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BILL ANALYSIS

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Senate Bill 636 (as introduced 10-22-13)
Sponsor: Senator Mike Nofs
Committee: Energy and Technology

Date Completed: 10-29-13

CONTENT

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

-- **Eliminate a requirement for a Public Service Commission (PSC) proceeding and otherwise revise procedures for a telecommunication provider to discontinue basic local exchange or toll service to an exchange.**
-- **Require the PSC to recalculate the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM) on March 13, 2018 (rather than on September 13, 2014, and September 13, 2018).**
-- **Delete references to PSC authority in provisions regarding text telephone-telecommunications devices and relay service for individuals who are deaf, hard-of-hearing, or speech-impaired.**
-- **Eliminate a requirement that operator and payphone service providers renew their registration annually and pay an annual renewal fee.**

Service Discontinuance

Section 313 of the Act prohibits a telecommunication provider that provides basic local exchange and/or toll service from discontinuing either service to an exchange, unless at least one alternative provider for toll service or at least two alternative providers for basic local exchange service are furnishing comparable voice service to customers in the exchange.

("Telecommunication provider" means a person that for compensation provides one or more telecommunication services. The term does not include a provider of commercial mobile (i.e., wireless) service. "Telecommunication services" includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.

"Basic local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality two-way interactive switched voice or data communication. "Toll service" means the transmission of two-way interactive switched communication between local calling areas. "Exchange" means one or more contiguous central offices and all associated facilities within a geographical area in which a provider offers basic local exchange service.)

A provider proposing to discontinue a regulated service to an exchange must file a notice with the PSC, publish the notice in a newspaper of general circulation within the exchange, notify each of its customers within the exchange by first-class mail or within customer bills, and provide other reasonable notice as required by the Commission.

Within 60 days after publication or receipt of the notice, a person or other provider affected by the discontinuance may apply to the PSC to determine if the discontinuance is authorized. Within 90 days after the notice is published, in response to a request or on its own initiative, the PSC may commence a proceeding to determine whether the discontinuance is authorized. The Commission has 180 days from the date a preceding is initiated to issue its final order. A provider may not discontinue service unless it has given each customer at least 60 days' notice after a Commission order has been issued or after the last day for initiating a proceeding.

Under the bill, these provisions would not apply after December 31, 2016. Beginning January 1, 2017, a telecommunication provider that provided basic local exchange or toll service could discontinue that service in an exchange by doing all of the following at least 90 days before discontinuing the service:

-- Filing a notice of the discontinuance with the PSC.
-- Publishing a notice in a newspaper of general circulation within the exchange.
-- Giving notice to each of the provider's customers within the exchange by first-class mail or within customer bills.
-- Notifying any interconnecting providers by first-class mail or other notice permitted under the terms of the interconnection agreement.

The bill provides that Section 313 "does not create, restrict, or expand the commission's jurisdiction and authority for any of the following:"

-- The jurisdiction and authority established under Section 201.
-- The jurisdiction and authority to carry out the PSC's obligations to enforce the rights, duties, and obligations of an entity established in Sections 251 and 252 of the Federal Telecommunications Act, and any applicable agreement or wholesale tariff or State law, rule, regulation, or order related to wholesale rights, duties, and obligations, including interconnection and exchange voice traffic.
-- The jurisdiction and authority to regulate switched access rates, terms, and conditions, including the implementation of Federal or State law concerning intercarrier compensation.

(Under Section 201 of the Michigan Telecommunications Act, the PSC has the jurisdiction and authority to administer the Act and all Federal telecommunications laws, rules, orders, and regulations that are delegated to the State. Sections 251 and 252 of the Federal Telecommunications Act prescribe the PSC's jurisdiction and authority with regard to interconnection of telecommunication carriers with the local exchange carrier's network, and procedures for negotiation, arbitration, and approval of interconnection agreements.)

Restructuring Mechanism

Except as otherwise provided, the PSC may not review or set the rates for toll access services. ("Access service" means access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication services within the local exchange.)

A provider of toll access services must set the rates for intrastate switched toll access services at rates that do not exceed the rates allowed for the same interstate services by the Federal government, and must use the access rate elements for intrastate services that are in effect for that provider and are allowed for the same interstate services. Eligible providers had to comply with this provision as of September 13, 2010.

("Eligible provider" means an incumbent local exchange carrier (ILEC) that as of January 1, 2009, had rates for intrastate switched toll access services higher than its rates for the same interstate switched toll access services, and that provides the services and functionalities identified by rules of the Federal Communications Commission described at 47 CFR 54.101(a). That regulation requires eligible voice telephony services to provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 9-1-1 and enhanced 9-1-1; and toll limitation services to qualifying low-income consumers.)

Providers that are not eligible may not charge intrastate toll access service rates in excess of those rates in effect as of July 1, 2009, and must reduce the differential, if any, between intrastate and interstate switched toll access services rates in effect on that date in not more than five steps of at least 20% each of the differential on January 1 every year from 2011 to 2015.

If toll access service rate is reduced, then the provider receiving the reduced rate must reduce its rate to its customers by an equal amount.

In order to restructure intrastate switched toll access service rates, the Act established within a State department (now the Department of Licensing and Regulatory Affairs) the Michigan Intrastate Switched Toll Access Restructuring Mechanism, as a separate interest-bearing fund administered by the PSC. An eligible provider is entitled to receive monthly disbursements from the ARM, as described below, in order to recover the lost intrastate switched toll access service revenue resulting from the required rate reductions.

