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**BILL ANALYSIS**

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Senate Bill 754 (Substitute S-5 as passed by the Senate)
Sponsor: Senator Cameron S. Brown
Committee: Technology and Energy

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CONTENT

The bill would amend the Michigan Telecommunications Act to do the following:

- Delay the Act's sunset from December 31, 2005, to December 31, 2009.
- Define "essential basic local exchange service" as basic local exchange service consisting of one primary access line to a residential or business customer for voice communications and a minimum allowance of local usage on that line of at least 200 outgoing calls per month with additional local calls available at a rate set in accordance with the Act.
- Require essential basic local exchange service to be offered to each residential customer in the State.
- Require providers to set the initial rates for essential basic local exchange service, and prohibit the initial rates from exceeding the rates in place before the bill's enactment, unless the existing rates did not exceed the total service long run incremental costs of the initial rates.
- Specify that a provider's tariffs of rates, services, and conditions of regulated services would be effective upon one day's notice of submission to the Public Service Commission (PSC).
- Expand the ways in which a provider may alter its rates by filing notice with the PSC.
- Prohibit a provider from offering basic local exchange service or essential basic local exchange service at a predatory rate.
- Require the PSC's annual report on competition to include specified information, and require the PSC to issue a semiannual report on the status of competition in telecommunication services.
- Require the PSC to create a task force to study the creation of a coordinated Michigan telephone assistance program to provide low-income customers with assistance regarding telecommunication services, and submit a report to the Governor and Legislature by December 31, 2006.
- Delete a statement that the PSC's authority includes the revocation of a license and the issuance of cease and desist orders.
- Allow the PSC to stay the effect or enforcement of an order on terms it considered just.
- Revise the timelines for resolving complaints and issuing orders.
- Authorize the PSC to resolve a dispute between providers arising under an interconnection agreement approved by the Commission.
- Require the PSC to designate a State 2-1-1 coordinating agency and issue orders assigning the telephone digits 2-1-1 to a statewide central routing system.
- Require the PSC to establish and carry out a customer education program for competitive markets to inform customers of their telecommunication service options.

- **Establish customer service standards for wireless telecommunication providers, and prescribe the PSC's authority regarding wireless providers.**
- **Allow a provider to satisfy its obligation to provide essential basic local exchange service by offering an alternative service using different technologies.**
- **Allow a provider to charge customers a late payment fee.**
- **Prohibit a provider's wholesale rates from exceeding its retail rates.**
- **Delete a provision requiring the PSC to establish operating requirements for operator service providers, and specifying what those requirements must include.**
- **Expand the three-person Michigan Telecommunication Relay Service Advisory Board to nine people, and require it to conduct a study and issue a report on the ability of deaf, hard of hearing, and speech-impaired customers to gain access to telecommunication services.**
- **Require parties to use their current interconnection agreement as the baseline document for negotiating a successor agreement.**
- **Require an unregulated service provider to file a tariff containing a commitment to provide emergency services, including 9-1-1 and E-9-1-1 services.**
- **Repeal sections mandating that providers offer specific basic local exchange service rate plans; requiring providers to provide toll dialing parity and number portability; and requiring the PSC to determine the rate that a toll service provide must compensate payphone service providers.**

The bill is described below in further detail.

"Essential Basic Local Exchange Service"

The Act defines "basic local exchange service" or "local exchange service" as 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. The bill would retain this definition, and define "essential basic local exchange service" as basic local exchange service consisting of one primary access line to a residential or business

customer for voice communications and a minimum amount of local usage on that line of not fewer than 200 outgoing calls per month with additional local calls available at a rate set in accordance with the Act. The bill would replace various references to "basic local exchange service" with "essential basic local exchange service".

The term "exchange" currently means one or more contiguous central offices and all associated facilities within a geographical area in which local exchange telecommunication services are offered by a provider. The bill would refer to basic local exchange service, rather than local exchange telecommunication services.

Currently, "telecommunication provider" or "provider" means a person or an affiliate of that person that provides one or more telecommunication services for compensation. The bill would delete the reference to an affiliate.

The bill would require essential basic local exchange service to be offered to each residential customer in the State. Each provider would have to offer essential basic local exchange service to residential customers within its service area.

