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BILL ANALYSIS

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Senate Bill 217 (as enrolled)

PUBLIC ACT 309 of 1990

Sponsor: Senator John J. H. Schwarz, M.D.

Senate Committee: Commerce and Technology

House Committee: Public Utilities

Date Completed: 2-12-91

RATIONALE

Alternative operator service (AOS) companies lease lines from companies such as AT&T, Michigan Bell, MCI, or Sprint and then contract with "call aggregators" such as hotels, motels, hospitals, airports, universities, shopping malls, truck stops, and other businesses or facilities that have pay phones or switchboards, to provide operator services. Such services include not only the traditional operator-assisted services for person-to-person, collect, third-party and credit card calls but also message desk concierge service, voice mail, credit card billing, and electronic yellow pages access service. Under the usual agreement with an AOS company, the call aggregator or host business routes its customers' long-distance and operator-assisted calls to the AOS provider in return for a commission. The cost of the commission, however, is passed on to the customers who, some claim, may find that their phone bills are up to triple the amount they would have been billed had the calls been routed through a primary phone company such as AT&T. According to a brochure published by Michigan Bell (AOS 6/88), the rates charged by AOS companies are not regulated by either the Federal government or the states and, therefore, may be higher or lower than those of regulated long-distance companies. The brochure explains that some AOS charges are itemized under the name of the AOS provider and appear on a separate page of the bill that the customer receives from his or her regular local phone company. AOS calls charged to major credit cards do not appear on the phone bill.

According to an article in the Wall Street Journal (12-9-88), AOS companies started in

approximately 1983 when AT&T stopped paying hotels commissions for guests' long-distance and operator-assisted calls. Further, the market share of long-distance service controlled by AOS companies apparently is increasing. According to the Wall Street Journal article, the AOS companies plan to pursue aggressively the Bell Company pay phone market--a plan some feel will be facilitated by a ruling made in October 1988 by the Federal judge who oversees the decree that dismantled the Bell System. That ruling requires the 1.7 million pay phones owned by regional Bell concerns to be connected to whatever long-distance concerns the host business requests. Many believe the order will lead host businesses to choose the phone concern paying the largest commission, sometimes up to 30% more than the AT&T base rate.

The Wall Street Journal article also states that utility companies in several states have received so many consumer complaints that they apparently are investigating whether and how to regulate the AOS companies. Reportedly, Kentucky barred one company from operating in the state after consumers complained that they could not tell when their calls were being routed to an AOS company. According to a Detroit News article (6-29-89), the Michigan Public Service Commission (PSC) has been receiving similar complaints from consumers who are angry at the higher charges they have incurred when their calls have been routed through AOS companies without their knowledge or consent. Although the PSC regulates the rates of long-distance companies that own facilities such as lines and switching systems in Michigan, it does not regulate the rates of AOS companies. The

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Federal Communications Commission (FCC) apparently is working on guidelines that will clarify a state's authority to regulate AOS companies. In the meantime, however, some believe that the interests of consumers would be best protected by at least requiring AOS companies to inform consumers of the procedure they should use to obtain information on the charges they would incur if they used an AOS provider's services, and allow them to choose another carrier, if they wished.

CONTENT

The bill would amend Public Act 206 of 1913, which regulates telephone lines and companies within Michigan, to impose certain notification requirements and other regulations on alternative operator service providers. The term "alternative operator service" would mean an operator service that is separate from the operator service provided by the local exchange carrier and that is not offered at prices that are required by law to be approved and on file with the Public Service Commission. Specifically, the bill would require an AOS provider to do all of the following:

- Furnish to each entity with which it contracted a sticker, card, or other form of information for each telephone that had access to the AOS provider and was intended for use by the public. The information would have to include the name of the AOS provider, a toll-free customer service telephone number, and a statement that charges imposed by the AOS provider and additional information could be obtained by calling the toll-free number. The entity using the service would be required by the terms of its contract with the AOS provider to display the information on or near each phone with access to the service.
- Announce, prior to the connection of each call, the provider's name and quote, at the request of the caller and without charge, the rate and any other fees or surcharges applicable to the call.
- Allow a caller to the AOS provider to choose the carrier of his or her choice. This could be done by instructing the caller how to reach his or her carrier of choice by dialing the carrier's 950, 1-800, or 10-XXX access method, or by

transferring the caller to the carrier without charge after informing him or her that the rates for the call might not reflect the rates for a call from the caller's location and after receiving his or her consent.

- Allow callers to the AOS provider to reach emergency services without charge.

The bill would not apply to specialized telecommunications in local, county, or State correctional or other confinement facilities, including juvenile and mental health facilities.

