

MICHIGAN TELECOMMUNICATIONS ACT (EXCERPT)

Act 179 of 1991

ARTICLE 2

MICHIGAN PUBLIC SERVICE COMMISSION

484.2201 Jurisdiction; authority; administration of act; consistency with federal laws, rules, orders, and regulations.

Sec. 201. (1) Except as otherwise provided by this act or federal law, the commission has the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state, including, but not limited to, the authority to arbitrate and enforce interconnection agreements and to establish rates in accordance with the standards set forth by applicable law.

(2) The commission shall exercise its jurisdiction and authority consistent with this act and all federal telecommunications laws, rules, orders, and regulations.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 2000, Act 295, Imd. Eff. July 17, 2000;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 58, Imd. Eff. June 14, 2011.

484.2202 Additional powers and duties; enforcement of rules; electronic filings; promulgation of new rules.

Sec. 202. (1) In addition to the other powers and duties prescribed by this act, the commission shall do all of the following:

(a) Establish by order the manner and form in which telecommunication providers of regulated services within the state keep accounts, books of accounts, and records in order to determine the total service long-run incremental cost requirements of this act of providing a service. The commission requirements under this subdivision shall be consistent with any regulations covering the same subject matter made by the federal communications commission.

(b) Except as otherwise provided in this subdivision, require by order that a provider of a regulated service, including access service, make available for public inspection and file with the commission a schedule of the provider's rates, services, and conditions of service, including access service provided by contract. Except for access service, a provider is exempt from any commission order requiring that provider to file with the commission its rates, services, and conditions of regulated service if the provider files a certification with the commission opting out of the filing requirement. A certification under this subdivision shall be signed by an officer of the provider.

(c) Promulgate rules under section 213 to establish and enforce quality standards for all of the following:

(i) The provision of basic local exchange service to end users.

(ii) The provision of unbundled network elements and local interconnection services to providers that are used in the provision of basic local exchange service.

(iii) The timely and complete transfer of an end user from 1 provider of basic local exchange service to another provider.

(iv) Providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers.

(2) Rules promulgated under subsection (1)(c) shall include remedies for the enforcement of the rules that are consistent with this act and federal law. Rules promulgated under subsection (1)(c)(ii) shall not apply to the provision of unbundled network elements and local interconnection services subject to quality standards in an interconnection agreement approved by the commission. In promulgating any rules under subsection (1)(c), the commission shall consider to what extent current market conditions are sufficient to provide adequate service quality to basic local exchange service end users. Any service quality rules promulgated by the commission shall expire within 3 years of the effective date of the rules. The commission may, before the expiration of the rules, promulgate new rules under subsection (1)(c). However, the commission may promulgate new rules under subsection (1)(c)(iii) at any time. Any service quality rules promulgated by the commission under subsection (1)(c)(i) and any retail service quality rules promulgated before January 1, 2006 shall expire on June 30, 2011.

(3) The commission shall permit the electronic filing of any pleadings, tariffs, or any other document required or allowed to be filed with the commission under this act.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 58, Imd. Eff. June 14, 2011.

Administrative rules: R 484.401 et seq. of the Michigan Administrative Code.

484.2203 Commencement of case; filing; emergency relief order; burden of proof; investigation; hearings; judicial review; continuation of service; posting security; alternative dispute process; additional relief; motion for stay.

Sec. 203. (1) Upon receipt of an application or complaint filed under this act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) If a complaint filed under this section alleges facts that warrant emergency relief, the complainant may request an emergency relief order. On the date of filing, the complaint and request for emergency relief shall be hand-delivered to the respondent at its principal place of business in Michigan. The commission shall allow 5 business days for a filing in response to the request for emergency relief. The commission shall review the complaint, the request for emergency relief, the response, and all supporting materials and determine whether to deny the request for emergency relief or to conduct an initial evidentiary hearing. The initial evidentiary hearing shall be conducted within 5 business days from the date of the notice of hearing and the commission shall issue an order granting or denying the request for emergency relief. 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 shall be technically feasible and economically reasonable and the respondent shall be given a reasonable period of time to comply with the order. At the hearing for emergency relief, the respondent has the burden of showing that the order is not technically feasible and not economically reasonable. If the commission finds that extraordinary circumstances exist that warrant expedited review before the commission's issuance of a final order, it shall set a schedule providing for the issuance of a partial final order as to all or part of the issues for which emergency relief was granted within 90 days of the issuance of the emergency relief order.

(3) An order for emergency relief may be granted under subsection (2) if the commission finds all of the following:

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

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

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

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

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

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

(a) Ninety days after its issuance.

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

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

(6) An order granting or denying emergency relief under subsection (2) shall be subject to immediate review in the court of appeals as a matter of right by the party aggrieved. The review shall be de novo and shall comply with Michigan court rule 7.211(c)(6). The court may stay an order granting emergency relief upon the posting of a bond or other security in an amount and on terms set by the court. Regardless of whether an appeal is made under this subsection, the commission shall proceed with the case and issue a final order as otherwise required under this section.