Tariffs Filed with PSC

The Act requires the PSC to require by order that a provider of a regulated service, including access service, make available for public inspection and file with the PSC a schedule of the provider's rates, services, and conditions of service, including access service provided by contract. The bill would refer to a tariff of the provider's rates, services, and conditions of regulated services, rather than a schedule, and would delete the references to access service. Under the bill, the tariffs would be effective upon one day's notice of submission to the PSC.

The bill would require a provider to file with the PSC for review and approval a tariff for the rates and charges for calls made under essential basic local exchange service that exceeded the 200-call limit.

Quality Standards

Currently, the Act requires the PSC to promulgate rules and issue orders to establish and enforce quality standards for

providing telecommunication services in Michigan. The bill would delete this provision, and instead would require the PSC to promulgate rules to establish and enforce quality standards for all of the following:

- The provision of basic local exchange service to end-users.
- The provision of unbundled network elements and local interconnection services to providers that were used in the provision of basic local exchange service.
- The timely transfer of an end-user from one provider of basic local exchange service to another provider.
- Providers of basic local exchange service that ceased to provide the service to any segment of end-users or geographic area, went out of business, or withdrew from the State.
- Procedures and methods to ensure accurate, timely, and truthful billing practices.

The rules regarding the provision of unbundled network elements and local interconnection services would not apply to the provision of unbundled network elements and local interconnection services subject to quality standards in an interconnection agreement approved by the PSC.

The rules would have to include enforcement remedies that were consistent with substantive and procedural requirements of the Act and applicable Federal law. In promulgating any rules, the PSC would have to consider to what extent current market conditions were sufficient to provide adequate service quality to basic local exchange service end-users. Any service quality rules promulgated by the PSC would expire within three years of their effective date. Before the expiration of the rules, the PSC could promulgate new ones.

Essential Basic Local Exchange Service Rates

The Act requires that the rates for basic local exchange service be just and reasonable. The bill would refer to essential basic local exchange service, and require the PSC to set the initial rates for essential basic local exchange service to be effective within 90 days from the bill's effective date. The initial rates could not exceed the rates in place before the initial rates were set unless the existing rates did not exceed the total

service long run incremental costs of the rates. The rates could be altered only as provided under the Act and would not be subject to Section 208.

(Under Section 208, if a competitive market for a regulated telecommunication service in which the rate is regulated exists in this State, a provider may file with the PSC to classify that service for all providers within the competitive market as a competitive service. If a regulated service is classified as competitive, the rate for the service is deregulated and is not subject to review under the Act. A service is competitive if for an identifiable class or group of customers in an exchange, group of exchanges, or other clearly defined geographical area, the service is available from more than one unaffiliated provider and at least three of the following apply:

- Actual competition exists within the local exchange, group of exchanges, or geographic area.
- Both residential and business end-users have service alternatives available from more than one unaffiliated provider or service reseller.
- Competition and end-user usage have been demonstrated and measured by independent and reliable methods.
- Rates and charges for the service have changed within the previous 12-month period.
- There is a functionally equivalent service, reasonably available to end-users from an unaffiliated provider or supplier.)

The bill would repeal a section requiring providers of basic local exchange service to offer various rate plans that include specified options (described below under "Repealed Sections").

Currently, a provider may alter its rates for basic local exchange services by filing with the PSC notice of a decrease, discount, or other rate reduction in a basic local exchange rate, which becomes effective without PSC review or approval; or by filing with the PSC notice of an increase in a basic local exchange rate that does not exceed 1% less than the consumer price index (CPI). In that case, unless the PSC determines that the alteration exceeds the allowed increase, it takes effect 90 days from the date of notice to customers. A provider also may alter its rates by filing with the PSC an application to increase a

basic local exchange rate in an amount greater than the amount described above. The application must be accompanied with sufficient documentary support that the rate alteration is just and reasonable. Within 90 days, the PSC must make a determination that the alteration is just and reasonable, or that a filing under Section 203 is necessary to review the rate alteration.

(Under Section 203, upon receipt of an application or complaint filed under the Act, or on its own motion, the PSC may conduct an investigation, hold hearings, and issue its findings and order under the contested hearings provisions of the Administrative Procedures Act.)

