

## TELECOMMUNICATIONS ACT

### House Bill 5721 (Substitute H-4) First Analysis (5-23-00)

**Sponsor: Rep. Mary Ann Middaugh**  
**Committee: Energy and Technology**

#### *THE APPARENT PROBLEM:*

Telecommunication is an inevitable part of most people's daily existence. From telephones to answering machines to pagers to cellular phones, people are rarely far from a phone and thereby are rarely far from access to just about anyone, anywhere in the world. Further, recent years have seen rapid expansion of services which vastly expand the telephone's usefulness, including facsimile machines, teleconferencing, call forwarding, voice mail, and speed dialing, just to name a few.

In Michigan, the provision of telecommunications service is regulated under the provisions of the Michigan Telecommunications Act. However, the act will be repealed by a sunset provision within the act on January 1, 2001. Without legislation to regulate the telecommunications industry, many believe it is likely that chaos would ensue and consumers would suffer the consequences.

At the time the most recent incarnation of the telecommunications act was enacted, it was expected to accelerate the introduction of new technology in both products and services, increase competition, and result in lower prices for customers. Some argue that many of the deregulation provisions in the 1995 amendments to the act have worked less well than was hoped or expected and the competition level in local telephone markets is such that further regulation is warranted to protect against abuses by existing monopolies. However, the extremely positive results of deregulation in the long-distance markets, which have lowered long distance rates for most consumers, are evidence to some that continuing the path of deregulation will continue to have a positive impact on service to consumers, both in quality and cost.

As the deadline for the expiration of the act rapidly approaches, legislation has been proposed to provide a new framework for regulating the extremely important and very lucrative telecommunications industry.

#### *THE CONTENT OF THE BILL:*

The bill would amend the Michigan Telecommunications Act (MCL 484.2101et al.) to do all of the following:

##### Powers and Duties of the Public Service Commission.

The Public Service Commission (PSC) would have jurisdiction and authority to administer, not only the act, but all federal telecommunications laws, rules, orders, and regulations that are delegated to the state. The commission would be required to exercise its jurisdiction and authority in accordance with the act and all federal telecommunications laws, rules, orders, and regulations. The commission could promulgate rules under the Administrative Procedures Act and issue those orders necessary to implement and administer the Telecommunications Act. In addition, the commission would be required to submit an annual report on the status of competition in telecommunication services, including, but not limited to, toll and local exchange service markets in Michigan. The report would have to be submitted to the governor and the House and Senate standing committees that oversee telecommunications issues.

Finally, under the act, the PSC does not review or set rates for toll access services. However, the bill would specify that rates for intrastate subscriber line charges or end user line charges to basic local exchange customers could not be increased except as approved by the PSC after a contested case hearing.

Hearings. The bill would specify that an application or complaint would have to include all information, testimony, exhibits, or other documents and information within the applicant's possession. If a complainant or applicant needed information that was in the possession of the respondent, the PSC would have to allow that complainant or applicant a reasonable opportunity for discovery to allow him or her to provide all the information, etc. that he or she intends to rely on to support the application or complaint.

Unless there was a request for emergency relief, the PSC would be required to compel parties to a complaint that involved an interconnection dispute between providers to use the act's alternative dispute resolution process. In addition, the bill would specify that, unless there was a request for emergency relief, the PSC would have an additional 45 days past the usual deadline for issuing an order in disputes involving \$1,000 or less, or an interconnection dispute between providers.

In addition to any other relief allowed in the act, the PSC or any other interested person could 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 appropriate jurisdiction.

Finally, the bill would also provide that the changes to the hearings provisions and the emergency relief provisions would not amend, alter, or limit any case or proceeding that was commenced prior to the effective date of the bill.

Emergency Relief. An order for emergency relief could be granted if the commission found all of the following: exigent circumstances warranting emergency relief; that the party seeking the relief will likely succeed on the merits; that the party will suffer irreparable harm in its ability to serve customers if the emergency relief is not granted; and the order is not adverse to the public interest. An emergency relief order could require a party to act or refrain from acting to protect the provision of competitive service offerings to customers under the act.

If the facts alleged in a complaint warranted emergency relief, the complainant could request an emergency relief order. A complaint and request for emergency relief would have to be hand delivered to the respondent at its principal place of business in Michigan. That party would have five business days to file a response to the request for emergency relief.

