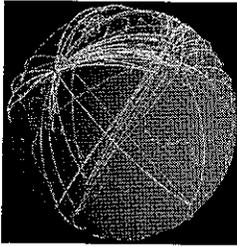


Michigan Internet & Telecommunications Alliance



Connecting Michigan to the World

MITA's Comments on and Proposed Edits to HB 4314

(March 14, 2011)

Primary Position of the Michigan Internet and Telecommunications Alliance

The opinion of the Michigan Internet and Telecommunications Alliance (MITA) is that changes to the Michigan Telecommunications Act (MTA) are unnecessary at this time.

Statutory changes create substantial uncertainty and increase the operating costs of the businesses subject to the altered regulation. Unless a demonstrable need exists, the Legislature should refrain from injecting itself into and changing the dynamics of telecommunications competition in Michigan.

The purpose of the MTA is to foster competition, which means that new entrants need a foothold in order to become viable competitors to the predominant carriers. MTA, in its current form, provides that foothold and has enabled a measure of competition to develop in Michigan.

MITA, as a representative of competition, respectfully requests the Legislature to exercise restraint and not reshuffle the rules upon which competitive telecommunications providers have based their business plans.

**Secondary Position of the
Michigan Internet and Telecommunications Alliance**

If the MTA is to be rewritten, MITA recommends the following revisions. Because of the sheer number of changes proposed in HB 4314, MITA is continuing to expend significant resources to analyze the bill. Accordingly, MITA anticipates that in the coming days, it may have additional recommendations.

1) Preservation of MPSC Authority over Wholesale Interactions

[Commentary: The ability of the MPSC to continue to referee disputes regarding the myriad, complex wholesale interactions that are necessary between carriers exchanging traffic on intertwined, interdependent, and interconnected networks cannot be understated. HB 4314 could be interpreted to diminish the MPSC's essential wholesale authority. Four sections should be revised to unambiguously preserve such MPSC authority.]

MITA's Recommended Revisions to HB 4314:

Sec. 201. NOT WITHSTANDING ANY OTHER PROVISION OF THIS ACT, ~~Except as otherwise provided by this act or federal law,~~ the Michigan public service commission shall have the jurisdiction and authority to administer **ON A TECHNOLOGY NEUTRAL BASIS** this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.

[Section 203(1) should be revised as follows:]

Sec. 203. (1) Upon receipt of an application or complaint filed under this act, **OR A FEDERAL TELECOMMUNICATIONS LAW, RULE, ORDER, OR REGULATION THAT IS DELEGATED TO THE STATE,** 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.

[Rather than Section 205(2) being deleted, the current language in the Section 205(2) should be modified as shown below:]

Sec. 205.

* * *

(2) If the commission finds, after notice and hearing, that ~~the rates, quality, general availability, or conditions for a regulated service violate~~ **A PROVIDER HAS VIOLATED** this act, an order of the commission under this act, **A FEDERAL TELECOMMUNICATIONS LAW, RULE, ORDER, OR REGULATION THAT IS**

DELEGATED TO THE STATE, or THE PROVIDER'S PROVISION OF A SERVICE WITHIN THE COMMISSION'S JURISDICTION is adverse to the public interest, the commission may require changes in how the telecommunication services are provided. The commission's authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.

[Section 601 should be revised as follows:]

Sec. 601. If after notice and hearing the commission finds a person has violated this act **OR ANY FEDERAL TELECOMMUNICATIONS LAW, RULE, ORDER, OR REGULATION THAT IS DELEGATED TO THE STATE**, the commission shall order remedies and penalties to protect and make whole ratepayers and other persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

- (a) Except as provided in subdivision (b), the person to pay a fine for the first offense of not less than \$1,000.00 nor more than \$20,000.00 per day that the person is in violation of this act, and for each subsequent offense, a fine of not less than \$2,000.00 nor more than \$40,000.00 per day.
- (b) If the provider has less than 250,000 access lines, the provider to pay a fine for the first offense of not less than \$200.00 or more than \$500.00 per day that the provider is in violation of this act, and for each subsequent offense a fine of not less than \$500.00 or more than \$1,000.00 per day.
- (c) A refund to the ratepayers of the provider of any collected excessive rates.
- (d) If the person is a licensee under this act, that the person's license be revoked.
- (e) Cease and desist orders.

[The following language should not be deleted, but should be retained.]

(f) Except for an arbitration case under 252 of part II of title II of the communications act of 1934, chapter 622, 110 Stat. 66, attorney fees and actual costs of a person or provider of less than 250,000 end-users.

2) Maximization of Michigan's Copper Infrastructure

[Commentary: Federal regulations create an anti-competitive incentive for incumbents to disable the copper lines that previously served customer premises after the incumbents install fiber to the premises. Because federal regulations severely limit the amount of capacity that competitors can access to newly constructed fiber, disabling copper lines in such situations causes competitors to have less ability to serve customers along such fiber runs.