To calculate the initial size of the ARM, by February 15, 2010, each eligible provider had to submit to the PSC information that established the amount of the reduction in annual intrastate switched toll access revenue that would result from the rate reduction. The reduction had to be calculated for each eligible provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate minutes of use and other switched access demand quantities for the calendar year 2008. The PSC had to compute the size of the initial disbursements for each eligible provider.

The ARM is supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service (which does not include providers of interconnected voice over internet protocol (VOIP) services). These contributions must continue until the end of the period for which eligible providers are entitled to receive monthly disbursements from the ARM.

By February 15, 2010, each contributing provider had to report its 2008 intrastate retail telecommunications services revenue to the PSC. The initial contribution assessment percentage was a uniform percentage of this revenue determined by projecting the total amount necessary to cover the initial disbursement levels for 12 months, divided by the 2008 calendar year total retail intrastate telecommunications services revenue in the State, less projected uncollectible revenue, reported to the PSC. The Commission had to issue an order establishing the initial calculation of the contribution assessment percentage by May 16, 2010. The Commission may increase or decrease the assessment on a quarterly or other basis as necessary to maintain sufficient funds for disbursements.

Each eligible provider is entitled to receive monthly disbursements from the ARM for not more than 12 years after the mechanism's establishment, at which time it will cease to exist.

The ARM became operational on September 13, 2010. The Act requires the PSC to recalculate the size of the restructuring mechanism for each eligible provider on September 13, 2014, and again on September 13, 2018. The bill would eliminate both of those dates, and instead require the Commission to perform one recalculation on March 13, 2018. Currently, the ARM must be recalculated as follows:

-- The ARM must be recalculated each time as the difference between the intrastate switched toll access rates in effect as of July 1, 2009, and the interstate rates in effect at the time of the recalculation, multiplied by the intrastate minutes of use and other switched access demand quantities for the calendar year 2008.
-- During the first recalculation, the recalculated ARM must be further adjusted 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 before the year in which the adjustment is made.
-- During the second recalculation, the recalculated ARM must be adjusted by any percentage change 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 before the second recalculation.

The bill would eliminate the provision related to the second recalculation, and would apply the first two requirements to the recalculation on March 13, 2018.

<u>Text-Telecommunications Devices & Relay Service</u>

Under the Michigan Telecommunications Act, the PSC must require each basic local exchange service provider to provide a text telephone-telecommunications device for the deaf to each individual who is certified as deaf, hard-of-hearing, or speech-impaired, and to each public safety answering point (a communications facility operated or answered on a 24-hour basis to receive 9-1-1 calls and dispatch public safety response services, as appropriate). The PSC also must require each basic local exchange service provider to provide a telecommunication relay service that enables a person using the device to communicate with a person using a voice telephone through the use of third-party intervention or automated translation. The bill would eliminate these references to the PSC. Instead, the Act would require the providers to provide the devices and relay service. The bill also would eliminate a requirement for the Commission to determine the technical standards and essential features of text telephone and telecommunication relay service to ensure their compatibility and reliability.

Unless ordered by the PSC, a provider of telecommunications relay service does not have to handle calls from public telephones, except for calls charged collect or to cash, a credit card, or a third-party number. The bill would eliminate the reference to a PSC order.

Notwithstanding any other provision of the Act, a provider may offer discounts on toll calls where a device for the deaf is used. The bill would delete a provision that precludes the Commission from prohibiting such discounts on toll calls placed through a relay service.

Currently, the PSC must establish a rate for each of a provider's subscriber lines to allow the provider to recover its costs related to the device and relay service requirements, and may waive the costs assessed to individuals who are deaf or severely hearing- or speech-impaired. The rate established by the Commission may be assessed as a line item on an end-user's bill. The bill would eliminate the references to the Commission, and instead would allow the provider to recover the applicable costs, and waive the assessed costs to those who were deaf or severely hearing- or speech-impaired.

Operator & Payphone Service

The Act requires an operator service provider or payphone service provider to register with the PSC and pay a $100 fee before providing service in Michigan. The registration is effective upon filing and remains in effect for one year. A provider may renew registration annually by filing a renewal with the Commission and paying a renewal fee of $100.

Under the bill, a registration would not expire after one year and would not have to be renewed. The $100 registration fee would have to be paid only once.

Local Calls

The Act provides that a call made to a local calling area adjacent to the caller's local calling area is considered a local call and must be billed as such. A call made to a party who is not located within the geographic area of the caller's local calling area or an adjacent local calling area (as defined by the PSC's order in case numbers U-12515 and U-12528) is not a local call if the tariff of the provider originating the call does not classify the call as a local call. The bill would refer to the tariff, service guide, or similar document containing the terms and conditions of the originating provider.

MCL 484.2304 et al. Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a minor, but likely negative fiscal impact on the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill would remove the $100 annual renewal fees paid by providers of payphone and operator service, which would reduce revenue to the Public Service Commission by a small amount.

The bill also would allow basic local exchange or toll service providers to discontinue services after December 31, 2016. The Public Service Commission receives assessments based on the revenue received by telecommunication providers. To the extent that telecommunication providers would decide to stop offering basic local exchange or toll service in certain areas, those assessments would be reduced. However, it is likely that assessment revenue lost due to providers' decisions to stop service in certain areas would be mitigated by former consumers of the discontinued services switching to alternative services.

Fiscal Analyst: Josh Sefton