Under the bill, a provider could alter its initial rates for essential basic local exchange services by one or more of the following:

- Filing with the PSC notice of a decrease, discount, promotional rate, or other rate reduction, which would become effective without PSC review or approval.
- Filing with the PSC notice of an increase in an essential basic local exchange rate to a level not to exceed the initial rate set as described above, which would be effective without PSC review or approval.
- Filing with the PSC notice of an annual increase that did not exceed 1% less than the CPI, which would take effect not less than 60 days from the date of notice to customers, unless the PSC determined that the rate alteration exceeded the allowed increase.
- Filing with the PSC notice of a combination of increases and decreases in essential basic local exchange rates that were projected to be revenue neutral for the next 12-month period, which would take effect not less than 60 days from the date of notice to customers, unless the PSC determined that the combination would result in a revenue increase for services in question during the next 12-month period.
- Filing with the PSC notice of a rate alteration that included a range of rates (having an upper limit of 1% less than the CPI) within which the provider could increase or decrease rates in different amounts for different geographic areas, which would take effect without PSC review at least 60 days from the date of notice to customers.

-- Filing with the PSC an application to increase an essential basic local exchange rate in an amount greater than that allowed under the last three options described above, along with sufficient documentary support that the rate alteration was just and reasonable.

If a provider applied to increase a rate in an amount greater than the allowed increase, the PSC still would have to make a determination within 90 days that the alteration was just and reasonable, or that a filing under Section 203 was necessary to review the alteration. Currently, except as otherwise provided, an altered rate takes effect 90 days from the date that notice is provided to customers. Under the bill, the rate would take effect 10 days from the date of notice.

Under the Act, in reviewing a rate alteration as described above, the PSC must consider certain factors if relevant to the rate alteration as specified by the provider. The bill also would require the PSC to consider whether the proposed rate alteration would discourage competition for telecommunication services; whether additional revenue resulting from the rate alteration could be reinvested in the basic local exchange network for the development or implementation of new technology or the enhancement of the telecommunications infrastructure; and whether the proposed rate alteration produced a reasonable rate.

The bill also would delete from the factors the PSC must consider whether a new function, feature, or capability is being offered as a component of basic local exchange service.

Under the Act, a provider is allowed only one rate increase for each class or type of service during any 12-month period. The bill would delete the reference to the class or type of service. The bill also would allow a provider to offer a special incentive, but prohibit the provider from increasing the rate above the rate established before the special incentive.

The bill would prohibit a provider from offering basic local exchange service or essential basic local exchange service at predatory rates.

Under the bill, a person with disabilities, or who voluntarily was providing a service for a

nonprofit organization or who provided a service for a congressionally chartered veterans organization or its duly authorized foundation would have to be exempt from any call limit and would have to receive essential basic local exchange service allowing unlimited monthly calls for a flat rate. A person exempt from the call cap under this provision could not be charged for unlimited essential basic local exchange service a rate greater than the flat rate charged other residential customers for essential basic local exchange service.

End-User Line Charge

The Act prohibits a provider of basic local exchange service from assessing or imposing on end-users an intrastate subscriber line charge or end-user line charge. Under the bill, this provision would apply after July 1, 2006. If a provider were assessing or imposing such a charge on July 1, 2005, it could file with the PSC, by July 2, 2006, notice of an increase in the essential basic local exchange rate in an amount not to exceed the provider's charge in effect on July 1, 2005.

The Act provides that 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. Under the Act, in no event may the end-user or subscriber line charges exceed the rates allowed for the same interstate services by the Federal government as of May 1, 2000. The bill would delete the date.

Reports on Competition

The Act requires the PSC to submit to the Governor and the House and Senate standing committees with oversight of telecommunication issues an annual report describing the status of competition in telecommunication services in Michigan. Under the bill, the report would have to include the following:

- The status of competition from all modes of competitive telecommunication services, including wireline, wireless, and voice over internet protocol.
- Actions taken by the PSC to implement measures necessary to protect consumers from unfair or deceptive business practices by telecommunication providers.

- Information regarding customer education activities conducted by the PSC to inform consumers of all relevant information regarding the purchase of telecommunication services.
- Recommendations for legislation, if any.

The bill would require a provider to submit to the PSC all information necessary for the preparation of the report.

