

Act No. 295
Public Acts of 2000
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Rep. Middaugh

Reps. Birkholz, Bradstreet, Cameron Brown, Callahan, Cassis, DeRossett, Ehardt, Garcia, Gosselin, Hart, Howell, Jansen, Jelinek, Ruth Johnson, Kuipers, Kukuk, LaSata, Mortimer, Pappageorge, Raczkowski, Richardville, Rocca, Sanborn, Shackleton, Shulman, Vear and Voorhees named co-sponsors

ENROLLED HOUSE BILL No. 5721

AN ACT to amend 1991 PA 179, entitled "An act to regulate and insure the availability of certain telecommunication services; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; to repeal certain acts and parts of acts; and to repeal this act on a specific date," by amending sections 101, 103, 201, 203, 203a, 207, 213, 302, 303, 304, 310, 312, 502, 503, 506, 601, and 604 (MCL 484.2101, 484.2103, 484.2201, 484.2203, 484.2203a, 484.2207, 484.2213, 484.2302, 484.2303, 484.2304, 484.2310, 484.2312, 484.2502, 484.2503, 484.2506, 484.2601, and 484.2604), sections 101, 203, 207, 213, 303, 304, 310, 312, 601, and 604 as amended and sections 203a, 502, and 503 as added by 1995 PA 216 and section 506 as added by 1998 PA 259, and by adding sections 214, 316a, 322, 507, and 701; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 101. (1) This act shall be known and may be cited as the "Michigan telecommunications act".

(2) The purpose of this act is to do all of the following:

(a) Ensure that every person has access to just, reasonable, and affordable basic residential telecommunication service.

(b) Allow and encourage competition to determine the availability, prices, terms, and other conditions of providing telecommunication services.

(c) 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.

(d) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state through incentives to providers to offer the most efficient services and products.

(e) Improve the opportunities for economic development and the delivery of essential services including education and health care.

(f) 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.

(g) Encourage the use of existing educational telecommunication networks and networks established by other commercial providers as building blocks for a cooperative and efficient statewide educational telecommunication system.

- (h) Ensure effective review and disposition of disputes between telecommunication providers.
- (i) Authorize actions to encourage the development of a competitive telecommunication industry.

Sec. 103. (1) Except as otherwise provided in this act, this act shall not be construed to prevent any person from providing telecommunication services in competition with another telecommunication provider.

(2) The commission shall submit an annual report describing the status of competition in telecommunication services in this state, including, but not limited to, the toll and local exchange service markets in this state. The report required under this section shall be submitted to the governor and the house and senate standing committees with oversight of telecommunication issues.

Sec. 201. (1) Except as otherwise provided by this act, the Michigan public service commission shall have the jurisdiction and authority to administer this act and all federal telecommunications laws, rules, orders, and regulations that are delegated to the state.

(2) The commission shall exercise its jurisdiction and authority consistent with this act and all federal telecommunications laws, rules, orders, and regulations.

Sec. 203. (1) Upon receipt of an application or complaint filed under this act, 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.

(2) If a complaint filed under this section alleges facts that warrant emergency relief, the complainant may request an emergency relief order. On the date of filing, the complaint and request for emergency relief shall be hand-delivered to the respondent at its principal place of business in Michigan. The commission shall allow 5 business days for a filing in response to the request for emergency relief. The commission shall review the complaint, the request for emergency relief, the response, and all supporting materials and determine whether to deny the request for emergency relief or to conduct an initial evidentiary hearing. The initial evidentiary hearing shall be conducted within 5 business days from the date of the notice of hearing and the commission shall issue an order granting or denying the request for emergency relief. An order for emergency relief may require a party to act or refrain from action to protect competition. Any action required by an order for emergency relief shall be technically feasible and economically reasonable and the respondent shall be given a reasonable period of time to comply with the order. At the hearing for emergency relief, the respondent has the burden of showing that the order is not technically feasible and not economically reasonable. If the commission finds that extraordinary circumstances exist that warrant expedited review before the commission's issuance of a final order, it shall set a schedule providing for the issuance of a partial final order as to all or part of the issues for which emergency relief was granted within 90 days of the issuance of the emergency relief order.

