, or composition of the restructuring mechanism were warranted. While that proceeding was pending, the requirement for eligible providers to set intrastate switched toll access services rates equal to interstate switched toll access service would have to be suspended temporarily by those providers. Intrastate

access rates could not be increased above the levels existing at the time of the suspension. Following notice and hearing, upon a showing of good cause, the PSC could stop or place certain conditions on the temporary suspension.

If the Federal government changed the Federal universal service contribution methodology so that it was not based on a percentage of total interstate telecommunications services revenue, the PSC would have to modify the contribution methodology for the restructuring mechanism to be consistent with the Federal methodology. The PSC would have to initiate a proceeding to modify the contribution methodology for the restructuring mechanism and to establish a reasonable time period for transition to the new methodology.

Contributing Provider Violations

If any contributing provider subject to Section 310 failed to make the required contributions or failed to provide required information to the PSC, the Commission would have to initiate an enforcement proceeding under the Act. If the Commission found that a contributing provider had failed to make contributions or to perform any act required under Section 310, the provider would be subject to the remedies and penalties under Section 601.

(Under that section, if after notice and hearing the PSC finds that a person has violated the Act, the Commission must order remedies and penalties to protect and make whole ratepayers and other people who have suffered an economic loss as a result of the violation, including one or more of the following:

- A fine for the first offense of at least \$1,000 but not more than \$20,000 per day of violation, and for each subsequent offense, a fine of at least \$2,000 but not more than \$40,000 per day.
- If the provider has fewer than 250,000 access lines, a fine for the first offense of not less than \$200 but not more than \$500 per day, and for each subsequent offense, a fine of at least \$500 but not more than \$1,000 per day.
- A refund to the provider's ratepayers of any collected excessive rates.

- Cease and desist orders.
- Except for an arbitration case, attorney fees and actual costs of a person or a provider of fewer than 250,000 end-users.)

Disclosure of Information

Eligible providers and contributing providers would have to give the PSC information that was required for the administration of the restructuring mechanism. Company-specific information pertaining to access lines, switched toll access services minutes of use, switched toll access demand quantities, contributions, and intrastate telecommunications services revenue submitted to the PSC would be confidential commercial or financial information and exempt from public disclosure.

Disputes

Disputes arising under Section 310 could be submitted to the PSC for resolution pursuant to the Act.

PSC Investigation

Under the Act, if a toll access service rate is reduced, the provider receiving the reduced rate must reduce its rate to its customers by an equal amount. The PSC must investigate and ensure that the provider has complied with this requirement. The bill would permit, rather than require, the PSC to investigate and ensure compliance.

Providers with Fewer than 250,000 Customers

The bill would delete a provision stating that Section 310 does not apply to basic local exchange providers with 250,000 or fewer customers in Michigan.

MCL 484.2310

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would increase the responsibilities of the Michigan Public Service Commission. The bill would require the PSC to administer a program to restructure interstate switched toll access rates charged by telecommunications providers. The restructuring would consist of limits on

access charges and a system of assessments on and payments to certain telecommunications providers.

The bill would establish a fund in the Department of Energy, Labor, and Economic Growth, referred to as the Intrastate Switched Toll Access Rate Restructuring Mechanism. This fund would receive deposits from assessments levied on providers of retail intrastate telecommunications services and providers of commercial mobile service. The assessment rate would be determined by the PSC in an amount sufficient to cover its administrative costs and disbursements from the fund to incumbent local exchange providers that were required to reduce their access charges under the bill. The PSC would determine disbursements according to a statutory formula based on data provided by the affected companies. The restructuring mechanism would operate for not more than 12 years from its inception.

The bill specifies that this program would operate independently of the State budget. The assessment revenue would not be subject to appropriation or available for any purpose other than the program created by the bill. The fund would earn interest and carry forward into subsequent fiscal years.

Additional responsibilities of the PSC would include adjustment of assessment rates, reporting, dispute resolution, and enforcement. The PSC would have the authority to levy fines for violations of the program. These fines would be deposited into the General Fund.

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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.