

Legislative Analysis



INTRASTATE ACCESS RATES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4257 as enrolled

Public Act 182 of 2009

Sponsor: Rep. Tim Melton

House Committee: Energy and Technology

Senate Committee: Energy Policy and Public Utilities

Complete to 2-1-11

A SUMMARY OF HOUSE BILL 4247 AS ENACTED

BRIEF SUMMARY: The bill amends the Michigan Telecommunications Act to require all telecommunications providers, including those with with 250,000 or fewer customers, to adopt *intrastate* access rates no higher than federal *interstate* access rates. The bill also establishes a "restructuring mechanism" to partially compensate certain providers—incumbent local exchange carriers (ILECs) with 250,000 or fewer customers—for revenue lost as a result of the bill for 12 years. Competitive local exchange carriers (CLECs) that are required to reduce their access rates receive no restructuring compensation but are allowed to phase in required access charge reductions over five years, rather than immediately. (MCL 484.2310)

[Note: After Public Act 182 of 2009 was enacted, a group of CLECs filed a petition with the Federal Communications Communication (FCC) seeking a declaratory ruling that the act is preempted under federal communications law. On February 22, 2010, the FCC established a pleading cycle for comments on this petition (WC Docket No. 10-45). As of the date of this analysis, this petition is still pending with no ruling from the FCC.]

BACKGROUND INFORMATION:

Federal and state telecommunications laws contain complex provisions establishing various forms of intercarrier compensation. After the breakup of AT&T in the early 1980s, federal *interstate* access charges were established to compensate local exchange carriers (LECs) for the use of what has been described as the "vital, expensive and relatively unprofitable local access network." Federal law governs *interstate* access charges and Michigan law governs *intrastate* access charges. Generally speaking, intrastate access charges are paid by long distance providers to local exchange providers for calls carried by the long distance providers that begin and end in different local calling areas within Michigan.

Currently, Michigan law allows companies to set their own intrastate access charges. Companies with more than 250,000 customers¹ generally adopt intrastate access rates no higher than federal interstate levels because such rates are presumed just and reasonable

¹At the time the bill was enacted, AT&T and Verizon were the only two companies with more than 250,000 customers. Verizon subsequently sold its Michigan landline assets to Frontier Communications. References to "current law" in this analysis means the state of the law before the bill was enacted into law.

under state law. Companies with 250,000 or fewer customers—both incumbent local exchange carriers (ILECs, which generally serve rural areas, and are providers of last resort, and competitive carriers (CLECs) that have emerged in recent decades—may charge intrastate access rates that exceed federal interstate levels.

Large telecommunications companies believe that the rates charged by CLECS and smaller, often rural, ILECs are too high, and have sought legislation to prohibit intrastate access charges that exceed federal interstate levels.

FISCAL IMPACT: The act essentially creates a new fund within the Department of Energy, Labor, and Economic Growth (DELEG)—the "restructuring mechanism"—to provide financial assistance to certain incumbent local exchange carriers (ILECs) as a trade-off for reducing their intrastate access charges to the same level as applicable interstate access charges. The restructuring mechanism would be supported by mandatory monthly contributions assessed against all providers of retail intrastate telecommunications services (landlines) and commercial mobile service (cellular service), established under an order of the Public Service Commission (MPSC). The cost of the restructuring mechanism is estimated by the PSC at \$17.8 million. (For additional information, see **Detailed Fiscal Information** later in the analysis.)