(3) An order for emergency relief may be granted under subsection (2) if the commission finds all of the following:

- (a) That the party has demonstrated exigent circumstances that warrant emergency relief.
- (b) That the party seeking relief will likely succeed on the merits.
- (c) That the party will suffer irreparable harm in its ability to serve customers if emergency relief is not granted.
- (d) That the order is not adverse to the public interest.

(4) The commission may require the complainant to post a bond in an amount sufficient to make whole the respondent in the event that the order for emergency relief is later found to have been erroneously granted.

(5) An order for emergency relief shall expire upon the sooner of any of the following:

- (a) Ninety days after its issuance.
- (b) Issuance of the commission's partial final order.

(c) An earlier date set by the commission. Notwithstanding this subsection, the commission may extend the emergency relief order to a date no later than the date on which the final order in the proceeding is issued.

(6) An order granting or denying emergency relief under subsection (2) shall be subject to immediate review in the court of appeals as a matter of right by the party aggrieved. The review shall be de novo and shall comply with Michigan court rule 7.211(c)(6). The court may stay an order granting emergency relief upon the posting of a bond or other security in an amount and on terms set by the court. Regardless of whether an appeal is made under this subsection, the commission shall proceed with the case and issue a final order as otherwise required under this section.

(7) An application or complaint filed under this section shall contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the application or complaint. Applications or complaints that do not meet the requirements of this subsection shall be dismissed or suspended pending the receipt by the commission of the required information. If the complainant or applicant requires information in the possession of the respondent, not within the complainant's or applicant's possession, the commission may allow a reasonable opportunity for discovery to allow the complainant or applicant to provide all relevant information, testimony, exhibits, or other documents on which the complainant or applicant intends to rely to support its application or complaint.

(8) The burden of proving a case filed under this act is with the party filing the application or complaint.

(9) In a contested case under this section, the commission can administer oaths, certify all official acts, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony.

(10) Except as otherwise provided in this section, the commission shall issue a final order in a case filed under this section within 90 days from the date the application or complaint is filed.

(11) Except as provided for a hearing involving a request for emergency relief, if a hearing is required, the applicant or complainant shall publish a notice of hearing as required by the commission within 7 days of the date the application or complaint was filed or as required by the commission. The first hearing shall be held within 10 days after the date of the notice. If a hearing is held, the commission shall have 180 days from the date the application or complaint was filed to issue its final order. If the principal parties of record agree that the complexity of issues involved requires additional time, the commission may have up to 210 days from the date the application or complaint was filed to issue its final order. If the application or complaint is subject to section 203a, the commission shall have an additional 45 days to issue its final order.

(12) An order of the commission shall be subject to review as provided by section 26 of 1909 PA 300, MCL 462.26.

(13) If a complaint is filed under this section by a provider against another provider, the provider of service shall not discontinue service during the period of the contested case, including the alternative dispute process, if the provider receiving the service has posted a surety bond, provided an irrevocable letter of credit, or provided other adequate security in an amount and on a form as determined by the commission.

(14) Except if there is a request for emergency relief under this section, if the complaint filed under this section involves an interconnection dispute between providers, the commission shall require the parties to utilize the alternative dispute process under section 203a.

(15) In addition to any other relief provided by this act, the commission or a party may 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 proper jurisdiction.

(16) The amendatory act that added this subsection does not amend, alter, or limit any case or proceeding commenced before the effective date of this subsection.

Sec. 203a. (1) For all complaints involving a dispute of \$1,000.00 or less, a dispute under section 203(14), or at the option of the complainant, for a period of 45 days after the date the complaint is filed under section 203, the parties shall attempt alternative means of resolving the complaint.

(2) Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record, including, but not limited to, settlement conferences, mediation, and other informal dispute resolution methods. If the parties cannot agree on an alternative means within 20 days after the date the complaint is filed, the commission shall order mediation. Within the 45-day period required under subsection (1), a recommended settlement shall be made to the parties.

(3) Within 7 days after the date of the recommended settlement, each party shall file with the commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under section 203.

(4) If a party rejects the recommended settlement, then the application or complaint shall proceed to a contested case hearing under section 203.

(5) The party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the final order of the commission is more favorable to the rejecting party than the recommended settlement under this section. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party.

(6) If the recommendation is not accepted under subsection (3), the individual commissioners shall not be informed of the recommended settlement until they have issued their final order under section 203.

(7) An attempt to resolve a contested case under this section is exempt from the requirements of section 203 and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) This section shall not extend or toll the time within which the commission is required to issue its final order under section 203.

