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BILL



ANALYSIS

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Senate Bill 722

Sponsor: Senator Mat J. Dunaskiss

Committee: Technology and Energy

Date Completed: 10-11-95

SUMMARY OF SENATE BILL 722 as introduced 10-5-95:

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

- Generally provide that a telecommunication service provider could not set rates for various services below the "total service long run incremental cost" (TSLRIC) of providing the service. ("Total service long run incremental cost" would mean, given service demand, either the total forward-looking cost of a telecommunication service, or relevant group of services, that would be required to offer the service using least cost technology that can be implemented with current technology; or the total cost that the provider would incur if the provider were to initially offer the service or group of services.)
- Allow a provider of basic local exchange service to provide cable television service.
- Add an article to the Act that would address interconnection of telecommunication providers with the basic local exchange service.
- Allow a provider of telecommunication services to classify a regulated service as a competitive service under certain circumstances.
- Revise provisions regarding rates, including requiring a basic local exchange provider to restructure its rates for certain services to ensure that those rates would be less than the TSLRIC of providing each service.
- Revise the MTA's educational provisions to allow educational institutions to sell

certain telecommunication services, and allow telecommunications providers, at the request of an educational institution, to provide service across local access and transport areas (LATAs).

- Provide for the regulation of pay phone services, including requiring independent pay phone providers to pay an annual \$100 registration fee and file a list of their pay phone locations with the Public Service Commission.
- Provide for intra-LATA "dial-1 parity" under certain conditions. ("Dial-1 parity" refers to the ability to make a toll call without having to dial an access code or extra digits if the caller chose a telephone company other than the local exchange carrier.)
- Specify the purposes of the Act.
- Provide for the Act to take effect on January 1, 1996 (rather than January 1, 1992), and to be repealed on January 1, 2000 (rather than January 1, 1996).

Interconnection with the Basic Local Exchange Service

By January 1, 1998, the Public Service Commission (PSC) would have to issue a report and make recommendations to the Legislature and the Governor involving the issues, scope, terms, and conditions of interconnection of telecommunication providers with the basic local exchange service. Until January 1, 1997, the rates of a provider of basic local exchange service for interconnection would have to be at the provider's TSLRIC of providing the service. The bill's interconnection provisions would not apply to providers of basic local exchange service with fewer than 250,000 access lines.

Joint Marketing. Until inter-LATA prohibitions were removed for providers of basic local exchange service, a provider of basic local exchange service could not do any of the following:

- Jointly market, directly or indirectly, the basic local exchange service or a local exchange service that had not been unbundled or made available for resale together with an inter-LATA toll service.
- Offer the basic local exchange service together with an inter-LATA toll service or condition a rate for basic local exchange service on the customer's also ordering an inter-LATA toll service.
- Discriminate against providers of toll service by not making available customer names and addresses that were available to an affiliate of the basic local exchange provider.

Unbundling Local Exchange Services. By July 1, 1996, a provider of basic local exchange service would have to unbundle and separately price each service offered by that provider and allow other providers interconnection with those services on a nondiscriminatory basis. A provider of local exchange service would have to allow and provide for "virtual co-location" (which is not defined in the bill) with other providers at or near the premises of the provider of local exchange service of equipment necessary for efficient interconnection of the unbundled services. Providers also could enter into an agreement that allowed for co-location on other terms and conditions.

Resale of Local Exchange Service. A provider of local exchange service would have to make available for resale all basic local exchange services that it offered to its retail customers as of July 1, 1996. Resale would have to be provided on a wholesale basis. A provider of local exchange service could include in its wholesale tariffs any use or class of customer restrictions it included in its retail tariffs. A provider of local exchange service, however, would not be required to offer for resale either of the following:

- A package of services in which basic local exchange service was jointly marketed or combined with other services, or for any promotional or discounted offering of basic local exchange service.
- Services for which the provider did not have existing facilities in place to serve the intended end user, or any service offered for the first time subsequent to March 1, 1996.