In addition, the bill would require the PSC to report to the Legislature and the Governor, by July 1, 2006, and every six months after that, on the current status of competition in telecommunication services within Michigan. The PSC would have to establish benchmark criteria to allow for the assessment of progress in the development of telecommunication services.

Michigan Telephone Assistance Program

The bill would require the PSC to create a task force to study the creation of a coordinated Michigan telephone assistance program. The program would have to provide for low-income customers to receive assistance with their telecommunication services, including lifeline, link-up, and community voice mail. By December 31, 2006, the task force would have to issue to the Legislature and the Governor a report containing its findings and recommendations. The task force would have to consist of the following members:

- The PSC chairperson.
- One representative from each basic local exchange service provider with at least 250,000 access lines.
- Two representatives from providers who, together with affiliated providers, provided basic local exchange or toll service to fewer than 250,000 end-users in Michigan.
- Two representatives of consumer groups primarily interested in matters affecting low-income customers.
- One representative of the provider of community voice mail in Michigan.

Complaints and Disputes

Scope of PSC Authority. The Act allows the PSC to investigate and resolve complaints. If it finds, after notice and hearing, that the quality, general availability, or conditions for a regulated service violate the Act or a PSC order, or are adverse to the public interest,

the PSC may require changes in how the telecommunication services are provided. The bill would delete a provision stating that the PSC's authority includes the revocation of a license and issuing cease and desist orders.

Timeline. Under Section 203a, for all complaints involving a dispute of \$1,000 or less, an interconnection dispute between providers, or at the option of the complainant, the parties must attempt alternative means of resolving the complaint for a period of 45 days after it is filed. If the parties cannot agree on an alternative means that will result in a recommended settlement within 20 days after the complaint is filed, the PSC must order mediation. A recommended settlement must be made to the parties within the 45-day period. If a party rejects the recommended settlement, then the application or complaint must proceed to a contested case hearing under Section 203 (described above). The bill would extend the alternative resolution period to 60 days and decrease to 10 days the time the parties have to agree to an alternative means. Additionally, the application or complaint would have to proceed to a contested case hearing if a party rejected the recommended settlement or failed to respond to it within seven days.

Under the Act, if a hearing is held in a contested case under Section 203, the PSC has 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 the issues involved requires additional time, the PSC may have up to 210 from the date of filing to issue its final order. If the application or complaint is subject to Section 203a, the PSC has an additional 45 days. Under the bill, if the application or complaint were subject to Section 203a, the PSC would have an additional 60 days.

The bill also would delete a provision that Section 203a does not extend or toll the time within which the PSC is required to issue its final order under Section 203.

Dispute Between Providers. Under the Act, if two or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, then either provider may file with the PSC an application for resolution of

the matter. Under the bill, this provision would apply to all telecommunication issues.

Predatory Rates. The bill would allow the PSC to receive a complaint against a basic local exchange service provider alleging that the provider was offering either basic local exchange service or essential basic local exchange service at a predatory rate. If the PSC found that a party's complaint or defense was frivolous, it would have to award to the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and its attorney.

Stay of a PSC Order. Under the bill, upon the filing of a motion for stay, the PSC could, on terms it considered just, stay the effect or enforcement of an order. A motion for stay, including a request for setting the amount of any appeal bond, would be governed by the provisions for obtaining a stay of a civil action set forth in Rule 7.209 of the Michigan Court Rules. The PSC would have to decide a motion for stay within 10 days from the date the motion was filed.

Appellate Review. Currently, a PSC order is subject to review as provided by Section 26 of Public Act 300 of 1909, which regulates railroads. (Under Section 26, if a common carrier or other party in interest is dissatisfied with a PSC order fixing rates, fares, charges, classifications, joint rates, or any order fixing any regulations practices, or services, the party may, within 30 days from the issuance and notice of the order file an appeal as of right in the Court of Appeals.) The bill specifies, instead, that a PSC order would be subject to appellate review as of right in the Court of Appeals. The appeal would have to be initiated by the filing of a claim of appeal with the Court within 30 days of the issuance of an order or within 30 days of an order issued on a petition for rehearing of an order.

Interconnection Agreement Dispute. Under the bill, upon complaint or application filed by a party under the Act, the PSC would have the authority to resolve a dispute between two providers arising under an interconnection agreement approved by the Commission.