Sec. 207. Until directory assistance service is determined by the commission to be a competitive service, the commission shall determine the manner in which all directory assistance service to the end-user is to be regulated under this act. The regulations shall include both rates, if any, and quality of service.

Sec. 213. (1) Subject to section 201, the commission may promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(2) Except as provided in subsection (3), effective September 1, 1996, the following administrative rules shall not apply to telecommunication providers or telecommunication services:

(a) Electric power and communication lines: R 460.581 to R 460.592.

- (b) Intrastate telephone services and facilities: R 460.1951 to R 460.1968.
- (c) Filing procedures for communications common carriers tariffs: R 460.2051 to R 460.2057.
- (d) Consumer standards and billing practices, residential telephone service: R 460.2211 to R 460.2279.
- (e) Uniform systems of accounts for class A and class B telephone companies: R 460.9041 and R 460.9059.

(3) If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.245 and 24.246, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the commission shall not promulgate rules under this act. Subsection (2) does not apply if the commission is prohibited from promulgating rules under this subsection.

Sec. 214. (1) The commission shall issue orders that assign the telephone digits 2-1-1 to community resource information and referral answering points established under subsection (3) and prescribe appropriate interconnection orders to carry out the intent of this section.

(2) Each provider of basic local exchange service in this state shall assign the telephone number 2-1-1 only to a community resource information and referral answering point established under subsection (3).

(3) The commission shall designate a community resource information and referral entity to be the 2-1-1 answering point for various geographical areas within this state. In making its determination, the commission shall consider all of the following:

- (a) The recommendations of the Michigan alliance for information and referral systems.
- (b) Whether the relevant state-endorsed multipurpose collaborative bodies are in agreement.

(c) Whether the entity has established a framework to assure the provision of coverage of the 2-1-1 telephone number 24 hours per day, 7 days per week.

(d) Whether the entity meets 2-1-1 standards adopted by the Michigan alliance for information and referral systems.

(4) Each community resource information and referral entity designated by the commission to be the 2-1-1 answering point for a particular geographical area within the state shall establish the framework to provide sufficient resources to operate the 2-1-1 telephone number 24 hours per day, 7 days per week.

Sec. 302. (1) After notice and hearing, the commission shall approve an application for a license if the commission finds both of the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to all residential and commercial customers within the geographic area of the license and that the applicant intends to provide service within 1 year from the date the license is granted.

(b) The granting of a license to the applicant would not be contrary to the public interest.

(2) The commission shall retain a copy of all granted licenses and make all information contained in the licenses available to the public.

(3) Each provider granted a license shall retain a copy of the license at its principal place of business and make the license available for review to the public.

Sec. 303. (1) The commission may alter or amend the geographic area of a license, grant a competing license, or revoke a license of a provider if within 2 years from the date the license was granted the provider has not marketed its services to all potential customers or has refused to provide services to certain customers.

(2) A telecommunication provider shall not provide basic local exchange service to customers or end-users located within another telecommunication provider's licensed service area except through interconnection arrangements as provided by this act.

(3) The sale or transfer of shares of stock of a provider of basic local exchange service is not a sale or transfer of a license or a discontinuance of service.

(4) The commission has the authority to approve or deny a proposed addition, elimination, or modification of an area code in this state. The commission shall give public notice and shall conduct a public hearing in the affected geographic area before an addition, elimination, or modification of an area code is made in this state.

(5) To the extent that it is technically and economically feasible, the commission shall issue orders requiring the modification of all area code boundaries in this state to insure that they conform to county lines.

Sec. 304. (1) Except as provided in section 304a, the rates for basic local exchange service shall be just and reasonable.

(2) A provider may alter its rates for basic local exchange services by 1 or more of the following:

(a) Filing with the commission notice of a decrease, discount, or other rate reduction in a basic local exchange rate. A rate alteration under this subdivision shall become effective without commission review or approval.

(b) Filing with the commission notice of an increase in a basic local exchange rate that does not exceed 1% less than the consumer price index. Unless the commission determines that the rate alteration exceeds the allowed increase under this subdivision, the rate alteration shall take effect 90 days from the date of the notice required under subsection (3). As used in this subdivision, "consumer price index" means the most recent reported annual average percentage increase in the Detroit consumer price index for all items for the prior 12-month period by the United States department of labor.