By March 1, 1996, each provider of local exchange service would have to file with the PSC tariffs that set forth the wholesale rates, terms, and conditions for basic local exchange services. The wholesale rates would have to be set at levels no greater than the provider's current retail rates minus the provider's avoided costs. After January 1, 2000, wholesale rates could not be less than the provider's TSLRIC of the services.

Number Portability. By January 1, 1999, a provider of basic local exchange service would have to provide "number portability". ("Number portability" would mean the capability for a local exchange customer at a particular location to change providers of basic local exchange service without any change in the customer's telephone number, while preserving the full range of functionality that the customer could obtain by changing telephone numbers.)

If the PSC determined that it was economically and technologically feasible to provide number portability before January 1, 1999, the PSC would have to order providers of basic local exchange service to provide the service before that date. Until number portability was available, a provider of basic local exchange service would have to make available to other providers "direct inward dialing" and "remote call forwarding". (Neither term is defined in the bill.)

Interconnection Termination Rates. By July 1, 1996, a provider of basic local exchange service would have to establish a rate charge for other providers of basic local exchange service for the termination of local traffic on its network. This provision would not prohibit providers of basic local exchange service from entering into an agreement to provide for the exchange of local traffic on other terms and conditions.

Directory Assistance. By July 1, 1996, a provider of basic local exchange service would have to establish a rate to other providers of basic local exchange service for providing directory assistance. This provision would not prohibit providers of basic local exchange service from entering into an agreement to provide for the exchange of providing directory assistance on other terms and conditions.

Attachment Rates. A provider of telecommunication services would have to establish rates, terms, and conditions for "attachment" by another provider. ("Attachment"

would mean any wire, cable, facility, or other apparatus installed upon any pole or in any duct or conduit, owned or controlled, in whole or in part, by a telecommunication provider.)

The rates, terms, and conditions would have to be just and reasonable. A rate would be just and reasonable if it assured the provider recovery of not less than the additional costs of providing the attachments, or more than an amount determined by multiplying the percentage of the total “usable space”, or the percentage of the total duct or conduit capacity, that was occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct, or right-of-way. (“Usable space” would mean the total distance between the top of a utility pole and the lowest possible attachment point that provided the minimum allowable grade clearance, and would include the space that separated telecommunication and power lines.)

An attaching provider would have to obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment.

Imputation. If a provider of local exchange service had a service that competed with a service of another provider, or if another provider used a service from the provider of local exchange service that was not available within the relevant market or geographic area from any other provider of local exchange service, or if the provider of local exchange service used that same noncompetitive service or its functional equivalent, the rate of the telecommunication service would have to exceed the sum of both of the following:

- The tariffed rates, including access, carrier common line, residual interconnection, and similar charges, for the noncompetitive service or its functional equivalent that was actually used by the provider of local exchange service, as those rates would be charged a customer for the use of that service.
- The TSLRIC of all other components of the provider of local exchange service.

Access to Customer Data Bases. Providers of basic local exchange service would have to allow access by other providers to their customer data bases either on the terms and conditions as the providers agreed or as otherwise ordered by the PSC.

Classification as a Competitive Service

Under the Act, if a competitive market for a regulated telecommunication service exists, the PSC, by adopting policies and entering orders, may provide for and exercise flexibility in its regulation of that service. The PSC retains authority to rescind or amend any policy or order issued regarding that flexibility.

The bill, instead, would allow a provider to file with the PSC to classify the service as a competitive service. If the competition among providers were sufficient to protect the public interest, the service would have to be deregulated. If the PSC found the service to be competitive but that the competition was not sufficient to protect the public interest, the Commission would have to provide for and exercise flexibility in its regulation. A service would be competitive if, for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service, its functional equivalent, or a substitute service were available from more than one provider.

A provider would have to notify its customers if a service were to be classified as competitive. The notice would have to be included in or on the bill of each affected customer at least 90 days before the effective date of the classification. The service classification would take effect 90 days from the date of the notice. Upon receiving a complaint, however, the PSC could require a filing to review a competitive classification and issue an order approving, modifying, or rejecting the classification.