*In the last few years, advances in copper technology have been explosive. Today, speeds of up to 100 Mbps can be achieved over copper – which is much faster than the maximum speed that cable service offers. The significance of these advances in copper technology is that broadband service can be provided **today** over **existing** infrastructure without the expenditure of billions of dollars to replace copper last mile lines with fiber. Given the universal and widespread availability of copper loops, even rural and underserved areas currently have this less costly and more expedient opportunity to receive 100 Mbps solutions. To encourage the investment necessary for providers to purchase and connect such advanced and innovative equipment to the existing copper infrastructure, it is essential that regulatory stability and certainty be established.*

Accordingly, Michigan needs to recognize the considerable value of this state's copper infrastructure, which was built in the era of regulation with ratepayer's dollars, and to take affirmative steps to protect against its uneconomic destruction.]

[The following new Section 215 should be incorporated into the MTA:]

SEC. 215. (1) FOR PURPOSES OF THIS SECTION:

- a. **“COPPER INFRASTRUCTURE” MEANS COPPER (OR COPPER BLEND) LINES, INCLUDING BUT NOT LIMITED TO, LOCAL LOOPS, INTER-OFFICE LINES, TRUNK LINES, FEEDER LINES, OR DROPS, THAT HAVE BEEN USED AS PART OF THE PUBLIC SWITCHED TELEPHONE NETWORK AND FUNDED THROUGH REGULATED RATES, THE INSTALLATION OF WHICH WAS SUBSTANTIALLY COMPLETED PRIOR TO FEBRUARY 8, 1996, INCLUDING INCIDENTAL EXTENSIONS AND MAINTENANCE AFTER FEBRUARY 8, 1996.**
- b. **“RETIRE” OR “RETIREMENT” OF COPPER INFRASTRUCTURE MEANS THE REMOVAL, ABANDONMENT, DISCONTINUANCE OF USE, OR OTHER INCAPACITATION OF COPPER LINES.**

- (2) THIS SECTION SHALL BE INTERPRETED TO ADVANCE THE PUBLIC INTEREST, TO MAXIMIZE THE TECHNOLOGICAL VALUE OF THIS STATE'S EXISTING COPPER INFRASTRUCTURE, AND TO PRESERVE COPPER INFRASTRUCTURE.
- (3) NO MORE THAN ONCE A YEAR, UNLESS OTHERWISE PROVIDED BY THE COMMISSION, A LOCAL EXCHANGE CARRIER OR AN AFFILIATE OF A LOCAL EXCHANGE CARRIER THAT MAY PETITION THE COMMISSION FOR APPROVAL TO RETIRE COPPER INFRASTRUCTURE. NOTICE OF THE PETITION SHALL BE GIVEN AS DETERMINED BY THE COMMISSION. THE PETITIONER SHALL PRESENT EVIDENCE OF:
- a. ITS INVESTIGATION OF ALTERNATIVES TO RETIREMENT, INCLUDING THE POSSIBLE TRANSFER OF THE COPPER INFRASTRUCTURE TO ANOTHER PROVIDER WHO WOULD ASSUME THE OBLIGATIONS UNDER SECTION 251(C) OF THE FEDERAL ACT AS TO SUCH COPPER INFRASTRUCTURE,
 - b. THE COSTS THAT THE PETITIONER WOULD INCUR TO RETIRE THE COPPER INFRASTRUCTURE, AND
 - c. THE EXTENT TO WHICH THE PROPOSED RETIREMENT MIGHT RESTRAIN TRADE OR BUSINESS OR LIMIT COMPETITION IN THE MARKET AREA.
- (4) THE COMMISSION SHALL APPROVE A PETITION TO RETIRE COPPER INFRASTRUCTURE, IN WHOLE OR PART, IF IT FINDS THAT RETIREMENT OF ALL OR A SEGMENT OF THE COPPER INFRASTRUCTURE IS THE LEAST COSTLY ALTERNATIVE FOR THE PETITIONER.
- (5) DURING THE PROCEEDINGS, PARTIES MAY SUBMIT OFFERS FOR ALL OR A SEGMENT OF THE SUBJECT COPPER INFRASTRUCTURE. IF THE COMMISSION DETERMINES THAT ONE OR MORE OFFER WOULD BE AN ACCEPTABLE ALTERNATIVE TO RETIREMENT AND WOULD ADVANCE THE INTERESTS IDENTIFIED IN SUBSECTION 2, THE PETITIONER AT ITS OPTION MAY ACCEPT ONE OR MORE SUBMITTED OFFERS IN ACCORDANCE WITH THEIR TERMS AND CONDITIONS. TO THE EXTENT ACCEPTED, SUCH OFFER WILL BE BINDING ON THE OFFEROR.

