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Senate Bill 636 (as enacted)  
Sponsor: Senator Mike Nofs  
Senate Committee: Energy and Technology  
House Committee: Energy and Technology  
Date Completed: 4-21-14

**PUBLIC ACT 52 of 2014**

**CONTENT**

**The bill amended the Michigan Telecommunications Act to do the following:**

- **Eliminate a provision for a Public Service Commission (PSC) proceeding and otherwise revise procedures for a telecommunication provider to discontinue basic local exchange or toll service to an exchange, beginning January 1, 2017.**
- **Allow a customer or an interconnecting provider to petition the PSC to investigate the availability of comparable voice service.**
- **Require the PSC, after investigating, to declare that an emergency exists in an area that is not served by at least one provider offering voice service with reliable 9-1-1 access; and to conduct a request for service process to identify a willing provider.**
- **Require the PSC to issue an order requiring the current provider to provide the service until another willing provider is available, if the PSC determines that another provider is not capable of providing the service.**
- **Require the PSC's annual report on the administration of the Michigan Intrastate Switched Toll Access Restructuring Mechanism (ARM) to identify any duplicative costs or revenue being recovered by providers and make recommendations for altering the restructuring mechanism.**
- **Require the PSC to recalculate the ARM on March 13, 2018 (rather than on September 13, 2014, and September 13, 2018).**
- **Require the PSC to reduce the amount of the monthly disbursement from the ARM to an eligible provider on a pro rata basis for each exchange in which the provider discontinues basic local exchange service.**
- **Require the PSC to maintain a publicly available database of toll and local exchange service providers in Michigan, and require a provider to submit to the PSC the information necessary for the database.**
- **Eliminate a requirement that operator and payphone service providers renew their registration annually and pay an annual renewal fee.**

The bill took effect on March 25, 2014.

Service Discontinuance

Section 313 of the Act prohibits a telecommunication provider that provides basic local exchange and/or toll service from discontinuing either service to an exchange, unless at least one alternative provider for toll service or at least two alternative providers for basic local exchange service are furnishing comparable voice service to customers in the exchange.

("Telecommunication provider" means a person that for compensation provides one or more telecommunication services. The term does not include a provider of commercial mobile (i.e., wireless) service. "Telecommunication services" includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.

"Basic local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality two-way interactive switched voice or data communication. "Toll service" means the transmission of two-way interactive switched communication between local calling areas. "Exchange" means one or more contiguous central offices and all associated facilities within a geographical area in which a provider offers basic local exchange service.)

A provider proposing to discontinue a regulated service to an exchange must file a notice with the PSC, publish the notice in a newspaper of general circulation within the exchange, notify each of its customers within the exchange by first-class mail or within customer bills, and provide other reasonable notice as required by the Commission.

Within 60 days after publication or receipt of the notice, a person or other provider affected by the discontinuance may apply to the PSC to determine if the discontinuance is authorized. Within 90 days after the notice is published, in response to a request or on its own initiative, the PSC may commence a proceeding to determine whether the discontinuance is authorized. The Commission has 180 days from the date a proceeding is initiated to issue its final order. A provider may not discontinue service unless it has given each customer at least 60 days' notice after a Commission order has been issued or after the last day for initiating a proceeding.

Under the bill, these provisions will not apply after December 31, 2016. Beginning January 1, 2017, a telecommunication provider that provides basic local exchange or toll service may discontinue that service in an exchange by doing all of the following at the same time as filing a petition under Section 214 of the Federal Telecommunications Act (described below):

- Filing a notice of the proposed discontinuance with the PSC.
- Publishing a notice in a newspaper of general circulation within the exchange.
- Giving notice to each of the provider's customers within the exchange by first-class mail or within customer bills.
- Notifying any interconnecting providers by first-class mail or other notice permitted under the terms of the interconnection agreement.

At least 90 days before discontinuing service, the provider must give the same notices again upon approval of the discontinuance by the Federal Communications Commission (FCC).

(Under Section 214 of the Telecommunications Act, a provider may not discontinue, reduce, or impair service to a community unless it has obtained from the FCC a certificate that neither the present nor future public convenience and necessity will be adversely affected. The FCC may issue or refuse to issue a certificate and may attach to a certificate any terms and conditions that it determines are required by public convenience and necessity.)