Except as otherwise provided by the MTA, the PSC or a local unit of government would not have authority over a service classified as competitive. A provider of a service classified as competitive could not be considered a public utility subject to State or local authority in the provision of the classified service. This provision could not be construed to limit any rights necessary to provide the competitive service that the provider would have if it were a public utility.

The bill's competitive classification provisions would not limit a local unit of government's right to review and approve a provider's use of a right-of-way, easement, or other public place. Any fee or assessment made by a local unit could not exceed the actual costs to the local unit in approving and maintaining a provider's use of the right-of-way, easement, or public place.

Basic Local Exchange Service Rates

Rate Alteration. Under the MTA, the PSC must approve for each provider any alterations in the local exchange rates, which must be just and reasonable as determined by the PSC. A provider may alter its rates for basic local exchange services upon notice to the PSC, which must be accompanied by sufficient documentary support that the rate alteration is just and reasonable. The MTA provides for a PSC hearing procedure on the alteration of rates.

The bill, instead, provides that rates for basic local exchange service would have to be just and reasonable, and a provider could alter its rates for basic local exchange services by one or more of the following methods:

- Filing with the PSC notice of a decrease, discount, or other rate reduction in a basic local exchange rate. A rate alteration under this provision would become effective without PSC review or approval.
- Filing with the PSC notice of an increase in a basic local exchange rate that did not exceed 1% less than the Detroit consumer price index. Unless the PSC determined that the rate alteration exceeded the allowed increase, the alteration would take effect 90 days from the date of the required notice to customers.
- Filing with the PSC an application to increase a basic local exchange rate in an amount greater than that allowed under the above provision. The application would have to be accompanied by sufficient documentary support that the rate alteration was just and reasonable and the PSC would have to make a determination within the 90-day period following the date of the required notice to customers either that the rate alteration was just and reasonable or that a contested case filing was necessary to review the rate alteration.

A provider could not make a rate alteration until the rate had been restructured under the bill.

Rate Restructuring. Upon filing with and the approval of the PSC, a basic local exchange provider would have to restructure its rates for basic local exchange, toll, and access services to ensure that the rates were not less than the TSLRIC of providing each service.

The provider could determine when each rate was restructured and could phase in the rate restructuring until January 1, 2000. After that date, the provider's rates for basic local exchange, toll, and access services could not be less than the TSLRIC for each service. The rate restructuring could include, but would not be limited to, one or more of the following:

- Touchtone capability and associated charges into basic local exchange services at rate levels no greater than the sum of the current basic local exchange service rates and the touchtone service rates. Residential customers with rotary dial service could retain that service at their current rate.
- Within basic local exchange rates, all or part of the existing rate elements and charges for other services that were designed to recover the costs associated with the local exchange network.
- Restructure existing basic local exchange rates to reflect the existing variations in costs to provide basic local exchange services based upon differences in geographic areas, classes of customers, calling patterns and volumes, technology, and other factors.

The PSC would have 45 days from the date of a filing to review proposed rate restructuring to ensure that the rates were not less than the TSLRIC of the service, or that the rate restructuring brought rates that were below TSLRIC costs closer to the costs. If the PSC did not complete its review within 45 days, the rate restructuring would be considered approved. The basic local exchange provider could implement the restructured rates 10 days following PSC approval or the end of the 45-day period, whichever was earlier. For purposes of rate restructuring, telecommunication providers with fewer than 250,000 access lines could determine TSLRIC through preparation of a cost study or could determine that their TSLRIC was the same as that of a provider with more than 250,000 access lines.

Basic Local Exchange Rate Determination. The basic local exchange rate for all residential customers would have to be based on one of the following, at the option of the customer, unless it were not technologically feasible:

- A flat rate allowing personal and domestic outgoing calls up to 200 calls per month per

line. Calls in excess of 200 per month could be charged at an incremental rate as set by the provider. If a customer had more than one line, the allowable calls would have to be the aggregate of all the lines, regardless of the line from which the calls originated.

