



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1 (as introduced 1-8-03)
Sponsor: Senator Gerald Van Woerkom
Committee: Technology and Energy

Date Completed: 1-22-03

CONTENT

The bill would amend the Michigan Telecommunications Act to require a local telephone service provider to obtain approval from the Michigan Public Service Commission (PSC) to assess or impose an intrastate end-user common line (EUCL) charge.

Currently, the Act prohibits a provider of basic local exchange service from assessing or imposing on end-users an intrastate subscriber line charge or end-user line charge. Under the bill, the prohibition would apply *except* upon a filing and approval of the PSC under Section 304 of the Act. (In July 2001, the U.S. Court of Appeals for the Sixth Circuit issued a preliminary injunction against this prohibition, and the parties recently settled the case. Both the litigation and Section 304 are described in **BACKGROUND**, below.)

The bill would require the PSC, in reviewing a filing for a subscriber line charge or an end-user line charge, to include in its consideration whether the proposed line charge would provide a reasonable rate of return for the services provided.

The bill also would allow a provider that was assessing or imposing an interstate subscriber line charge or EUCL on the effective date of the bill to continue to assess or impose the line charge if the provider complied with all of the following:

- Within 90 days of the bill's effective date, the provider submitted a filing pursuant to Section 304 to the PSC.
- The line charge was not greater than the amount of the line charge assessed or imposed as of the bill's effective date.
- The provider made any necessary adjustments to the line charge after the PSC issued its decision on a filing submitted pursuant to Section 304.

MCL 484.2310

BACKGROUND

Litigation

In *Michigan Bell Telephone Co. v Engler* (257 F.3d 587 [2001]), the United States Court of Appeals for the Sixth Circuit addressed Michigan's prohibition against an intrastate end-user common line charge. This prohibition is contained in Section 310(7) of the Michigan Telecommunications Act (which was enacted in 2000 and will be repealed on December 31, 2005). According to the Court, before Section 310(7) was enacted, local telephone service providers could impose, or increase at any time, the intrastate EUCL charge without prior approval of the PSC or a hearing before the Commission.

The plaintiffs in this case, Michigan Bell Telephone Company (dba Ameritech Michigan) and Verizon North, Inc., sought an injunction against the enforcement of Section 310(7) in the U.S. District Court for the Eastern District of Michigan. After the District Court denied the plaintiff's motion, the Court of Appeals reversed and held that a preliminary injunction was warranted. (This case also involved another section of the Michigan Telecommunications Act unrelated to the EUCL issue.)

The Court of Appeals held that the plaintiffs had demonstrated a substantial likelihood that Section 310(7) violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, which "protects utilities from being limited to a charge for their property serving the public which is so "unjust" as to be confiscatory." According to the Court, due process requires a mechanism through which a regulated utility may challenge the imposition of rates that may be confiscatory. Section 310(7), however, "abolishes the EUCL without providing a mechanism to safeguard the right to earn a constitutional rate of return".

In December 2002, the State of Michigan entered into settlements with both SBC Ameritech Michigan and Verizon, in which the plaintiffs agreed to reduce their end-user line charges. In addition to other provisions, the settlement agreements also state that they do not preclude enactment of legislation addressing the subject matter of Section 310(7).

The U.S. District Court accepted the settlement agreements and dismissed the case.

Section 304 of the Act

Section 304 states that the rates for basic local exchange service must be "just and reasonable", and allows a provider to apply for a rate alteration by filing one of the following with the PSC:

- Notice of a decrease, discount, or other rate reduction in a basic local exchange rate. A rate decrease becomes effective without PSC review or approval.
- Notice of an increase in a basic local exchange rate that does not exceed 1% less than the consumer price index. If the PSC approves the rate increase, the provider must notify customers before the effective date of the rate alteration. Unless the PSC determines that the alteration exceeds the allowed increase, the increase will take effect 90 days after the notice is provided to customers.
- An application to increase a basic local exchange rate in an amount greater than the amount allowed above. The application must be accompanied by sufficient documentation that the rate increase is just and reasonable. Within 90 days, the PSC must determine either that the rate increase is just and reasonable, or that a filing under Section 203 is needed. Upon review of a filing under Section 203, the PSC may approve, modify, or reject the proposed rate alteration. (Section 203 allows the PSC to conduct an investigation, hold hearings, and issue its findings and orders under the contested case provisions of the Administrative Procedures Act. A PSC order under Section 203 may be appealed to the Michigan Court of Appeals.)

In reviewing an application for a provider seeking to raise its rates under the third option, the PSC must consider only one or more of the following factors:

- Total service long-run incremental cost of basic local exchange services.
- Comparison of the proposed rate to the rates charged by other providers in this State for the same service.
- Whether a new function, feature, or capability is being offered as a component of basic local exchange service.
- Whether there has been an increase in the costs to provide basic local exchange service in the geographic area of the proposed rate.

-- Whether the provider's further investment in the network infrastructure of the geographic area of the proposed rate is economically justifiable without the proposed rate.

A provider is allowed only one rate increase under Section 304 for each class or type of service per year.

The PSC must exempt from the provisions of Section 304 any provider that: provides basic local exchange service or basic local exchange and toll service to fewer than 250,000 end-users in this State; offers single-party local exchange service, tone dialing, toll access service, including EUCL services and dialing parity at a total price of no higher than the amount charged as of May 1, 2000; and provides dialing parity access to operator, telecommunication relay, and emergency services to all basic local exchange end-users.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have an indeterminate, although likely negative, impact on State revenues. Any impact would affect both General Fund/General Purpose and School Aid Fund revenues.

The bill essentially would require Public Service Commission approval of any intrastate end-user line charges or subscriber charges on telephone bills. The fiscal impact of the bill would depend upon the decisions made by the PSC regarding the charges. If the PSC were to approve such charges at current levels, the bill would have no fiscal impact. At one extreme, the PSC could prohibit such charges, which would reduce use tax revenues by approximately \$9.4 million to \$9.5 million, assuming that the December 2002 agreement with Ameritech to lower the residential end-user line charge to \$2.78 is implemented. However, the PSC could disallow the line charges and instead allow providers to increase rates to offset the loss of revenue, in which case revenues would be unaffected. At another extreme, if telecommunications providers successfully argued that the current line charges are insufficient, the providers would receive increases in the charges and/or rates, in which case use tax revenues would increase.

School Aid Fund revenues would experience one-third of any fiscal impact, while the remaining fiscal impact would affect General Fund/General Purpose revenues.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

S0304\1sa

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.