After January 1, 2017, and only in an area in which a provider has given notice of a proposed discontinuance of service or discontinued service in the previous 90 days, a customer of that provider or any interconnecting provider may petition the PSC to investigate the availability of comparable voice service with reliable access to 9-1-1 and emergency services to that customer.

(The bill specifies that "comparable voice service" includes any two-way voice service offered through any form of technology, including voice over internet protocol (VOIP) and wireless services, that is capable of placing calls to and receiving calls from a provider of basic local exchange service. The bill defines "emergency services" as services provided to the public by police, fire, ambulance, or other first responders. "Reliable access to 9-1-1" means the rules, regulations, and guidelines set forth in the FCC trials order, including all appendices, that provide comparable and reliable consumer access to emergency services. "FCC trials order" means the order of the FCC, GN docket nos. 13-5 and 12-353, adopted January 30, 2014, and any subsequent order of the FCC modifying or revising that order that includes emergency connectivity requirements that provide comparable and reliable consumer access to emergency services. (The trials order is described below, under **BACKGROUND**.)

After conducting an investigation lasting no longer than 180 days, if the PSC determines that the FCC failed to make a finding that the present and future public convenience and necessity are not adversely affected or has not adequately addressed the issue, the PSC must declare by order that an emergency exists in an area in the State that is not served by at least one voice service provider offering the required comparable voice service through any technology or medium. The Commission must conduct a request for service process to identify a willing provider in that area, including the current provider. A provider may not be required to participate in the request for service process. (The bill defines "willing provider" as a provider that voluntarily participates in the request for service process.)

The willing provider may use any form of technology that is capable of providing comparable voice service with reliable access to 9-1-1 and emergency services, including VOIP and wireless services. If the PSC determines that another provider is not capable of providing service that meets those criteria, the Commission must issue an order requiring the current provider to provide the service in that area using any form of technology that the Commission determines is capable of providing it, until another willing provider is available. An intrastate universal service fund under Section 316a may not be created or used to compensate or fund a willing provider or current provider to provide service under these provisions.

(Section 316a provides for the creation of an intrastate universal service fund if no interstate universal service fund exists on the Federal level, unless otherwise approved by the PSC. "Intrastate universal service fund" means a fund created by the PSC to provide a subsidy to customers for the provision of supported telecommunication services provided by any telecommunication carrier. The PSC must require that the costs of the fund be recovered from all providers on a competitively neutral basis. Contributing providers may recover from end-users the costs of the financial support through surcharges on their bills.)

Beginning January 1, 2017, a provider that discontinues service must adhere to all rules, regulations, and guidelines set forth in the FCC trials order, including all appendices, for each of that provider's exchanges in Michigan, whether or not the discontinuance is undertaken pursuant to an official trial under the order, except that all notices or reports to be filed with the FCC must be submitted to the PSC for its information. This provision will be effective until the FCC determines the legal and policy framework and establishes the requirements for the IP-transition, including emergency connectivity requirements that provide comparable and reliable consumer access to emergency services.

The Act provides that discontinuance of basic local exchange service by an incumbent local exchange carrier (ILEC) does not affect the requirements of that ILEC under Federal law. The bill also refers to the ILEC's requirements under the Act.

The bill provides that Section 313 "does not create, restrict, or expand the commission's jurisdiction and authority for any of the following:"

- The jurisdiction and authority established under Section 201.
- The jurisdiction and authority to carry out the PSC's obligations to enforce the rights, duties, and obligations of an entity established in Sections 251 and 252 of the Federal Telecommunications Act, and any applicable agreement or wholesale tariff or State law, rule, regulation, or order related to wholesale rights, duties, and obligations, including interconnection and exchange voice traffic.
- The jurisdiction and authority to regulate switched access rates, terms, and conditions, including the implementation of Federal or State law concerning intercarrier compensation.