DETAILED SUMMARY:

Limit intrastate access charges. The bill does the following things:

- Allows all providers of toll access services to set their own intrastate switched toll access rates, but prohibits any of them, including smaller companies, from charging more for *intrastate* switched toll access services than the federal government allows for the same *interstate* services. (Previously, Section 310 of the act established a presumption for providers with more than 250,000 Michigan customers that intrastate rates set at a level not exceeding federal interstate levels were just and reasonable, but exempted providers with 250,000 or fewer customers from commission review of their rates under Section 310, allowing them to set intrastate access rates at levels higher than allowed for federal interstate access services.)
- Requires a provider to use the same "access rate elements" for *intrastate* services as those in effect for that provider and permitted under federal law for the same *interstate* services.
- Retains—and expands to providers with 250,000 or fewer customers—the requirement that all providers of toll access service must make available for intrastate access services any technical interconnection arrangements, including colocation required by the federal government for identical interstate access services.
- Retains—and expands to providers with 250,000 or fewer customers—the requirement that providers offer services to all other providers under the same rates, terms, and conditions, without unreasonable discrimination. Special toll

access services and switched access services, including volume discounts, must be offered to all providers under the same rates, terms, and conditions.

- Continues to allow providers with 250,000 or fewer customers to agree to joint toll access service rates and to pool intrastate toll access service revenues.

Pass through of rate reductions. Section 310(6) currently requires a provider to pass through any access rate reductions it receives to its customers in an equal amount, and also requires the MPSC to investigate and assure that providers comply with this requirement. The bill allows, but does not require, the MPSC to investigate and assure compliance with this requirement.

Effective date. A provider's deadline for adopting required access charge reductions depends on whether a provider is an "eligible provider" under the bill:

- An "**eligible provider**" must comply with the new limit on intrastate access charge rates *as of the date set for the restructuring mechanism created by the bill to begin*. [The bill does not set a date certain for the mechanism to begin; rather, it allows a third-party administrator to start the mechanism on any date within 270 days after the bill's effective date.]
- An "**eligible provider**" means: (1) an incumbent local exchange carrier (ILEC), as defined in the federal Telecommunications Act of 1996 (Section 251, 47 USC 251²); (2) that charged higher rates for intrastate switched toll access services than for the same interstate switched toll access services on January 1, 2009; and (3) that provides "services and functionalities identified by rules of the Federal Communications Commission described at 47 CFR 54.101(a)."³
- A provider required to reduce its access charge levels—but that is not eligible for compensatory payments (presumably, CLECs)—may phase in the required access charge reductions in no more than five steps. The first reduction is due 30 days after the bill's effective date, followed by additional reductions on July 1 in years 2010 to 2013. Each step has to reduce the differential between the provider's intrastate and interstate switched toll access rates as of July 1, 2009 by at least 20 percent.

² Under Section 251 of that act, an incumbent local exchange carrier (ILEC) means, for a given area, the local exchange carrier that provided telephone exchange service in the area and was a member of the exchange carrier association under a specified FCC regulation (or is a successor to such a member) on February 8, 1996. In addition, FCC rules may treat other carriers as ILECs.

³ The services or functionalities described by 47 CFR 54.101(a)(1)-(9) are those supported by the federal universal service support programs: (1) voice grade access to the public switched network; (2) local usage (a certain number of local minutes provided free of charge to the customer); (3) dual tone multi-frequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, such as 911 or enhanced 911; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. These are the minimum characteristics of any retail local service offering which must be met before the Lifeline discount for eligible low-income persons may be applied to the service.

Restructuring mechanism. The bill establishes an intrastate switched toll access rate restructuring mechanism as a separate interest-bearing fund within the Department of Energy, Labor, and Economic Growth. Money in the "restructuring mechanism" will remain in it at the close of a state fiscal year and not lapse to the General Fund. An eligible provider, as defined in the bill, is entitled to receive monthly disbursements from the restructuring mechanism to recover lost revenues from required access rate reductions.

MPSC administration of mechanism. The MPSC must establish and administer the restructuring mechanism. It must begin operation within 270 days after the bill's effective date. The MPSC must determine the date for the restructuring mechanism to begin, within the 270-day deadline, and give participants 30 days' notice of this date. The MPSC will recover its actual costs of administration from assessments collected for operation of the restructuring mechanism.