Wireless Telecommunication Providers

The bill would delete provisions prohibiting a provider of cellular telecommunication services from unreasonably providing

services, extending credit, or offering other terms and conditions on more favorable terms to an affiliate or to its retail department that sells to end-users than to other providers. The bill also would delete a provision prohibiting a cellular provider from unreasonably using rates or proceeds from providers, directly or indirectly, to subsidize or offset the costs of cellular service offered by the provider, or an affiliate of the provider, to other providers or to end-users.

Under the bill, if a customer of a wireless telecommunications service terminated a service contract before the expiration date, the wireless provider could charge the customer a maximum termination fee of \$20.

The bill would require all wireless telecommunications services providers to publish verified coverage maps showing the coverage area associated with all statewide home calling areas and each calling plan. Providers would have to make copies of the maps available to prospective and existing subscribers. The maps would have to be prepared in compliance with PSC rules and submitted to the Commission at least annually for verification and approval.

Wireless providers would have to publish rate information in a clear and understandable format. Any restrictions on the use of package minutes would have to be clearly identified. Prices, rates, or term contracts associated with wireless services would have to include a disclosure of any geographic limitation to the advertised price, rate, or term contract. Rate information would have to include a good faith estimate of the total monthly cost of service, including any additional surcharges, call setup charges, fees, or taxes applicable to the prices, rate, or term contracts. Rate information would have to be identified clearly, and termination and reactivation fees would have to be clearly stated.

Additionally, for up to 20 days after the date of the first bill for the first full month of service following service activation, the bill would require that the subscriber be allowed to cancel the contract without penalty and return for a full refund any wireless telecommunications equipment acquired from the provider, or from its agents or authorized dealers. The subscriber would remain responsible for any use charges incurred before termination. Refunds would

be contingent upon the return of all wireless equipment in proper working order.

Any agreement or contract the consumer or subscriber could execute would have to be a separate document from marketing materials used to promote wireless telecommunications products or services, and would have to be unambiguous and legible. The rates provided in agreements or contracts "should" include a good faith estimate of the total monthly cost of a plan, including taxes, surcharges, and other fees that would appear on the customer's bill. The terms and conditions specified in the contract regarding prices, terms of use, package minutes, and nongovernment charges would be binding on the provider during the plan term.

The bill would require each wireless provider to establish and maintain a toll-free customer service telephone number with access to a live operator, through which consumers could lodge relevant complaints and through which a consumer could obtain all rates, surcharges, and fees; the balance of minutes in the consumer's account; and the process to dispute charges.

Within 30 days from the expiration date of a service contract with a provider of cellular telecommunication service, the provider would have to notify the customer of the expiration date.

The bill specifies that the scope of PSC authority regarding wireless telecommunication providers would not extend to the regulation of market entry or exit by, the establishment of rates and services offered by, or rates of return earned by wireless telecommunication providers. The bill would allow the PSC to use its authority in the oversight of marketing and billing practices, service quality, provision of accurate coverage maps, and resolution of disputes between wireless providers and their subscribers.

The bill would require the PSC to establish standards for, and publish information regarding, the quality of service associated with wireless telecommunications providers operating in Michigan, including call center performance, blocked and dropped call rates, and the number of complaints received by the PSC for each telecommunications provider, per 1,000 subscribers, quarterly. The information

would have to be made available through the PSC's website, pamphlets, or other means suitable for mass distribution.

The PSC would have to monitor the deployment of wireless telecommunications networks and develop rules for the production of accurate coverage maps by providers in the State. The PSC would have to develop signal strength thresholds, measured in decibels relative to one milliwatt, to be used in producing the maps. The PSC could develop other service quality measurements as appropriate, such as assessments of voice or data transmission quality. The signal strength thresholds would have to identify levels of quality of service in coverage areas that were appropriate for the population characteristics and terrain conditions in coverage areas of the State. The maps also could depict other measures of service quality as appropriate, which would have to be determined by the PSC. The verified coverage maps approved by the PSC "should" clearly convey information regarding the quality of service to the public and have uniform characteristics across providers to promote service quality comparisons by consumers.

The PSC would have to develop methods to verify the accuracy of the coverage maps that wireless providers submitted to the Commission for approval to ensure their compliance with the rules established under the Act. The accuracy of the maps would have to be verified at least annually. The PSC would have to make available to the public copies of verified accurate coverage maps for wireless telecommunications providers operating in this State.