(Under Section 201 of the Michigan Telecommunications Act, the PSC has the jurisdiction and authority to administer the Act and all Federal telecommunications laws, rules, orders, and regulations that are delegated to the State. Sections 251 and 252 of the Federal Telecommunications Act prescribe the PSC's jurisdiction and authority with regard to interconnection of telecommunication carriers with the local exchange carrier's network, and procedures for negotiation, arbitration, and approval of interconnection agreements.)

## Restructuring Mechanism

Except as otherwise provided, the PSC may not review or set the rates for toll access services. ("Access service" means access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication services within the local exchange.)

A provider of toll access services must set the rates for intrastate switched toll access services at rates that do not exceed the rates allowed for the same interstate services by the Federal government, and must use the access rate elements for intrastate services that are in effect for that provider and are allowed for the same interstate services. Eligible providers had to comply with this provision as of September 13, 2010.

("Eligible provider" means an ILEC 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). That regulation requires eligible voice telephony services to provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 9-1-1 and enhanced 9-1-1; and toll limitation services to qualifying low-income consumers.)

Providers that are not eligible may not charge intrastate toll access service rates in excess of those rates in effect as of July 1, 2009, and must reduce the differential, if any, between intrastate and interstate switched toll access services rates in effect on that date in not more than five steps of at least 20% each of the differential on January 1 every year from 2011 to 2015.

If toll access service rate is reduced, then the provider receiving the reduced rate must reduce its rate to its customers by an equal amount.

In order to restructure intrastate switched toll access service rates, the Act established the Michigan Intrastate Switched Toll Access Restructuring Mechanism, as a separate interest-bearing fund administered by the PSC. An eligible provider is entitled to receive monthly disbursements from the ARM, as described below, in order to recover the lost intrastate switched toll access service revenue resulting from the required rate reductions.

The ARM is supported by a mandatory monthly contribution by all providers of retail intrastate telecommunications services and all providers of commercial mobile service (which does not include providers of interconnected VOIP) services. These contributions must continue until the end of the period for which eligible providers are entitled to receive monthly disbursements from the ARM.

To calculate the initial size of the ARM, by February 15, 2010, each eligible provider had to submit to the PSC information that established the amount of the reduction in annual intrastate switched toll access revenue that would result from the rate reduction. The reduction had to be calculated for each eligible provider as the difference between intrastate and interstate switched toll access service rates in effect as of July 1, 2009, multiplied by the intrastate minutes of use and other switched access demand quantities for the calendar year 2008. The PSC had to compute the size of the initial disbursements for each eligible provider.

By February 15, 2010, each contributing provider had to report its 2008 intrastate retail telecommunications services revenue to the PSC. The initial contribution assessment percentage was a uniform percentage of this revenue determined by projecting the total amount necessary to cover the initial disbursement levels for 12 months, divided by the 2008 calendar year total retail intrastate telecommunications services revenue in the State, less projected uncollectible revenue, reported to the PSC. The Commission had to issue an order establishing the initial calculation of the contribution assessment percentage by May 16, 2010. The Commission may

increase or decrease the assessment on a quarterly or other basis as necessary to maintain sufficient funds for disbursements.

Each eligible provider is entitled to receive monthly disbursements from the ARM for not more than 12 years after the mechanism's establishment, at which time it will cease to exist.

The ARM became operational on September 13, 2010. Originally, the Act required the PSC to recalculate the size of the restructuring mechanism for each eligible provider on September 13, 2014, and again on September 13, 2018. The bill eliminated both of those dates, and instead requires the Commission to perform one recalculation on March 13, 2018. The bill requires the recalculation process to be as follows:

- The ARM must be recalculated as the difference between the intrastate switched toll access rates in effect as of July 1, 2009, and the interstate rates in effect at the time of the recalculation, multiplied by the intrastate minutes of use and other switched access demand quantities for the calendar year 2008.
- During the recalculation, the recalculated ARM must be 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 before the year in which the adjustment is made.

The original recalculation process was generally the same but included an additional adjustment for any percentage change in the number of access lines in service for each eligible provider between the first and the second recalculations.

The bill also requires the PSC to reduce the amount of the monthly disbursement to an eligible provider on a pro rata basis for each exchange in which the provider discontinues basic local exchange service. A reduction will be effective on the date of the service discontinuation.