In addition to any other penalty provided for in the Act, a person who was charged for the use of an alternative operator service in violation of the bill could sue to recover actual damages or \$250, whichever was greater, and reasonable attorney fees.

Proposed MCL 484.103g

BACKGROUND

Federal Regulation

In early 1988, the Staff Communications and Cost Allocations Subcommittee of the National Association of Regulatory Utility Commissioners (NARUC) requested that a task force examine the issue of alternative operator services providers. According to the results of the study, which were published in a report on June 24, 1988, complaints about AOS providers focused mostly on the pricing of their services. The study found that since the AOS services are marketed to a transient and "captive" end user (the person placing the call), and since the customer purchasing the service (e.g., hotel, motel, or airport) and the end user are usually not the same entity, the pricing of the AOS services is not market-driven as it is for other competitive telecommunications services. Because of the lack of "economic safeguards to protect the end user", the study concluded that the "AOS industry is not ready for detariffing and/or deregulation". The study, therefore, made the following recommendations:

- Regulatory agencies should regulate the AOS providers' rate levels to ensure that the providers do not engage in the practice of unjust, unreasonable, or unduly discriminatory pricing.

- AOS providers should post and display in prominent fashion the name of the AOS provider and detailed complaint procedures.
- AOS operators should inform the end user of the name of the AOS provider before placing the call for the user.
- AOS operators should be able to quote verbally to the end user the rates for any calls placed by the operator.

According to a bulletin by the FCC (#2428 printed April 5, 1988), AOS companies that provide long-distance services are subject to the Federal Communications Act and various FCC regulations and policies. AOS providers are classified as nondominant carriers because they are not large enough to control market prices. Therefore, unless they provide international service, they do not have to obtain operating certificates or file tariffs listing rates and practices. They do have to comply, however, with a number of requirements of the Communications Act and various FCC regulations and policies, including the requirement that they charge reasonable rates and not engage in unreasonable practices. All AOS providers must respond to any complaints forwarded to them by the FCC and pay damages ordered by the FCC. As of April 1988, AOS companies responding to complaints filed with the FCC have issued a credit to the customer's account. The credits have amounted to at least the difference between the AOS charge and the charge that would have been incurred had the call been handled by the customer's carrier of choice.

Other States

According to Payphone Exchange (September 1988), the regulatory agencies of 27 states require some form of certification for AOS providers while 19 states, including the District of Columbia, do not. Connecticut is the only state that prohibits AOS providers, New Jersey requires only an acknowledgment form from the providers, and several states are in the process of considering the issue of certification.

According to a bulletin from NARUC (#1-1989 published January 2, 1989), the Kansas Corporation Commission has granted two AOS providers approval to operate in the state, at least temporarily, and has established interim

guidelines that the providers must follow until "AOS issues are more fully explored and final certification or operating authority is considered". The guidelines include the following requirements:

- AOS in-state rates cannot exceed AT&T rates by more than 4%.
- AOS providers must be able to return a call to the local exchange company if the caller so requests or if the provider cannot place the call as requested.
- AOS providers must refund to customers complaining of excessive charges the difference between their billed rates and AT&T's comparable rates.

An article in Telecommunication Reports (3-6-89) states that Alabama requires AOS providers to identify themselves at the beginning and end of each transaction, quote rates on request, post notices by the phones explaining that they handle certain calls made from that equipment, and route "0-only" calls to local exchange carriers. The same article reports that Virginia has passed legislation requiring AOS providers to provide a toll-free number "to disclose rate information and that they announce to the caller the identity of the provider handling the interstate toll call".

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

Until it is clear whether and to what extent the PSC has the authority to regulate the rates of AOS companies, it is imperative that the interests of consumers who use long-distance services be protected by those time-honored traditions--disclosure of information and freedom of choice.

Response: A statutory requirement that AOS companies notify consumers of AOS charges and allow them to choose other carriers is unnecessary. AOS companies already are working with the FCC and consumers to resolve complaints about long-distance bills and are trying to give customers better notice about the long-distance service options by requiring AOS operators to identify themselves more clearly.

Moreover, hotels and other host businesses often insist that AOS companies provide long-distance services just like those of AT&T specifically to avoid confusing customers. Finally, the caller always has the option of insisting that his or her call be handled by another company, requesting instructions on how to gain access to that company if the AOS provider cannot or will not transfer the call, complaining to the pay phone owner, host business or PSC if he or she is not satisfied with the AOS provider, or finding another phone.

Opposing Argument

Any AOS regulations or reporting requirements also should apply to others in the telecommunications field, such as MCI, Sprint, AT&T, and Michigan Bell.

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