The MPSC must also do the following things:

- Establish the procedures and timelines for organizing, funding, and administering the restructuring mechanism.
- Report to the Legislature and Governor at least annually on (1) the total amount of money collected from contributing providers; (2) the total amount of money disbursed to each eligible provider; (3) the costs of administration; and (4) any other information considered relevant by the MPSC.

Confidentiality. Company-specific information about access lines, minutes of use, demand quantities, contributions, and intrastate telecommunications services revenues submitted to the MPSC under Subsection 310(10) is exempt from disclosure as "confidential commercial or financial information" under Section 210 of the Michigan Telecommunications Act, MCL 484.2210. [Under Section 210, MCL 484.2210, trade secrets and commercial or financial information submitted under the Telecommunications Act are generally exempt from the Freedom of Information Act, except under the terms of a protective order. Subsection 310(22) of the bill also concerns the confidentiality of certain company-specific information.]

Calculation of initial payments. The bill requires the initial size of the restructuring mechanism to be calculated as follows:

- Within 60 days after the bill's effective date, each eligible provider must submit to the MPSC information and supporting documentation to establish the amount of the annual intrastate access revenue it will lose as a result of the a rate reduction required by the bill.
- The formula for calculating the reduction is the difference between intrastate and interstate access rates in effect as of July 1, 2009, multiplied by the intrastate switched access minutes of use and other switched access demand quantities for the calendar year 2008.

- The MPSC must compute the size of the initial restructuring mechanism for each provider within 60 days after the date established for receiving information and supporting documentation from eligible providers.

Providers required to contribute; universal service fund. All retail intrastate telecommunications service providers and commercial mobile service providers must make mandatory monthly contributions to the restructuring mechanism. Interconnected voice over Internet protocol (VoIP) service providers are not considered interstate telecommunications service providers for this purpose, and are not required to pay mandatory contributions, directly or indirectly. A provider of telecommunications services to an interconnected VoIP provider does not pay a mandatory monthly contribution related to those interconnected VoIP services, and is prohibited from passing through any mandatory monthly contributions, directly or indirectly, to a provider of interconnected VoIP services. Nothing in the act grants the MPSC authority over commercial mobile service providers or VoIP providers except as strictly necessary for administration of the restructuring mechanism.

Notwithstanding these provisions, if the FCC determines that interconnected VOIP service providers may be regulated by states for universal services purposes, the MSPC may open a proceeding to determine which providers must participate in a universal services fund.

Contributing provider reports. Within 60 days of the bill's effective date, each contributing provider must report its 2008 intrastate retail telecommunications services revenues to the MPSC.

Initial contribution assessment; order. The initial contribution assessment is a uniform percentage of retail intrastate telecommunications services determined as follows:

Projected funds needed for restructuring mechanism disbursements for 12 months (including projected cash reserve requirements, actual and projected administrative costs, and projected uncollectible assessments)

Divided by

2008 total retail intrastate telecommunications revenues (less projected uncollectible revenues) **reported to the MPSC**

The MPSC must issue an order establishing the initial contribution assessment within 150 days of the effective date of the bill, and may adjust it on a quarterly or other basis as necessary to maintain sufficient funds.

Monthly contributions. Each contributing provider must remit to the MPSC on a monthly basis an amount equal to its intrastate retail telecommunications services revenues, less uncollectible revenues, multiplied by the contribution assessment. Contributing providers

must continue making contributions until eligible providers are no longer entitled to disbursements, as determined by the commission.

Resizing of restructuring mechanism payments. The administrator must recalculate the size of the restructuring mechanism payment for each eligible provider four years after the mechanism becomes operational, and again four years later, as follows:

- The restructuring mechanism payment is recalculated each time as the difference between the provider's intrastate access rates in effect on July 1, 2009, and the federal interstate access rates *in effect at the time of the recalculation*, multiplied by the intrastate access minutes of use and other switched access demand quantities for calendar year 2008.
- Additional adjustment during first resizing. During the first recalculation (after four years), the restructuring mechanism is further adjusted by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31, 2008, to December 31 of the year immediately preceding the year in which the adjustment is made.
- Additional adjustment during second resizing. The recalculated restructuring mechanism will be further adjusted during the second recalculation (after eight years) by the percentage change, if any, in the number of access lines in service for each eligible provider from December 31 of the year of the first recalculation to December 31 of the year immediately preceding the second recalculation.