The commission would review the complaint, the request, the response, and all supporting materials. After review, the commission could decide to deny the request for emergency relief or conduct an initial evidentiary hearing. The hearing would have to be conducted within five days after notice had been provided and an order granting or denying the request would have to be issued.

Any action required by an order for emergency relief would have to allow the respondent a reasonable

amount of time to comply and would also have to be technically feasible and economically reasonable; however, the burden of establishing technical infeasibility and economic unreasonableness would on the respondent. In addition, the commission could require a complainant to post a bond that would be sufficient to make the respondent whole in the event that the order for emergency relief was later determined to have been erroneously granted.

An order granting or denying emergency relief would expire either upon the commission's final order or at an earlier date set by the commission and would be subject to immediate review in the court of appeals as a matter of right by the losing party. The review would have to comply with Michigan Court Rule on motions for immediate consideration and the review would be as a new case, rather than a review of the record of the prior hearing. The court of appeals could stay the emergency relief order upon posting of a bond or other security in an amount and on terms set by the court. Whether or not an appeal was made, the commission would be required to proceed with the case and issue a final order.

License Approval. As part of the findings necessary for the PSC to grant a license for a telecommunication provider, the bill would require that the PSC find that the applicant was able to provide basic local exchange service to all residential and commercial customers within the geographic area of the license and that it intended to provide service within one year from the date the license was granted. The PSC would also have the authority to revoke a provider's license if the PSC found that, within two years of the date the license was granted, the provider had not marketed its services to all potential customers or had refused to provide service to certain customers.

Rate setting requirements. As stated above, rates for intrastate subscriber line charges or end user line charges to basic local exchange customers could not be increased except as approved by the PSC after a contested case hearing. However, the bill would exempt certain providers from some of the act's basic local exchange service rate setting requirements.

The PSC would be required to exempt a provider who provided basic local exchange service to less than 250,000 end-users under a permanent or temporary license issued before January 1, 1993; offered those end-users single party basic local exchange service, tone dialing, toll access service, including end-user common line services and dialing parity at a total price no higher than the amount charged as of May 1, 2000;

and provided dialing parity access to operator, telecommunication relay, and emergency services to all basic local exchange end-users. Such a provider would also be exempt from the section of the law that allows a toll access service provider to set rates for toll access services, but states that access service rates and charges that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. Under that section, providers may agree to a lower rate than is allowed by the federal government, but if they cannot agree on a rate, a provider may apply to the PSC.

Prohibited practices. In addition to the existing prohibitions, a provider of telecommunication services would be prohibited from the following:

- disparaging the services, business, or reputation of another by false or misleading representations of fact;
- representing that unrequested services are being supplied in response to a request made by or on behalf of the party receiving the services;
- causing a probability of confusion or a misunderstanding as to a party's legal rights, obligations or remedies;
- representing or implying that the subject of a transaction will be provided promptly or at a specified time, or within a reasonable time, if the provider knew or has reason to know that it will not be so provided; and
- causing coercion and duress as a result of the time and nature of a sales presentation.

For alleged violations of these prohibitions, the PSC could accept an assurance that the accused provider would discontinue the allegedly unlawful method, act, or practice. Such an assurance would not be an admission of guilt nor could it be introduced in any other proceeding. An assurance could be enforced in the circuit court by the parties to the assurance, unless it had been rescinded by the parties or was voided by the court for good cause. An assurance could include stipulations for the voluntary payment of the costs of the investigation, an amount to be held in escrow pending the outcome of an action, or an amount for restitution to an aggrieved person.

The bill would also prohibit a telecommunications provider from adding to or otherwise altering a retail subscriber's service package without that subscriber's authorization. The PSC would be required to issue

orders to establish procedures that telecommunications providers would have to adopt to ensure that the services are not added to a subscriber's service package without his or her authorization.

All billings for a telecommunications provider would have to be written in a clear and conspicuous manner and provide all necessary information to allow a subscriber to make informed decisions regarding services and service providers. Bills would have to be clearly organized and would have to include, but not be limited to, all of the following:

- identification of any new charges or changes to the subscriber's services from the prior billing period;
- complete descriptions of all the charges and the service provider responsible for each charge, including the provider's address and toll-free telephone number; and
- information on how a subscriber could dispute a charge and how to file a complaint with the PSC.