(c) Filing with the commission an application to increase a basic local exchange rate in an amount greater than that allowed under subdivision (b). The application shall be accompanied with sufficient documentary support that the rate alteration is just and reasonable. The commission shall make a determination within the 90-day period provided for in subsection (5) of 1 of the following:

(i) That the rate alteration is just and reasonable.

(ii) That a filing under section 203 is necessary to review the rate alteration.

(3) Notice to customers of a rate alteration is required for a rate alteration under subsection (2)(b) or (c) and section 304a and shall be included in or on the bill of each affected customer of the provider before the effective date of the rate alteration.

(4) The notice required under subsection (3) shall contain at least all of the following information:

(a) A statement that the customer's rate may change.

(b) An estimate of the amount of the annual change for the typical residential customer that would result by the rate change.

(c) A statement that a customer may comment on or receive complete details of the rate alteration by calling or writing the commission. The statement shall also include the telephone number and address of the commission. Complete details of the rate alteration shall be provided free of charge to the customer at the expense of the provider.

(5) Except as otherwise provided in subsections (2) and (6), an altered basic local exchange rate shall take effect 90 days from the date of the notice required by subsection (3).

(6) Upon receiving a complaint or pursuant to a determination under subsection (2)(c), the commission may require a filing under section 203 to review a proposed rate alteration under subsection (2)(c). The commission's final order may approve, modify, or reject the rate alteration.

(7) In reviewing a rate alteration under subsection (6), the commission shall consider only 1 or more of the following factors if relevant to the rate alteration as specified by the provider:

(a) Total service long run incremental cost of basic local exchange services.

(b) Comparison of the proposed rate to the rates charged by other providers in this state for the same service.

(c) Whether a new function, feature, or capability is being offered as a component of basic local exchange service.

(d) Whether there has been an increase in the costs to provide basic local exchange service in the geographic area of the proposed rate.

(e) Whether the provider's further investment in the network infrastructure of the geographic area of the proposed rate is economically justifiable without the proposed rate.

(8) A provider shall be allowed only 1 rate increase for each class or type of service during any 12-month period.

(9) A provider shall not make a rate alteration under this section until the rate has been restructured under section 304a.

(10) The commission shall exempt a provider from this section and section 310(2) if it finds all of the following:

(a) The provider provides basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state.

(b) The provider offers to 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 of no higher than the amount charged as of May 1, 2000.

(c) The provider provides dialing parity access to operator, telecommunication relay, and emergency services to all basic local exchange end-users.

(11) 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.

Sec. 310. (1) Except as provided by this act, the commission shall not review or set the rates for toll access services.

(2) Except as otherwise provided under subsection (7), a provider of toll access services shall set the rates for toll access services. Access service rates and charges set by a provider that exceed the rates allowed for the same interstate services by the federal government are not just and reasonable. In no event may end-user or subscriber line charges exceed the rates allowed for the same interstate services by the federal government as of May 1, 2000. Providers may agree to a rate that is less than the rate allowed by the federal government. If the providers cannot agree on a rate, a provider may apply to the commission under section 204.

(3) Two or more providers that each have less than 250,000 access lines may agree to joint toll access service rates and pooling of intrastate toll access service revenues.

(4) A provider of toll access services shall make available for intrastate access services any technical interconnection arrangements, including colocation required by the federal government for the identical interstate access services.

(5) A provider of toll access service, whether under tariff or contract, shall offer the services under the same rates, terms and conditions, without unreasonable discrimination, to all providers. All pricing of special toll access services and switched access services, including volume discounts, shall be offered to all providers under the same rates, terms, and conditions. Until allowed by the federal communications commission, volume discounts on switched access are prohibited under this subsection.

(6) If a toll access service rate is reduced, then the provider receiving the reduced rate shall reduce its rate to its customers by an equal amount. The commission shall investigate and ensure that the provider has complied with this subsection.

(7) A provider of basic local exchange service shall not assess or impose on end-users an intrastate subscriber line charge or end-user line charge.

(8) This section shall not apply to basic local exchange providers that have 250,000 or fewer customers in this state.

Sec. 312. (1) Except as provided by this act, the commission shall not review or set the rates for toll service.

(2) A provider of toll service may charge the same rate for the service on its routes of similar distance.