(7) An application or complaint filed under this section shall contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the application or complaint. Applications or complaints that do not meet the requirements of this subsection shall be dismissed or suspended pending the receipt by the commission of the required information. If the complainant or applicant requires information in the possession of the respondent, not within the complainant's or applicant's possession, the commission may allow a reasonable opportunity for discovery to allow the complainant or applicant to provide all relevant information, testimony, exhibits, or other documents on which the complainant or applicant intends to rely to support its application or complaint.

(8) The burden of proving a case filed under this act is with the party filing the application or complaint.

(9) In a contested case under this section, the commission can administer oaths, certify all official acts, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony.

(10) Except as otherwise provided in this section, the commission shall issue a final order in a case filed under this section within 90 days from the date the application or complaint is filed.

(11) Except as provided for a hearing involving a request for emergency relief, if a hearing is required, the applicant or complainant shall publish a notice of hearing as required by the commission within 7 days of the

date the application or complaint was filed or as required by the commission. The first hearing shall be held within 10 days after the date of the notice. If a hearing is held, the commission shall have 180 days from the date the application or complaint was filed to issue its final order. If the principal parties of record agree that the complexity of issues involved requires additional time, the commission may have up to 210 days from the date the application or complaint was filed to issue its final order. If the application or complaint is subject to section 203a, the commission shall have an additional 60 days to issue its final order.

(12) An order of the commission under this act is subject to appellate review as of right in the court of appeals. The appeal shall be initiated by the filing of a claim of appeal with the court of appeals within 30 days of the issuance of an order or within 30 days of an order issued on a petition for rehearing of an order.

(13) If a complaint is filed under this section by a provider against another provider, the provider of service shall not discontinue service during the period of the contested case, including the alternative dispute process, if the provider receiving the service has posted a surety bond, provided an irrevocable letter of credit, or provided other adequate security in an amount and on a form as determined by the commission.

(14) Except if there is a request for emergency relief under this section, if the complaint filed under this section involves an interconnection dispute between providers, the commission shall require the parties to utilize the alternative dispute process under section 203a.

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

(16) Upon the filing of a motion for stay, the commission may, on terms as it considers just, stay the effect or enforcement of an order, except an order regarding rates or cost studies. A motion for stay, including a request for setting the amount of any appeal bond, are governed by the provisions for obtaining a stay of a civil action set forth in R 7.209 of the Michigan court rules. The commission shall decide a motion for stay within 10 days from the date the motion is filed with the commission.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2000, Act 295, Imd. Eff. July 17, 2000;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

484.2203a Resolution of complaint by alternative means.

Sec. 203a. (1) For all complaints involving a dispute of \$1,000.00 or less, a dispute under section 203(14), or upon the consent of all parties after the complaint is filed, for a period of 60 days after the date the complaint is filed under section 203, the parties shall attempt alternative means of resolving the complaint.

(2) Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record, including, but not limited to, settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 10 days after the date the complaint is filed, the commission shall order mediation. Within the 60-day period required under subsection (1), a recommended settlement shall be made to the parties.

(3) Within 7 days after the date of the recommended settlement, each party shall file with the commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under section 203.

(4) If a party rejects or fails to respond within 7 days to the recommended settlement, then the application or complaint shall proceed to a contested case hearing under section 203.

(5) The party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the final order of the commission is more favorable to the rejecting party than the recommended settlement under this section. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party.

(6) If the recommendation is not accepted under subsection (3), the individual commissioners shall not be informed of the recommended settlement until they have issued their final order under section 203.

(7) An attempt to resolve a contested case under this section is exempt from the requirements of section 203 and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2000, Act 295, Imd. Eff. July 17, 2000;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

484.2204 Disagreement between telecommunication providers; application for resolution.

Sec. 204. If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service or a matter prohibited by section 305, then either telecommunication provider may file with the commission an application for resolution of the matter.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

484.2205 Investigation and resolution of service complaints.

Sec. 205. The commission may investigate and resolve complaints under this act. The penalties under this act shall not be imposed for a violation that occurred more than 2 years before the date the complaint was filed.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 58, Imd. Eff. June 14, 2011.

484.2206 Repealed. 1995, Act 216, Imd. Eff. Nov. 30, 1995.

Compiler's note: The repealed section pertained to new telecommunication service.

484.2207 Repealed. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

Compiler's note: The repealed section pertained to directory assistance service rates and quality of service.

484.2207a Repealed. 1995, Act 216, Imd. Eff. Nov. 30, 1995.

Compiler's note: The repealed section pertained to coin-operated telephones, direct-inward dialing, and touch-tone service.

484.2208 Repealed. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

Compiler's note: The repealed section pertained to classification of service within competitive market.

484.2209 Awarding costs to prevailing party where frivolous position taken in proceeding; "frivolous" and "prevailing party" defined.

Sec. 209. (1) If the commission finds that a party's position in a proceeding under this act was frivolous, the commission shall award to the prevailing party the costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

(2) As used in this section:

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

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

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were true.