Disbursements. Each eligible provider is entitled to receive monthly disbursements from the restructuring mechanism for a period of not more than 12 years from the date the mechanism is established, at which time the mechanism will cease to exist.

Use of funds. The bill prohibits the money received and administered by the MPSC for the support and operation of the restructuring mechanism from being used by the commission or any other state department, agency, or branch for any other purpose. This money is not subject to appropriation, allocation, assignment, expenditure, or any other use by the state or any branch of state government.

Effect of federal intercarrier compensation reforms. If the federal government adopts intercarrier compensation reforms or takes any action significantly changing interstate switched toll access service rates, the MPSC or any interested party may apply for a proceeding under Section 203 within 60 days of the federal action to determine whether any modifications to the size, operation, or composition of the restructuring mechanism are warranted. If a proceeding is filed, the requirement that eligible providers set intrastate access rates equal to federal interstate access rates is temporarily suspended and intrastate access rates are frozen at the levels in effect at the time of the suspension. Following notice and hearing, and upon a showing of good cause, the MPSC may stop or place conditions on a temporary suspension.

Effect of federal universal service changes. If the federal government stops basing universal service contributions on a percentage of total interstate telecommunications

services revenues, the MPSC must modify the contribution methodology for the restructuring mechanism to be consistent with the new federal methodology. To do this, the MPSC It would initiate a proceeding to modify the contribution methodology and to set a reasonable transition period.

Dispute resolution. Disputes arising under these provisions may be submitted to the MPSC for resolution under Sections 203 and 204 of the Michigan Telecommunications Act, 484.2203 and 2204. [Section 203 allows the MPSC to conduct investigations, hold hearings, and issue findings and orders under the contested hearings provisions of the Administrative Procedures Act, upon receipt of a complaint or on its own motion. It also provides for emergency relief in appropriate cases and prescribes procedures and appeal rights. Section 203 provides that in cases involving interconnection disputes, the alternative dispute resolution process found in Section 203a must be followed. Section 204 states that "[i]f 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service or a matter prohibited by section 305, then either telecommunication provider may file with the commission an application for resolution of the matter."]

If any contributing provider fails to make required contributions or fails to provide required information to the MPSC, the commission must file initiate an enforcement proceeding under Section 203. If the commission finds that a contributing provider has failed to make contributions or to perform a required act, the provider is subject to remedies and penalties under Section 601 of the Telecommunications Act, MCL 484.2601.

[In general, Section 601 provides that if the MPSC finds that a person has violated the act, after notice and a hearing, the MPSC must 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. Remedies and penalties may include fines, refunds to ratepayers of any excessive rates collected, license revocations, cease and desist orders, and attorney fees. Persons and providers with fewer than 250,000 end users may recover actual costs, except in certain arbitration cases. The following fines may be assessed:

Providers with 250,000 or more access lines:

- First offense: \$1,000 to \$20,000 per day of violation.
- Subsequent offense: \$2,000 to \$40,000 per day of violation.

Providers with fewer than 250,000 access lines:

- First offense: \$200 to \$500 per day of violation.
- Subsequent offense: 500 to \$1,000 per day of violation.]

Confidentiality. Eligible providers and contributing providers must provide information to the MPSC that is required for the administration of the restructuring mechanism. Company-specific information as to the following is deemed confidential commercial or

financial information exempt from public disclosure under Section 210 of the Telecommunications Act (which provides a Freedom of Information Act exemption for certain commercial or financial information):

- Access lines.
- Switched toll access minutes of use.
- Switched toll access demand quantities.
- Contributions.
- Intrastate telecommunications services revenues

[See also the confidentiality provision in subsection 310(10).]