(3) The commission shall require that toll service is universally available to all persons within the state.

(4) Upon commission review and approval, all providers of toll service shall make available to their customers adjacent exchange toll calling plans. All providers of toll service shall inform their customers of the available plans. The plans shall remain in effect under this act until altered by order of the commission. A provider of toll service shall implement an optional discount plan for calling to exchanges within 20 miles of a customer's home exchange. The plan shall not violate the conditions delineated in the commission's order in case number U-9153, dated September 26, 1989.

(5) Except as otherwise approved by the commission, a provider shall not charge a mandatory minimum monthly or mandatory flat-rate charge for toll calls except in connection with an optional discount toll calling plan.

Sec. 316a. (1) As used in this section:

(a) "Affordable rates" means, at a minimum, rates in effect on January 1, 2001 or as determined by the commission.

(b) "Intrastate universal service fund" means a fund created by the commission to provide a subsidy to customers for the provision of supported telecommunication services provided by any telecommunication carrier.

(c) "Supported telecommunication services" means primary residential access lines and a minimum level of local usage on those lines, as determined by the commission.

(d) "Universal service" shall mean the provision of supported telecommunication services by any carrier.

(2) No sooner than July 1, 2002, the commission shall initiate an investigation to determine whether an intrastate universal service fund should be created. The commission shall complete the investigation no sooner than December 1, 2002. All providers shall be made respondents in the proceeding and any other interested party may participate and intervene in the proceeding.

(3) The commission shall determine for each provider whether and to what extent the affordable rate level to provide supported telecommunication services is below each provider's forward looking economic cost of the supported telecommunication services.

(4) If a fund is created under this section, to the extent providers provide supported telecommunication services at an affordable rate that is below the forward looking economic cost of the supported telecommunication services, the fund shall provide a subsidy for customers in an amount which is equal to the difference between the affordable rate as determined by the commission and the forward looking economic cost of the supported services, less any federal universal service support received for those supported services.

(5) Eligibility for customers to receive intrastate universal service support under subsection (4) shall be consistent with the eligibility guidelines of section 254(e) of the telecommunications act of 1996 and the rules and regulations of the federal communications commission. The state fund shall be administered by an independent third-party administrator selected by the commission.

(6) To the extent an intrastate universal service fund is established, the commission shall require that the costs of the fund be recovered from all telecommunication providers on a competitively neutral basis. Providers contributing to the intrastate universal service fund may recover from end-users the costs of the financial support through surcharges assessed on end-users' bills.

(7) Upon request or on its own motion, the commission, after notice and hearing, shall determine if, based upon changes in technology or other factors, the findings made under this section should be reviewed.

(8) This section does not apply if an interstate universal service fund exists on the federal level unless otherwise approved by the commission.

Sec. 322. (1) As used in this section:

(a) "Affiliate" means a person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The term "own" means to own an equity or other financial interest of more than 10% or any management interest.

(b) "Broadband" means of a capability in excess of 144 kilobits per second.

(c) "Broadband internet access transport services" means the broadband transmission of data between a user and his or her internet service provider's point of interconnection with the broadband internet access transport provider's facilities.

(d) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(e) "Internet service provider" means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the internet.

(f) "Wireline broadband internet access transport provider" means a person who provides broadband internet access transport services, by aid of wire, cable, or other like connection, over facilities owned by it or under its control for a fee directly or indirectly to the public. The term also includes an internet service provider who self-provides, over facilities owned by it or under its control, the wireline broadband transport of its services between itself and its users.

(2) The commission shall study whether the state should require each wireline broadband internet access transport provider who is, or is an affiliate of, an internet service provider to provide any other requesting internet service provider access to its broadband internet access transport services, unbundled from the provision of content, on rates, terms, and conditions that are at least as favorable as those on which it provides the access to itself, to its affiliate, or to any other person.

(3) The commission shall report to the legislature and the governor no later than July 1, 2001 on its findings under this section.

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.

(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 or misleading representation of fact.

(g) Represent to a party to whom services are supplied that the services are being supplied in response to a request made by or on behalf of the party when they are not.

(h) Cause a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(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.

(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.

Sec. 503. (1) The commission shall promulgate rules that establish privacy guidelines in the providing of telecommunication services.

(2) The rules promulgated under this section shall include, but need not be limited to, protections against the releasing of certain customer information and customer privacy intrusions.