The Act requires the PSC to report to the Legislature and the Governor annually regarding administration of the ARM. The report must include the total amount of money collected from contributing providers, the total amount disbursed annually to each eligible provider, the costs of administration, and any other information the Commission considers relevant.

Under the bill, the report also must identify any duplicative costs or revenue that already is being recovered by eligible providers through Federal access recovery charges or the Connect America Fund (described below, under **BACKGROUND**). If the PSC identifies duplicative recovery, it must notify the FCC and all contributing providers. Any identified duplicative recovery is not exempt from public disclosure under Section 210 (which provides for the confidentiality of trade secrets and commercial or financial information submitted under the Act).

In addition, beginning with the first report required after the recalculation in 2018, the bill requires the report to include recommendations for altering the ARM, based on the results of the recalculation and the State and Federal regulations in effect at the time, to ensure that the ARM is still achieving the purpose for which it was originally established.

#### Operator & Payphone Service

The Act requires an operator service provider or payphone service provider to register with the PSC and pay a \$100 fee before providing service in Michigan. The registration is effective upon filing. Previously, a registration remained in effect for one year, and a provider could renew registration annually by filing a renewal with the Commission and paying a renewal fee of \$100.

Under the bill, a registration does not expire after one year and does not have to be renewed. The \$100 registration fee must be paid only once.

## Local Calls

The Act provides that a call made to a local calling area adjacent to the caller's local calling area is considered a local call and must be billed as such. A call made to a party who is not located within the geographic area of the caller's local calling area or an adjacent local calling area (as defined by the PSC's order in case numbers U-12515 and U-12528) is not a local call if the tariff of the provider originating the call does not classify it as a local call. The bill refers to the tariff, service guide, or similar document containing the terms and conditions of the originating provider.

MCL 484.2103 et al.

## **BACKGROUND**

### FCC Trials Order

On January 30, 2014, the FCC adopted an order that will allow telecommunication providers to engage in a set of voluntary experiments to make the transition from telephone service delivered over copper lines (known as "plain old telephone service", or "POTS") to IP-based service delivered over coaxial cable, fiber, or wireless networks. The order identifies a number of values as fundamental to communication networks and requires the trials to focus on preserving and enhancing these values as technology evolves. The values include the availability of public safety communications, access to affordable communications services for all Americans, choice provided through competition in the marketplace, and consumer protection. Providers had to submit their proposals for test projects to the FCC by February 20, 2014. A public comment and reply period followed. The FCC is expected to issue its final decision on the submitted proposals at its May meeting.

In addition to the trials focused on service delivery technology, the order provides for a set of experiments focused specifically on broadband access in rural areas, interagency research regarding IP-based technologies for people with disabilities, and the assignment of telephone numbers as society moves to IP-based telecommunication platforms. The order also addresses the improvement of data collection and use to improve understanding of the impact of change on consumers, including reform of the FCC's consumer complaint and inquiry process, intergovernmental collaboration, and data collection and analysis regarding next-generation 9-1-1 systems.

### Connect America Fund

The Connect America Fund (formerly the Universal Service Fund) supports the FCC's universal service high-cost program. That program encourages the build-out of telecommunications services by allowing eligible providers serving rural, insular, and high-cost areas to recover some of their costs of providing the service. According to the FCC, the program is designed to ensure that consumers in these traditionally underserved areas "have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that are reasonably comparable to those in urban areas".

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bill will have a minor, but likely negative fiscal impact on the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill removes the \$100 annual renewal fees paid by providers of payphone and operator service, which will reduce revenue to the Public Service Commission by a small amount.

The bill also will allow basic local exchange or toll service providers to discontinue services after December 31, 2016. The Public Service Commission receives assessments based on the revenue received by telecommunication providers. To the extent that telecommunication providers decide to stop offering basic local exchange or toll service in certain areas, those assessments will be

reduced. Some of the assessment revenue lost from local basic exchange cancellation might be replaced with assessment revenue from alternative voice service types. However, some of these alternative services, such as voice over internet protocol, are not subject to assessments, so overall the amount of these assessments collected under the bill will likely be reduced.

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