Definitions.

"Commercial mobile service" means "that term as defined in Section 332(d)(1) of the Telecommunications Act of 1996, 47 USC 332." [Under Section 332(d)(1), "commercial mobile service" means any mobile service (as defined in 47 USC 153) that is provided for profit and that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by FCC regulation.]

"Contributing provider" means "an entity required to pay into the restructuring mechanism." [Under the bill, all providers of retail intrastate telecommunications services and commercial mobile service are required to pay into the restructuring mechanism.]

"Eligible provider" means "an incumbent local exchange carrier as defined in Section 251 of the Telecommunications Act of 1996, 47 USC 251, that as of January 1, 2009 had rates for intrastate switched toll access services higher than its rates for the same interstate switched toll access services, and that provides the services and functionalities identified by rules of the Federal Communications Commission described at 47 CFR 54.101(a)" [as described above, these are the minimum services and functionalities that must be offered to Lifeline customers].

"Interconnected voice over internet protocol service" means "that term as defined in 47 CFR 9.3." [Under this federal regulation, VoIP service is one that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.]

"Restructuring mechanism" means the "intrastate switched toll access restructuring mechanism established in this section."

DETAILED FISCAL INFORMATION:

The act essentially creates a new fund within the Department of Energy, Labor, and Economic Growth (DELEG)—the "restructuring mechanism"—to provide financial assistance to certain incumbent local exchange carriers (ILECs) as a trade-off for reducing their intrastate access charges to the same level as applicable interstate access charges.

The initial amount in the fund would be first determined based on the amount of revenue that would be lost by reducing intrastate access charges. The MPSC estimates that this amount would total approximately \$16.0 million, initially. The restructuring mechanism would also include amounts necessary to cover projected cash reserve requirements, administrative costs, and projected uncollectible contribution assessments. The restructuring mechanism would be supported by mandatory monthly contributions assessed against all providers of retail intrastate telecommunications services (landlines) and commercial mobile service (cellular service), established under an order of the Public Service Commission (MPSC). The MPSC also estimates that initial cash reserve requirements will total another \$1.3 million. The restructuring mechanism would be re-sized every four years.

The act specifically provides that money received by the commission for the support and operation of the restructuring mechanism is not subject to appropriation by the Legislature, and is not to be used for any other purpose. The restructuring mechanism would be subject to investment by the state treasury, and would receive common cash investment earnings. Any year-end balances would remain in the fund, rather than lapse to the General Fund.

The MPSC would incur some additional administrative expenses relative to establishing "procedures and timeliness for organizing, funding, and administering the restructuring mechanism," including determining the amount of the restructuring mechanism, determining the amount of the monthly contribution assessment, processing monthly assessment payments, pursuing delinquent payments, submitting annual reports to the Legislature and Governor, resolving disputes through the contested case process, assessing penalties for non-compliance, and otherwise ensuring compliance with the provisions of the act, including the reduction of intrastate access charges. As noted above, the act specifically provides that the MPSC "shall recover its actual costs of administering the restructuring mechanism from assessments collected for the operation of the restructuring mechanism." The MPSC estimates that it requires 4.0 FTE positions, at a cost of \$440,000, bringing to total amount of the restructuring mechanism to \$17.8 million.

The bill provides that contributing providers that fail to make the required payments or otherwise fail to comply with requirements of the bill would be subject to the penalties imposed under Section 601 of the Michigan Telecommunications Act (MCL 484.2601). Any additional fine revenue would be credited to the General Fund.

The bill would also have an impact on local units of government to the extent restructuring intrastate access charges impacts local telephone rates. In general, it seems that reducing intrastate access charges exerts an upward pressure on local telephone rates. That upward force, however, is mitigated, to a large extent, by the restructuring mechanism established in the bill.

Legislative Analyst: Shannan Kane
Fiscal Analyst: Mark Wolf

■ 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.