2-1-1 Service

Under the Act, the PSC must designate a community resource information and referral entity to be the 2-1-1 answering point for various geographical areas within the State. The PSC must issue orders assigning the telephone digits 2-1-1 to the designated community resource information and referral answering points. Each basic local exchange service provider may assign the telephone number 2-1-1 only to a designated answering point.

The Act requires the PSC to consider the recommendations of the Michigan Alliance for Information and Referral Systems, as well as whether the relevant State-endorsed

multipurpose collaborative bodies are in agreement, in determining which entities are designated 2-1-1 answering points. Under the bill, the PSC would have to consider the recommendations of 2-1-1, Inc., and whether the relevant State-endorsed community collaborative bodies were in agreement.

Within 90 days after the bill's effective date, the PSC would have to designate an entity to serve as the State 2-1-1 coordinating agency. The designated agency would have to assist and provide information and resources in implementing 2-1-1 service in Michigan. The agency also would have to coordinate the provision of 2-1-1 services of the designated community resource information and referral entities.

Before a State agency or local unit of government implemented a community resources information or referral service, it would have to consult with the designated State 2-1-1 coordinating agency.

By 2008, the PSC would have to issue orders that assigned the telephone digits 2-1-1 to a statewide central routing system connecting the regional community resource information and referral answering points. Each basic local exchange service provider in Michigan would have to reassign the telephone number 2-1-1 to the central system without additional charge.

Customer Education Program

Under the bill, for markets declared competitive under Section 208 (described above), the PSC would have to establish and carry out a customer education program to do all of the following:

- Inform customers of the changes in the provision of telecommunication services, including the availability of competitive telecommunication providers.
- Inform customers of the applicable laws and requirements relating to disclosures, explanations, or sales practices for telecommunication providers.
- Provide assistance to customers in understanding and using the information to make reasonably informed choices.

Telecommunication Relay Service Advisory Board

The Act requires the PSC to appoint a three-person advisory board consisting of a representative of the deaf community, the PSC staff, and providers of basic local exchange service to assist in administering provisions regarding telecommunication relay service. The board must hold meetings open to the public at least once every three months, periodically seek input on the administration of the telecommunication relay service provisions from members of the deaf, hearing-, or speech-impaired community, and report to the PSC at least annually. The board must investigate and make recommendations on the feasibility of hiring a reasonably prudent number of people from the deaf or hearing-impaired and speech-impaired community to work in the provision of telecommunication relay service.

The bill would delete all of those provisions. Instead, the bill would create the Michigan Telecommunication Relay Service Advisory Board within the Department of Labor and Economic Growth (DLEG). The board would have to include the following members:

- The PSC chairperson or his or her designated representative.
- The Director of the Division on Deaf and Hard-of-Hearing within DLEG, or his or her designated representative.
- A deaf consumer appointed by the DLEG Director upon the recommendation of the Michigan Deaf Association.
- A hard-of-hearing consumer appointed by DLEG upon the recommendation of the Michigan Self-Help for Hard of Hearing.
- A speech-impaired consumer appointed by the DLEG Director.
- Four representatives of telecommunication providers, appointed by the DLEG Director.

Appointed members would be appointed for terms of four years. A vacancy would have to be filled in the same manner as the original appointment for the remainder of the unexpired term. Board members would serve without compensation, but would have to be reimbursed for actual and necessary expenses.

The board would have to designate from among its appointed members a chairperson and a vice-chairperson, who would serve for

two-year terms and could be reelected. The board would have to meet at least four times per year. Special meetings could be called by the chairperson, or upon written request of at least four board members.

Staff services would have to be performed by DLEG personnel. Assistance also would have to be made available, as requested by the board, from other agencies, departments, and authorities of the State. The board could employ a staff to assist in the performance of its duties, subject to Civil Service rules and within fiscal restraints.

The business performed by the board would have to be conducted at a public meeting. The board would have to keep minutes of its proceedings, showing the vote of each member on each proposition or question, or indicating if a member were absent or failed to vote. A record of board action and business would have to be made and maintained.

A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would have to be made available to the public.