- A rate determined by the time duration of service usage or the distance between the points of service origination and termination.
- A rate determined by the number of times the service was used.
- A rate that included one or more of the above rates.

Currently, the options listed above are available for rate determination, except that the flat rate must allow up to 400 calls per month and a person 60 years of age or greater cannot be charged a rate greater than the flat rate charged other residential customers for 400 calls.

Senior Citizen and Low Income Discounts. Under the MTA the PSC must require each provider of residential basic local exchange service to offer certain low income customers the availability of basic local exchange service at a rate below the regulated rate. The PSC, by order, must determine which customers qualify for the special rate. The bill would delete the requirement that the PSC determine who qualifies, and provides, instead, that the basic local exchange rate for low income customers would have to be 20% below the regulated rate. To qualify for this reduction, a person's annual income could not exceed 150% of the Federal poverty level.

The bill also provides that the basic local exchange rate for persons 65 years of age or older would have to be 10% below the regulated rate. If a person chose to accept this reduced rate, however, the number of call allowed under the flat rate would be 35.

If a customer were eligible for both the low income and the senior citizen rate reduction, he or she could receive only one of the reduced rates, at his or her option.

Educational Provisions

The bill would allow an educational institution to "sell" telecommunication services for instruction and training, worker training, research, and institutional operations. Currently, educational institutions may "provide" these services, with the exception of worker training.

The bill would allow telecommunication providers to provide to an educational institution, upon its request, services for the transmission of interactive data and video communications between the institution's facilities or to the homes of students or employees of the institution, regardless of whether the exchanges were in the same or different LATAs and regardless of whether the provision of those services was allowed by Federal law or Federal court order. (The MTA currently allows these activities *only* if allowed by Federal law or Federal court order.)

In addition, if an educational institution had excess capacity, it could sell the excess capacity subject to both of the following:

- The amount of capacity sold could not exceed 25% of the institution's total capacity.
- The capacity could not be sold below the TSLRIC of the provider of basic local exchange service in the educational institution's service area.

Pay Phone Services

A provider of pay phone service could not subsidize its pay phone service, directly or indirectly, by charging pay phone service rates that were less than the TSLRIC of providing the service. A provider of basic local exchange could not discriminate in favor of its pay phone service over similar services offered by another provider. A provider of pay phone service would have to comply with all nonstructural safeguards adopted by the Federal Communications Commission for pay phone service.

The PSC would have to determine the rate at which a provider of toll service would have to compensate a provider of pay phone service for calls made on a pay phone of the provider that used the toll service and avoided customer direct compensation to the provider of the pay phone service (that is, when a toll call was placed on a pay phone, but was billed to the toll service provider, by use of a calling card, for example). The rate of compensation determined by the PSC would have to be based on a per-minute basis and would have to be at the TSLRIC of providing the pay phone service. Until the PSC made a rate determination for this service, the toll service provider would have to compensate the provider of the pay phone service on a per-call basis in the amount of 25 cents for each inter-LATA call and

10 cents for each intra-LATA call. A provider of payphone service could not receive compensation from a toll service provider unless the pay phone service provider had registered with the PSC, as required by the bill.

Except for a licensed provider of basic local exchange service, a person could not provide pay phone service in Michigan without first registering with the PSC. The registration would have to include all of the following information:

- The provider's name.
- The address and telephone number of the provider's principal office.
- If the provider were not located in Michigan, the address and telephone number of the registered office and the name and telephone number of the registered agent authorized to receive service of process in Michigan.
- The specific location of each pay phone in Michigan owned or operated by the provider.

The registration also would have to be accompanied by a registration fee of \$100. Registration would be effective immediately upon filing and the payment of the fee, and would remain in effect for one year from its effective date. A provider could renew registration for one year by filing with the PSC a renewal registration on a form provided by the PSC and paying of a \$100 renewal fee.