(3) A person who obtains an unpublished telephone number using a telephone caller identification service shall not do any of the following without the written consent of the customer of the unpublished telephone number:

(a) Disclose the unpublished telephone number to another person for commercial gain.

(b) Use the unpublished telephone number to solicit business.

(c) Intentionally disclose the unpublished telephone number through a computer data base, on-line bulletin board, or other similar mechanism.

Sec. 506. (1) Upon the receipt of a complaint filed by a person alleging a violation of section 505 or 507, an end-user who has been switched to another provider or had services added in violation of section 505 or 507, or a provider who has been removed as an end-user's provider without the end-user's authorization, or upon the commission's own motion, the commission may conduct a contested case as provided under section 203. The commission shall create, and shall supply upon request, a form affidavit designed to enable an end-user to provide all information necessary to promote efficient resolution of complaints alleging a violation of section 505 or 507. Hearings conducted under this section shall comply with the following requirements:

(a) Hearings shall be conducted in a manner as to optimize expediency, convenience, and the ability of end-users to bring and prosecute, without the assistance of counsel, complaints alleging violations of section 505 or 507, while preserving the rights of the parties.

(b) If possible, the commission shall hold the hearing at a location near the end-user's residence or place of business.

(2) If the commission finds that a person has violated section 505 or 507 or an order issued under section 505 or 507, the commission shall order remedies and penalties to protect and make whole end-users and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than \$20,000.00 or more than \$30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$30,000.00 or more than \$50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of section 505 or 507, the commission shall order the person to pay a fine of not more than \$70,000.00. Each switch made in violation of section 505 or service added in violation of 507 shall be a separate offense under this subdivision.

(b) Order an unauthorized provider to refund to the end-user any amount greater than the end-user would have paid to an authorized provider.

(c) Order a portion between 10% to 50% of the fine assessed under subdivision (a) be paid directly to the customer who suffered the violation of section 505 or 507.

(d) Order an unauthorized provider to reimburse an authorized provider an amount equal to the amount paid by the end-user that should have been paid to the authorized provider.

(e) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of section 505 or 507.

(f) Issue cease and desist orders.

(3) Notwithstanding subsection (2), a fine shall not be imposed for a violation of section 505 or 507 if the provider has otherwise fully complied with sections 505 and 507 and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under section 505 is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the provider.

(4) If the commission finds that a party's complaint or defense filed under this section is frivolous, the commission shall award to the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

Sec. 507. (1) A telecommunications provider shall not include or add optional services in an end-user's telecommunications service package without the express oral or written authorization of the end-user.

(2) Upon the receipt of a complaint filed by a person alleging a violation of this section or upon the commission's own motion, the commission may conduct a contested case as provided under section 203.

Sec. 601. If after notice and hearing the commission finds a person has violated this act, 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 is revoked.

(e) Cease and desist orders.

(f) Except for an arbitration case under section 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 a provider of less than 250,000 end-users.

Sec. 604. This act is repealed effective December 31, 2005.

ARTICLE 7

TELECOMMUNICATION SERVICE RATES

Sec. 701. (1) Notwithstanding any other provision of this act and except as allowed by section 304(10) or for services determined to be competitive under subsection (3) and for rates charged under contract, the rate charged for every telecommunication service provided to an end-user in this state shall be no higher than the rate charged for the service as of May 1, 2000.

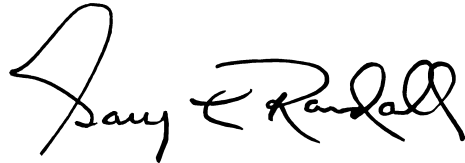
(2) The rate for any new service not offered under a contract that is functionally equivalent or substantially similar to an existing service shall be set no greater than the rate allowed for the existing service under subsection (1).

(3) The rates determined under this section shall remain in effect for each service until December 31, 2003, or until the commission determines that a service is competitive for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, whichever is earlier.

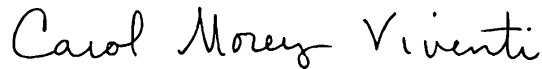
(4) The commission shall issue a determination as to whether a service is competitive within 60 days from the date the application is filed. If the determination is not made within the 60 days, the service is considered competitive.

(5) A complaint arising under this section shall be determined by the commission under section 203.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved

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Governor.