By January 1, 2008, the board would have to conduct a study and report to the Governor and the House and Senate standing committees with oversight of telecommunication issues on the ability for deaf, hard-of-hearing, and speech-impaired customers to gain access to telecommunication services. The report would have to include PSC activities to ensure reasonable access, impediments to access, identification of activities in other states to improve access, and recommendations for legislation, if any.

TDD; Relay Services

Under the Act, the PSC must require each provider of basic local exchange service to provide a text telephone-telecommunications device (TDD) for the deaf at costs to each individual who is certified as deaf or severely hearing- or speech-impaired. The bill would replace the reference to severely hearing-impaired with "hard of hearing".

The PSC also must require each provider of basic local exchange service to provide a relay service that enables a person using a TDD for the deaf to communicate with

people using a voice telephone through the use of third party intervention or automated translation. Rates and charges for calls placed through a relay service may not exceed the rates and charges for calls placed directly from the same originating location to the same terminating location. The PSC must establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred related to telecommunication relay service and may waive the assessed costs to individuals who are deaf or severely hearing- or speech-impaired. The bill would require the PSC to ensure that providers properly remitted funds to support the relay service.

Operator Service Providers

The bill would delete a provision requiring the PSC to establish operating requirements for operator service providers (OSPs), and specifying what those requirements must include. The bill also would delete a provision prohibiting a provider from charging a rate for operator services or toll service that is greater than 300% of the State average rate for those services by providers of regulated toll service, unless authorized by the PSC. In addition, the bill would delete a provision prohibiting a provider from discontinuing basic local exchange service for a person's failure to pay an OSP charge. The bill would eliminate a provision allowing a person who is charged for the use of an OSP or is denied access to emergency services to bring a civil action against the OSP to recover the greater of actual damages or \$250, and all reasonable attorney fees, in addition to any other penalty under the Act.

Under the bill, the PSC would have to require an OSP to quote, at the caller's request and without charge, the rate and any other fees and surcharges applicable to the call.

Interconnection Agreement Negotiations

Under the bill, when negotiating a successor interconnection agreement, unless the parties agreed otherwise, they would have to use their current interconnection agreement as the baseline document for negotiation. The party requesting in an arbitration proceeding a change in the baseline document would bear the burden of persuasion that the change was necessary.

If a party negotiating an interconnection agreement wished to take a position contrary to a previous ruling of the PSC in an arbitration proceeding, it would have to file a motion with the PSC demonstrating that good cause existed to relitigate the issue. The motion would have to be filed at least 90 days before negotiations commenced. The PSC would have to rule upon the motion within 21 days of its filing and determine the extent to which the issue could be relitigated. A party that believed that the other party was taking a position contrary to a previous Commission ruling also could file a motion for a determination under these provisions.

Unregulated Service Providers

The Act allows a provider of unregulated service to file with the PSC a tariff containing the information the provider determines to be appropriate regarding the offered service. The bill would require an unregulated service provider to file a tariff containing a commitment to provide emergency services to its customers, including 9-1-1 and E-9-1-1 services. If 9-1-1 service were not available in an area, the provider would have to make arrangements for the customer to reach police, fire, and emergency medical services through another mechanism. The tariff could contain other information the provider determined to be appropriate regarding its rates and service offerings.

Providers & Prohibited Actions

The Act prohibits a telecommunications service provider from charging an end-user for service provided after the effective date that the end-user canceled the service. Under the bill, this provision would apply if the end-user canceled the service in compliance with a tariff or contract.

The Act prohibits a provider from disparaging the services, business, or reputation of another by false or misleading representation of fact. The bill would include a deceptive representation of fact in this provision.

The Act prohibits a provider from causing a probability of confusion or a misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction. Under the bill, a provider would be prohibited from doing so by

making a false, deceptive, or misleading statement.

Unregulated Providers & Prohibited Actions

The bill would prohibit a provider of an unregulated telecommunication service from charging an end-user for a service that the end-user did not request by an affirmative order. Failure to refuse an offered or proposed service would not be an affirmative order for the service.

The bill also would prohibit an unregulated service provider from charging an end-user for services provided after the effective date that the end-user canceled a service.

Under the Act, an end-user of a telecommunications provider may not be switched to another provider without the end-user's authorization. Under the bill, this provision would include the end-user of an unregulated provider.