The PSC would have to establish a 1-800 toll-free number that someone could dial to report to the Commission a pay phone that was inoperative. The 1-800 number would have to be conspicuously displayed by the provider on or near each pay phone. If the PSC received a report of an inoperative pay phone, it would have to notify the provider immediately.

Dial-1 Parity

The bill would require, effective January 1, 1996, a provider of basic local exchange service to provide intra-LATA dial-1 parity within the service area, if a waiver to inter-LATA prohibitions were granted for a specific service area and the service area had one or more providers of basic local exchange service. This provision would not apply to a city with a population of 1 million or more.

Until the inter-LATA prohibitions were removed for providers of basic local exchange service, a provider of basic local exchange service would not

be required to provide intra-LATA dial-1 parity. If the inter-LATA prohibitions were removed, however, a provider of basic local exchange service would have to offer dial-1 parity to other providers.

Purposes of the MTA

The bill specifies that the purpose of the MTA would be to do all of the following:

- "Ensure that every person has access to basic residential telecommunication service."
- "Allow competition to determine the availability, prices, terms, and other conditions of providing unregulated telecommunication services."
- "Restructure regulation to focus on price and quality of service and not on the provider. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide safeguards for competition and consumers."
- "Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state through incentives to providers to offer the most efficient services and products."
- "Improve the opportunities for economic development and the delivery of essential services including education and health care."
- "Streamline the process for setting and adjusting the rates for regulated services that will ensure effective rate review and reduce the costs and length of hearings traditionally associated with rate cases."
- "Encourage the use of existing educational telecommunication networks and networks established by other commercial providers as building blocks for a cooperative and efficient statewide educational telecommunication system."

Other Provisions

The bill would do all of the following:

- Repeal and reenact in the MTA a section of Public Act 206 of 1913 that provides for PSC regulatory authority over an alternative operator service (AOS). The MTA's regulation of an AOS would require registration annually with the PSC and the

payment of a \$100 annual registration fee, and would cap AOS rates at 200% of State average rate for operator or toll service by providers of regulated toll service.

- Revise the powers and duties of the PSC under the Act, including altering deadlines for the resolution of contested case hearings, and prohibiting a telecommunication provider from discontinuing service to another provider during a contested case under certain circumstances.
- Create a mandatory alternative dispute resolution process for resolving complaints filed under the MTA.
- Provide a rebuttable presumption that certain information would constitute "trade secrets or commercial or financial information", which, under the MTA, are exempt from the Freedom of Information Act.
- Specify that local governmental units would not have authority over telecommunication providers of specified unregulated services and that the providers of those services could not be considered a public utility in the provision of the unregulated service.
- Repeal sections of the Act that are obsolete, because they required certain actions within a specified time after the MTA took effect, or that would be unnecessary due to provisions in the bill (MCL 484.2207a, 484.2212, and 484.2307a).
- Repeal a section of the MTA that requires the PSC to request the Attorney General to bring an action to enjoin acts or practices of providers that are the PSC determines are "harmful" (MCL 484.2501). ("Harmful" means sexually explicit matter that meets specified criteria.)

MCL 484.2101 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would require the PSC to hire up to six full-time employees with an annual cost of \$270,000 in order to absorb the regulatory workload related to the pay phone registration requirements and cost analysis provision in Section 304a of the bill for rate restructuring. According to PSC estimates, the Federal Communications Commission receives two calls per pay phone each week alleging that pay phones are not in working order. Based on an estimated 100,000 pay phones in the

State, two new positions would be required to answer the "800" line and report malfunctions to the companies that owned the phones. The cost analysis and complaint adjudication provisions could require four more positions depending on the position. Savings would be possible through the deregulation provisions in the bill.

The registration fees for alternative operator services and payphone services would generate revenue that partially would offset the regulatory fiscal requirements of this bill. A revenue estimate would be possible once the number of providers becomes apparent. It is unlikely that these revenue sources would meet the bills fiscal requirements.

Fiscal Analyst: K. Lindquist

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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.