The PSC could conduct a contested case hearing on an alleged violation of these provisions on its own motion, or upon the receipt of a complaint. If the PSC found that a violation had occurred, the commission would be required to order remedies and penalties as provided by the act. If the commission determined that a party had filed a complaint or defense that was frivolous, the commission would be required to award costs to the prevailing party, including reasonable attorney fees, against the losing party and their attorney.

Penalties. If, after notice and a hearing, the PSC found that a violation of the act had occurred, the PSC could, in addition to the penalties already provided under the act, order attorney fees and actual costs of a person or a provider of less than 250,000 end-users, unless the case was an arbitration case under section 252 of part II of title II of the Communications Act of 1934, Chapter 622, 110 Stat. 66.

Intrastate Universal Service Fund. "Universal service" would mean the provision of supported telecommunication services by any carrier serving customers in a geographic area currently served by an incumbent local exchange carrier that has a basic local exchange area with fewer than 250,000 subscribers.

"Affordable Rates" would be defined as, at a minimum, rates in effect on January 1, 2001 or as determined by the PSC.

“Incumbent Local Exchange Carrier” or “ILEC” would mean a provider that was granted a basic local exchange service license before January 1, 1993.

“Intrastate Universal Service Fund” would be a fund created by the commission to provide a subsidy for helping to support the provision of telecommunication services provided by any telecommunication carrier that furnished service within a geographic area currently served by an ILEC whose basic local exchange area has fewer than 250,000 subscriber access lines.

“Supported communications services” would mean primary residential lines and a minimum level of local usage on those lines, as determined by the PSC.

No later than July 1, 2001, the PSC would be required to initiate an investigation to determine whether an intrastate universal service fund should be created. The investigation would have to be completed by December 1, 2001. All ILECs with fewer than 35,000 subscriber access lines would have to be made respondents in the proceeding, and in addition any other interested party could participate and intervene in the proceeding. At some later date, upon request or on its own motion, the commission, after notice and hearing, could be required to determine if the findings made should be reviewed because of changes in technology or other factors.

The PSC would make a determination for each provider regarding whether and to what extent the affordable rate level for the provision of services would be below a provider’s forward looking economic cost for the supported services. If, for some or all of the providers, provision of the supported services at an affordable rate would be below the forward looking economic cost of the supported services, the PSC would be required to create a universal service fund to subsidize the difference between the affordable rate set by the PSC and the forward looking cost of the services, less any federal universal service support received. The PSC would select an independent third party administrator to administer the fund.

Eligibility to receive intrastate universal service support would be consistent with the act and with the rules and regulations of the FCC. To the extent a fund was established, the PSC would have to require that the costs of the fund be recovered from all telecommunications providers on a competitively neutral basis. Providers who contributed to the fund could recover costs from end-users through billing surcharges.

Purposes of the act. The act includes a section that specifies the purposes of the act. The bill would amend that section to provide, among other items, that the act’s purpose is to:

"Ensure that every person has access to *just, reasonable, and affordable* basic residential telecommunication service." [new language emphasized]

"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 associated with rate cases."

"Restructure regulation to focus on price and quality of service and not on the provider. *Supplement* existing state and federal law regarding antitrust, consumer protection, and fair trade to provide *additional* safeguards for competition and consumers".

"*Authorize the commission to take actions to encourage the development of a competitive telecommunications industry.*"

Rate Reductions. The bill would add a new article entitled “Rate Reductions”. Notwithstanding any other provision of the act, when the bill’s provisions took effect, the rate charged for every telecommunication service provided in the state would be required to be no higher than 95 percent of the rate charged for that service as of May 1, 2000. Rates for any new service that was functionally equivalent or substantially similar to an existing service would be set at no higher than the rate allowed for that existing service. The rates set under these provisions would remain in effect until December 31, 2003, or until the PSC determined that a service was competitive for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, whichever is earlier. The PSC would have to issue its determination as to whether a service was competitive within 60 days from the date the application was filed or the service would be considered competitive. Any complaint that arose under this section would be determined by the PSC through a contested hearing.

Sunset elimination, repeals. The bill would repeal the act’s January 1, 2001 sunset date and the provisions of act that repealed earlier sections of the act.