3) Transfer of Assets subject to Incumbent Wholesale Obligations.

[Commentary: HB 4314 proposes the deletion of Section 305(k) and (l) and Section 308. These provisions would make it easier for providers to transfer assets back and forth between affiliates. As long as, but only if, the below firewall is inserted into the Bill, the above referenced provisions could be deleted without opposition.]

[The following new Section 216 should be incorporated into the MTA:]

SEC. 216. NOT WITHSTANDING ANY OTHER PROVISION OF THIS ACT, A PROVIDER WITH OBLIGATIONS UNDER SECTION 251(C) OF THE FEDERAL ACT MAY NOT AVOID SUCH OBLIGATIONS BY TRANSFERRING ASSETS TO AN AFFILIATE. SUCH PROVIDER WILL ENSURE THAT THE AFFILIATE RECEIVING SUCH ASSETS BE EQUALLY OBLIGATED TO OBSERVE THE REQUIREMENTS OF SECTION 251(C) AS TO SUCH TRANSFERRED ASSETS.

4) **MPSC Jurisdiction over Wholesale Interconnected VOIP Service.**

[Commentary: Section 401 currently states that the MPSC does not have authority over, among other things, "retail broadband." HB 4314 proposes also to remove "Interconnected Voice Over Internet Protocol Service" from MPSC jurisdiction. This type of service is closely related to retail Broadband. Accordingly, it would be consistent for "retail" to be inserted where indicated below.]

Furthermore, since the wholesale interactions between carriers in the future will heavily rely on this new technology, Section 401 should not preclude the Commission's future role in wholesale interactions simply on the basis of a change in protocols, a change which will be invisible to consumers. The MPSC needs the same authority in the future to referee wholesale interactions between interconnected carriers – without regarding to the underlying invisible protocol.]

MITA's Recommended Revisions to HB 4314:

Sec. 401. (1) Except as otherwise provided by law or preempted by federal law, the commission shall **DOES** not have authority over enhanced services, paging, cellular, mobile, answering services, retail broadband service, video, cable service, pay-per-view, shared tenant, private networks, financial services networks, radio and television, WATS, personal communication networks, municipally owned telecommunication system, 800 prefix services, burglar and fire alarm services, energy management services, except for state institutions of higher education the reselling of centrex or its equivalent, payphone services, **RETAIL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICE**, and the reselling of an unlicensed telecommunication service. The foregoing services shall not be considered part of basic local exchange service.

5) Retention of Unfettered MPSC Authority over Quality of Service Rules at the Wholesale Level.

[Commentary: Currently, there is a procedural question about the continued effectiveness of Quality of Service Rules that were promulgated regarding transactions between providers and their customers. An argument has been made that, because these rules are arguably no longer effective, no need exists to revive them.

However, a second set of Quality of Service rules is in effect. The second set of Quality of Service rules pertains at the wholesale level to interactions between carriers. It is essential that the MPSC's authority to promulgate such rules be unfettered. If quality standards for the interactions between carriers are in place at the wholesale level, customers will directly benefit, thereby lessening the need for Quality of Service standards at the retail level. As long as the customer has the option to switch to another carrier, he or she can do so. However, if the quality standards are not maintained at the wholesale level for the interconnected amalgamation of networks, switching carriers will not assure that customers can obtain quality, reliable service.

The technical changes proposed below would preserve, without possibility of divestiture, the MPSC's authority to continue to promulgate wholesale quality of service rules.

The current wholesale quality of service rules are Exhibits A and B to the MPSC's February 8, 2010 Order, which can be viewed at:

http://www.dleg.state.mi.us/mpsc/orders/comm/2010/u-16063_02-08-2010.pdf

MITA's Recommended Revisions to HB 4314:

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

* * *

~~(B)~~ (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 which 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)(e)~~ **(1)(B)** shall include remedies for the enforcement of the rules that are consistent with this act and federal law. Rules promulgated under subsection ~~(1)(e)(ii)~~ **(1)(B)(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)(e)~~, **(1)(B)(i)** 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 **UNDER SUBSECTION (1) (B)** shall expire within 3 years of the effective date of the rules. The commission may, ~~prior to the expiration of the rules,~~ promulgate new rules under subsection ~~(1)(B)(ii) THROUGH (iv)~~. **ANY SERVICE QUALITY RULES PROMULGATED BY THE COMMISSION UNDER SUBSECTION (1)(B)(i) SHALL EXPIRE ON JUNE 30, 2011.**

6) Calls to Adjacent Exchanges should Continue to be Local Calls.