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

(b) "Frivolous" does not mean a complaint filed to challenge a rate alteration increase for basic local service if the complaint has been reviewed by the commission and has not been dismissed by the commission pursuant to section 203(2).

(c) "Prevailing party" means a party who wins in the proceeding.

History: 1991, Act 179, Eff. Jan. 1, 1992.

484.2210 Trade secrets and commercial or financial information; exemption from freedom of information act; protective order; confidentiality; presumption; information regarding settlement.

Sec. 210. (1) Except under the terms of a mandatory protective order, trade secrets and commercial or financial information submitted under this act are exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

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

(4) Information regarding settlement, including a recommended settlement issued by a mediator in a proceeding, shall be disclosed only to the parties to the proceeding unless all parties consent to disclosure. A mediator's recommended settlement may be disclosed to the commission after the commission has issued a final order. The administrative law judge assigned to any contested case proceeding arising from a mediation shall not be made aware of the acceptance or rejection by the parties of the recommended settlement, or the terms of the recommended settlement. The parties to the mediation shall not disclose or reveal the terms of the recommended settlement to anyone other than the parties to the mediation.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 58, Imd. Eff. June 14, 2011.

484.2211 Assessment.

Sec. 211. Each telecommunication provider of a regulated service in this state shall pay an assessment in an amount equal to the expenses of the commission pursuant to Act No. 299 of the Public Acts of 1972, being sections 460.111 to 460.120 of the Michigan Compiled Laws.

History: 1991, Act 179, Eff. Jan. 1, 1992.

484.2211a New or emerging technology; registration; information.

Sec. 211a. A provider of any telecommunication service utilizing a new or emerging technology shall register with the commission. The registration shall include all of the following information:

- (a) The name of the provider.
- (b) A description of the services provided.
- (c) The address and telephone number of the provider's principal office.
- (d) The address and telephone number of the provider's registered agent authorized to receive service in this state.
- (e) Any other information the commission considers necessary.

History: Add. 2005, Act 235, Imd. Eff. Nov. 22, 2005.

484.2212 Repealed. 1995, Act 216, Imd. Eff. Nov. 30, 1995.

Compiler's note: The repealed section pertained to complaints, investigations, examinations, and proceedings pending as of January 1, 1992.

484.2213 Rules; rescission of certain rules.

Sec. 213. (1) Subject to section 201 and limited to its specific authority over a service as provided under this act, the commission may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) A proceeding before the commission to promulgate rules under this act shall be concluded within 180 days from the date that the proceeding is initiated.

(3) The following administrative rules are rescinded:

- (a) Privacy standards for telecommunication services, R 484.201 to R 484.208 of the Michigan administrative code.
- (b) Billing standards for basic residential telecommunication service, R 484.301 to R 484.386 of the Michigan administrative code.
- (c) Telecommunications service quality, R 484.519 to R 484.571 of the Michigan administrative code.

History: 1991, Act 179, Eff. Jan. 1, 1992;—Am. 1995, Act 216, Imd. Eff. Nov. 30, 1995;—Am. 2000, Act 295, Imd. Eff. July 17, 2000;—Am. 2004, Act 591, Imd. Eff. Jan. 4, 2005;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005;—Am. 2011, Act 58, Imd. Eff. June 14, 2011.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Administrative rules: R 484.401 et seq. of the Michigan Administrative Code.

484.2214 Community resource information and referral entity; designation as 2-1-1 answering point; designation as 2-1-1 coordinating agency.

Sec. 214. (1) The commission shall issue orders that assign the telephone digits 2-1-1 to community resource information and referral answering points established under subsection (3) and prescribe appropriate interconnection orders to carry out the intent of this section.

(2) Each provider of basic local exchange service in this state shall assign the telephone number 2-1-1 only to a community resource information and referral answering point established under subsection (3).

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

- (a) The recommendations of Michigan 2-1-1, inc.
- (b) Whether the relevant state-endorsed community collaborative bodies are in agreement.
- (c) Whether the entity has established a framework to assure the provision of coverage of the 2-1-1 telephone number 24 hours per day, 7 days per week.

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

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

(5) Not later than April 1, 2006, the commission shall designate an entity to serve as the state 2-1-1 coordinating agency. The designated agency shall assist and provide information and resources in implementing 2-1-1 service in this state. The designated agency shall also coordinate the providing of 2-1-1 services of the community resource information and referral entities designated under subsection (3).

(6) Before a state agency or local unit of government implements a community resource information or referral service, the state agency or local unit of government shall consult with the state 2-1-1 coordinating agency designated by the commission under subsection (5).

(7) By 2008, the commission shall issue orders that assign the telephone digits 2-1-1 to a statewide central routing system connecting regional community resource information and referral answering points established under subsection (3). Each provider of basic local exchange service in the state will reassign the telephone number 2-1-1 to the central system without additional charge.

History: Add. 2000, Act 295, Imd. Eff. July 17, 2000;—Am. 2005, Act 235, Imd. Eff. Nov. 22, 2005.