Other Provisions

Electronic Filing. The bill would require the PSC to permit the electronic filing of any pleadings, tariffs, or any other document required or allowed to be filed with the PSC under the Act.

Area Codes. The bill would delete a provision requiring the PSC to issue orders requiring the modification of all area code boundaries in the State to ensure that they conform to county lines, to the extent that it is technically and economically feasible.

Late Payment Fee. The bill would allow a provider to charge a late payment fee to customers who did not make timely payments of the outstanding balance of their account as provided in tariffs filed with the PSC. A provider could not charge a late payment fee in excess of 5% of the customer's outstanding account balance.

Local Calls. Under the Act, a call made to a local calling area adjacent to the caller's local calling area must be considered a local call and billed as a local call. The bill provides that a call made to a called party who was 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, dated February 5, 2001, would not be a local call if the tariff of the provider

originating the call did not classify the call as a local call.

Alternative Technologies. A provider of essential basic local exchange service could provide that service using different technologies, as long as the essential basic local exchange service were offered as required by the Act.

Wholesale Rates. The bill would require a provider's rates for wholesale services to be lower than its retail rates.

Service & Repair Issues. The bill would require a telecommunication service provider in this State to provide on each service contract information regarding which entity was responsible for repairs and resolution of other service issues. The notice also would have to include information on how to contact the service provider responsible for service and repair.

Cable Service Providers. Under the Act, if a new provider of cable service seeks to offer the service in an area that has an incumbent cable service provider operating under a franchise agreement, in negotiating a franchise agreement during the term of a franchise agreement entered into before July 1, 1995, the local government unit may consider terms and conditions of the incumbent provider's franchise agreement, existing cable franchise fees, development of new services, the state of technology, and other factors. The bill would delete this provision.

Repealed Sections

Mandatory Rate Plans. The bill would repeal Section 304b of the Act, which requires a provider of basic local exchange service to develop and offer various rate plans that reflect residential customer calling patterns and that must include all of the following at the option of the customer unless it is not technologically feasible:

- A flat rate allowing unlimited personal and domestic outgoing calls.
- A flat rate allowing personal and domestic outgoing calls up to 400 calls per month per line, and an incremental rate for calls in excess of 400.
- A flat rate allowing personal and domestic outgoing calls of not fewer than 50 or more than 150 per month per line.

- A rate determined by the duration of service usage or the distance between the points of service origination and termination.
- A rate determined by the number of times the service is used.
- A rate that includes one or more of the rates allowed under Section 304b.
- A rate that includes toll-free calling to contiguous Michigan local calling exchanges.

Regarding the flat rate option of 400 outgoing calls per month, a person with disabilities or who voluntarily provides a service for a nonprofit organization, or a congressionally chartered veterans organization or its duly authorized foundations, is exempt from the monthly 400 call limit and must receive a flat rate allowing unlimited monthly calls.

Section 304b also provides that a provider who, together with any affiliated providers, provides basic local exchange service or basic local exchange and toll service to fewer than 250,000 end-users in Michigan is not required to provide any of the specified rate plans if it is not economically feasible to do so.

Directory Assistance Service. The bill would repeal Section 207, which requires the PSC to determine the manner in which all directory assistance services are to be regulated, until the PSC determines directory assistance services to be competitive.

Toll Dialing Parity. The bill would repeal Section 312a, which requires a basic local exchange service provider to provide 1+intra-LATA toll dialing parity within the service area subject to a waiver to inter-LATA prohibitions with at least two providers of local exchange service.

Payphone Service Compensation. The bill would repeal Section 319, which requires the PSC to determine the rate that a toll service provider must compensate a payphone service provider for calls made on the provider's payphone that use the toll service, and avoids customer direct compensation to the payphone service provider.

Number Portability. The bill would repeal Section 358, which requires a basic local

exchange service provider to provide number portability.

MCL 484.2102 et al.

Legislative Analyst: Julie Koval

FISCAL IMPACT

This bill would make numerous changes in the regulatory responsibilities of the Public Service Commission. It is not known what impact, if any, this would have on revenue. The bill would increase the costs of the Department of Labor and Economic Growth by an unknown amount to support the expanded Michigan Telecommunication Relay Service Advisory Board and its required report.

Fiscal Analyst: Elizabeth Pratt
Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.