[Commentary: For many years, the MTA has required that calls to adjacent exchanges be classified as local calls. It would be regressive for Michigan to go back to the days when short calls to adjacent exchanges could be charged toll rates.]

MITA's Recommended Revisions to HB 4314:

[The first sentence of Section 304(9) should be retained and not deleted.]

Sec. 304 (9) A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call.

7) Retention of provision permitting small providers to adopt cost studies

[Commentary: 304(14) furthers efficiency and should be retained. This section has long enabled the smaller providers to adopt the cost studies of either of the two dominant providers in the state – instead of requiring the smaller provider to perform its own cost study. Because the costs of the predominant carriers are lower than the costs of the smaller providers, this provision allows the smaller providers to choose between either accepting lower costs or bearing the cost of performing its own cost study. This reasonable provision should be retained.

[Deletion of this provision would also result in a reduction of revenue for some competitive providers.]

MITA's Recommended Revisions to HB 4314:

[304(14) should be retained with a slight housekeeping modification.]

Sec. 304 (14) ~~Except as provided in subsection (15),~~ For the purposes of this section and the act, providers who, together with any affiliated providers, provide basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state may determine total service long run incremental cost through preparation of a cost study or may determine that their total service long run incremental cost is the same as that of a provider with more than 250,000 end-users

8) Provisions Prohibiting Dishonest Conduct should be Retained.

[Commentary: Section 502 prohibits carriers from engaging in dishonest conduct. An argument has been made that, if HB 4314 passes, telecommunications providers will no longer be "regulated" entities and therefore would no longer be exempt from the Consumers Protection Act. However, the Consumers Protection Act is not a substitute for Section 502. Section 502 specifically concerns telecommunications matters, which can be technical and complex. The MPSC is a better forum to resolve such matters than courts of general jurisdiction. The valuable protections afforded by Section 502 to defend at the MPSC against any dishonest conduct which might occur in the provision of telecommunications service should be retained.]

MITA's Recommended Revisions to HB 4314:

[Section 502 should be retained]

Sec. 502. (1) A provider of a telecommunication service shall not do any of the following:

- (a) Make a statement or representation, including the omission of material information, regarding the rates, terms, or conditions of providing a telecommunication service that is false, misleading, or deceptive. As used in this subdivision, "material information" includes, but is not limited to, all applicable fees, taxes, and charges that will be billed to the end-user, regardless of whether the fees, taxes, or charges are authorized by state or federal law.
- (b) Charge an end-user for a subscribed service that the end-user did not make an initial affirmative order. Failure to refuse an offered or proposed subscribed service is not an affirmative order for the service.
- (c) If an end-user has canceled a service, charge the end-user for service provided after the effective date the service was canceled.
- (d) If a residential end-user has orally ordered a service, fail to confirm the order in writing within 15 days after the service is ordered.
- (e) State to an end-user that their basic local exchange service or other regulated service will be discontinued unless the end-user pays a charge that is due for an unregulated service.
- (f) Disparage the services, business, or reputation of another by false, deceptive, or misleading representation of fact.
- (h) Cause a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction by making a false, deceptive, or misleading statement or by failing to inform the customer of a material fact, the omission of which is deceptive or misleading.

(i) Represent or imply that the subject of a transaction will be provided promptly, or at a specified time, or within a reasonable time, if the provider knows or has reason to know it will not be so provided.

(j) Cause coercion and duress as a result of the time and nature of a sales presentation.

(k) Require the purchase of a regulated service of the provider as a condition of purchasing an unregulated service.

(l) If a dispute exists between a customer and the provider, disconnect service to the customer before the resolution of a dispute.

(2) When the commission has authority to bring a proceeding for violation of this section, the commission may accept an assurance of discontinuance of a method, act, or practice which is alleged to be unlawful under this section from the person who is alleged to have engaged, be engaging, or be about to engage in the method, act, or practice. The assurance shall not be an admission of guilt or be introduced in any other proceeding. Unless rescinded by the parties or voided by the court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may include a stipulation for any of the following:

(a) The voluntary payment by the person for the cost of investigation.

(b) An amount to be held in escrow pending the outcome of an action.

(c) An amount for restitution to an aggrieved person.

9) The Requirements for Mandatory Contributions to the Restructuring Mechanism should be adjusted.

[Commentary: The access reform (Act 182 of 2009) disproportionately impacted the competitive carriers. Unlike other classifications of carriers, the restructuring mechanism both reduced the revenues of the competitive providers and increased their costs. To rectify the disproportionate impact, the increased costs that Act 182 imposed on competitive providers should be removed.]

MITA's Recommended Revisions to HB 4314:

[Section 310(12) should be revised as follows:]

Sec. 310.

* * *

(12) The restructuring mechanism shall be created and supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services **WITH MORE THAN 250,000 ACCESS LINES** and all providers of commercial mobile service.