## **BACKGROUND INFORMATION:**

In 1991, Michigan began its efforts towards turning from the traditional monopoly structure for phone

service to a more competitive framework. The adoption of the Michigan Telecommunications Act in 1991 turned away from nearly 100 years of telephone service through the traditional public utility monopoly model. Under the traditional model telephone service was seen as a “natural monopoly” where the very nature of the service (like water or electric service) required a single provider. What generally occurred under this model, and what occurred in Michigan, was that an exclusive right to provide service in each local service area was granted to a local exchange carrier (LEC) which owned, among other things, the local loops (the wires connecting telephones to switches), the switches (equipment that directs calls to their destinations), and transport trunks (wires that carry calls between switches) that make up a local exchange network. In exchange for protection of the monopoly, the telephone company agreed be subjected to government regulation to assure the quality of service and to set rates in order allow a fair rate of return and to prevent monopoly pricing.

At the time it was enacted the MTA led the nation by replacing the traditional public utility model with a competitive model that would, it was hoped, encourage competition and use market forces, instead of regulations, to control prices and the quality of service. In 1995, the legislature amended the MTA to further reduce regulations on the monopoly providers and gave the PSC limited authority to encourage new providers to enter the market. Shortly after the 1995 MTA was enacted the federal government enacted the federal Telecommunications Act of 1996. The federal act provided a national policy framework to encourage a competitive telecommunications market.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

The latest revisions to the MTA, in 1995, have failed in their intended purpose of increasing competition for local phone services. Since 1995, competition in the local telephone service market, according to proponents of the bill, remains anemic, at best. By limiting the PSC’s authority, the revisions have allowed the incumbent local providers to retain what amounts to an unrestricted monopoly in the local telephone market. Furthermore, the 1995 act will sunset on December 31, 2000 and needs to be extended before that date, lest chaos ensue.

According to proponents of the bill, Ameritech and GTE account for the vast majority (some estimates are as high as 97 percent for the areas they serve) of the local phone service market. Because these incumbent providers control the local phone network, proponents of the bill argue that the incumbent providers have used delaying tactics to freeze out would-be competitors, and have actually increased their market shares since the enactment of the 1995 amendments to the MTA. As evidence of the failure of the 1995 revisions to the MTA, they point out that since 1995, Ameritech has increased its rates for various services eight times. During that time, costs have been reduced in four other states where the company does business. They assert that Ameritech’s residential basic line charges in Michigan are nearly double those in Illinois and Indiana, and more than 50 percent higher than those in Ohio and Wisconsin. They also point to FCC reports that indicate that Michigan customers spend the most per line on intrastate toll calls, \$25.69 per month, well above the United States average of \$14.41 per month. All this leads proponents to conclude that the current MTA is not helping to create a competitive local telephone market and should be amended to help enhance competition and prevent the incumbent local providers from using their monopoly positions to limit competition.

Furthermore, according to proponents, action is needed now. They point out that there is an opportunity cost for delaying action. According to estimates, each week of delay in introducing real competition into the local telephone market costs Michigan ratepayers approximately \$1.6 million. Proponents further claim that it is not unreasonable to assume that the introduction of competition in local phone service would lead to a 15 percent reduction in prices within five years (according to a Hillsdale Policy Group, Ltd. report).

Proponents also argue that Michigan’s economic growth in the current high-tech era depends upon having a competitive telecommunications market. Without that, high-tech industries will likely choose to set up their businesses in other states.

#### ***Against:***

Incumbent local service providers argue that proponents are twisting the FCC figures – while the intrastate toll charges are higher than in other states, Michigan consumers pay less in local line charges (\$23.09 per month compared to a national average of \$28.14 per month). When added with other charges, they argue, Michigan customers are paying a total of about \$73.46 per month for their phone service, while

the national average for similar service is \$75.00 per month. The reasons Michigan consumers pay more for local toll calls is that Michigan customers make more local toll calls (2.7 million in 1998 compared to the next highest, Illinois, with 1.7 million).

Further, the universal service provisions would unfairly exclude many rural customers who are served by GTE. Language in the bill would limit universal service subsidies to carriers whose service areas are served by incumbent local providers who have less than 250,000 subscribers. The universal service subsidies should be universal, not restricted.

Finally, the bill places proponents in the difficult position of arguing that in order to create a free market, more government regulation is needed. This doesn't make sense. By increasing regulation the bill will only serve to delay full competition. Looking only at local hardwired telephone service provides an inaccurate picture of competition for the average person's phone service. Many people are starting to use other communications devices and no longer look to their home phone as the means of basic telephone service. Cell phones, digital communications devices, and other such hand held communications devices have become the norm, rather than the exception. These devices, and other means of telecommunication, have flourished over the last few years and are providing very real competition for local phone service, and they have the advantage over other local service providers because they are not regulated by the state the way traditional phone companies are. Rather than increasing regulations, the bill should be removing the remaining barriers to full competition and allowing the market to work.

### ***Against:***

The bill is too weak; it lacks several important provisions to protect consumers. First, the bill continues to allow local phone companies to make virtually automatic increases in their rates based on the rate of inflation as reflected in the consumer price index (CPI). Allowing the rates to be tied to the rate of inflation means that rate will continue to increase, even though the cost of providing these services is decreasing due to advances in technology. Second, the bill does nothing to eliminate the state access fee charges instituted by the two largest incumbent local service providers. Both Ameritech and GTE, the two largest incumbent local providers in Michigan, now levy a "state access charge" or "end user line charge" on Michigan customers that is not billed in any of the other states where either Ameritech or GTE does business. Without these two provisions, opponents

believe that consumers will not be adequately protected under the bill.

It is also argued that the bill fails to provide sufficient protection for would-be competitive local providers. Given the existing monopoly maintained by the incumbent providers, some of the incentives provided could discourage rather than encourage competition. In particular, the requirement of a five percent rate cut is not only a clear interference with market forces, it begs the question – why not a ten percent rate cut? Or 20 percent? Of what value, other than political (and the two or three dollars a month), is an arbitrary rate cut? Opponents point out that by requiring a lowered rate, the bill could limit the ability of some competitors to enter the marketplace. First, the lowered rate could give customers less incentive to shop around and switch providers. Second, if new competitors can be assumed to have smaller profit margins, then the artificially lowered rate could force them to offer lower (possibly unprofitable or only marginally profitable) rates in order to entice customers to switch, weakening those competitors from day one. Even if the new competitors aren't forced to offer significantly lower rates to gain market share, the likelihood is that the incumbent providers will do better on the lower profit allowed under the artificially set rates than the new would-be competitors. Finally, because the five percent cut applies only to retail charges, would-be competitors will be hurt more than incumbent local providers. This is because competitors estimate that approximately 40 percent of their charges are applied to wholesale costs that are paid to the incumbent local provider. Thus, the 5 percent cut would have to come from the remaining 60 percent of the charge, increasing its impact on the would-be competitor.

Another problem asserted by would-be local market competitors is that the bill's protections against monopolistic behaviors are limited. An earlier version of the bill allowed competitors to get what amounted to a temporary restraining order against certain monopolistic behaviors. Opponents argue that the current provisions allowing for emergency relief orders is so watered down that it will do little to help protect competitive providers from the monopolistic practices of incumbent providers. Allowing a party to appeal emergency orders to the court of appeals will allow incumbent providers to continue their monopolistic behaviors until those legal actions have been completed. Without more realistic hope of immediately stopping certain monopoly practices through the use of emergency relief orders, many would-be competitors may choose to stay out of the marketplace altogether.

Finally, opponents note that the changes to the MTA are once again being rushed through the process. By taking up and attempting to enact a bill that was only introduced on May 2, 2000 (and has undergone significant revisions between then and now), the risk of once again doing more harm than good is magnified. Some opponents point out that the current pace has left little opportunity for the legislature to debate the bill's merits, much less for any public discussion to occur.

### ***POSITIONS:***

The Public Service Commission supports the bill. (5-22-00)

The American Association of Retired Persons believes that the bill is an improvement on current law, but could not fully support the bill without provisions regulating the right of monopoly interests to charge state access charges. (5-22-00)

The Michigan Municipal League is neutral on the bill. (5-22-00)

Ameritech does not oppose the bill in its current form, but has several issues with the current provisions, including the five percent rate reduction. (5-22-00)

GTE opposes the limited nature of the bill's universal service fund provisions. (5-22-00)

SPRINT opposes the bill as written. (5-22-00)

The attorney general opposes the bill. (5-22-00)

The Michigan Consumer Federation opposes the bill without provisions to prohibit annual automatic CPI based rate increases and state access charges. (5-22-00)

AT&T opposes the bill without amendments to address competitive issues. (5-22-00)

Analyst: W. Flory

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.