

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

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COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

I. Introduction and Summary of Substantive Arguments:

On April 19, 1996, the Federal Communications Commission (FCC) issued a Notice of Proposed Rulemaking (NPRM) requesting comment on proposed rules to implement Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act). In that NPRM, it was requested that comments responding to questions on the matters of dialing parity, number administration, public notice of technical changes, and access to rights of way be filed separately from comments responding to other portions of the NPRM. In compliance with the NPRM, the Michigan Public Service Commission Staff (Michigan Staff) herein responds to questions raised on the issues of dialing parity, number administration and access to rights of way. As discussed in its earlier comments on other issues in the subject NPRM, Michigan Staff strongly supports FCC specification of only a broad set of rules that must, at a minimum, be incorporated in dialing parity, number administration and right of way access requirements which will assure compliance with the 1996 Act. Where a number of alternatives would be acceptable under the 1996 Act, Michigan Staff would support FCC designation of a recommended solution, or at a minimum, a discussion of the advantages and disadvantages of each. However, selection

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of an alternative as the required solution, when a number of alternatives would be clearly permissible under the 1995 Act, should be rejected. As required in its NPRM (¶ 291),¹ Michigan Staff summarizes its arguments by reiterating the position raised in comments filed last week in this docket. Many states have proceeded to take action to introduce competition into the intraLATA toll and local marketplace. Michigan's actions in this regard, and those of many other states, are in compliance with the 1996 Act. The Michigan Staff supports adoption by the FCC of broad parameters outlining the actions which must occur in order to implement the 1996 Act. However, it is unnecessary and would be counter productive to attempt to specify only one set of actions which would be acceptable under the 1996 Act. Many alternatives are fully supportive of a competitive marketplace while taking account of other public interest considerations within a particular locale. Actions of this nature must proceed if competition is to take an immediate stronghold in the telecommunications marketplace.

I. Dialing Parity (¶ 202)

In its NPRM, the FCC has requested comments on definitions of dialing parity (¶ 206). Its proposal that dialing parity encompass international as well as interstate and intrastate, local and toll services is not inconsistent with Michigan law nor Michigan

¹As required by the NPRM, ¶ Numbers contained in parenthesis refer to paragraph numbers of the FCC Notice to which Michigan Staff is responding.

Commission orders. Intrastate toll dialing parity is required by both Michigan law² and Michigan Commission orders.³ Likewise, local interconnection requirements adopted by the Michigan Commission in 1995⁴ included no provision for the use of access codes when dialing a local call to a competitor as opposed to an incumbent.

The Michigan Commission has also addressed the issue of presubscription (§ 209). For the purposes of intraLATA toll dialing parity and for the purposes of implementation of local competition, reballoting of exchanges already balloted for interLATA presubscription purposes was rejected by the Michigan Commission. Where interLATA equal access has not occurred, balloting was required to occur simultaneously for both inter and intraLATA calls. Where balloting had yet to occur, the Michigan Commission adopted FCC interLATA balloting procedures⁵ for intraLATA purposes as well. Where offices had already converted to interLATA equal access, the Michigan Commission required that notice be provided to end-users and interexchange carriers of impending conversion to intraLATA dialing parity capabilities, that neutral material describing the conversion to intraLATA toll dialing parity

²Attachment 1 is Michigan's 1991 Public Act 179 as amended by 1995 Public Act 216 (Act 179). Toll dialing parity requirements are specified in Sec. 312(a) and (b).

³A number of orders issued during 1993, 1994 and 1995 by the Michigan Commission in Case No. U-10138 require the implementation of toll dialing parity under conditions specified in those orders. The last of these orders, issued on March 10, 1995, delineates the specifics of toll dialing parity requirements and is included herein as Attachment 2.

⁴Interconnection standards were adopted on February 23, 1995 in Case No. U-10647 in response to an application by City Signal, Inc. to establish interconnection arrangements with Ameritech Michigan.

⁵These balloting guidelines were found in FCC Dockets 83-1145 and 91-64.

be submitted to Staff for review, that end-users be notified twice of the availability of intraLATA dialing parity and that no charges for carrier selection be made if selection occurs within the 90-day notice period.⁶ Balloting for intraLATA toll dialing parity was rejected by the Michigan Commission due to its potential to create customer confusion and the imposition of additional cost. In its local interconnection proceedings, the Michigan Commission rejected balloting for local service as well for the further reason that since new providers are being licensed to offer local service in various markets continuously, reballoting every time a new entrant is admitted into the market would not only be very costly, it would lead to even more customer confusion.

Michigan's presubscription process requires the use of a "two-PIC" option (§ 210). Under this alternative, a subscriber may presubscribe to separate toll providers for intraLATA and interLATA toll service without limitation.⁷

Timetables for the implementation of intraLATA toll dialing parity are also addressed in both Michigan law and Michigan Commission order (§ 212). Although the Michigan Commission order required implementation of intraLATA toll dialing parity on January 1, 1996,⁸ Michigan law delayed the implementation schedule somewhat.⁹ A motion is now

⁶See pages 29-33 of Attachment 2 for discussion of presubscription procedures.

⁷See pages 8-13 of Attachment 2 for discussion of this issue.

⁸See Attachment 2, pages 13-22 for discussion of an implementation schedule for dialing parity including exceptions for conversion of certain older technology switches.

⁹See Sec. 312(a) and (b) of Act 179, Attachment 1.

pending before the Michigan Commission to determine whether intraLATA toll dialing parity for Ameritech may continue to be delayed at this point in time or whether it must immediately proceed. However, since GTE has been released from interLATA toll prohibitions by the terms of the 1996 Act, the Michigan Commission has ordered GTE to proceed to implement intraLATA toll dialing parity immediately according to the terms of Michigan law¹⁰ and prior Commission orders. At this point in time, the remainder of Michigan's licensed local exchange carriers (LECs) are not bound on a mandatory basis to offer intraLATA toll dialing parity, although they were urged to comply with Commission orders on a voluntary basis.¹¹

Finally, the Michigan Commission has addressed the issue of recovery of dialing parity costs (§ 219). Specifically, the Michigan Commission required the following:

"The costs of implementing intraLATA dialing parity shall be recovered in the form of an Equal Access Recovery Charge on a per intraLATA presubscribed access line basis. Specifically, those costs are switch translation modifications; operational support system modifications; customer education and interexchange carrier notification; balloting expenses; primary interexchange carrier changes; and software, generic, or feature package upgrades if directly and solely attributable to intraLATA equal access."¹²

Michigan Staff concludes its discussion of the dialing parity issue by reiterating two

¹⁰Sec. 312b(2) of Act 179, Attachment 1.

¹¹Page 40 of Attachment 2.

¹²Page 45 of Attachment 2. See also pages 22-29 of Attachment 2 for elaboration and further discussion of this issue.

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principles. First, as discussed above, Michigan has proceeded in a number of arenas over a number of years to begin the implementation of intraLATA toll dialing parity and competitive access to local competition. None of the actions that have been taken conflict with the 1996 Act and should therefore be permitted to proceed. Secondly, a number of other reasonable alternatives to this subject have been adopted by other states, many of which also comply with the 1996 Act. The FCC should not cause delay in this implementation by requiring a "one answer serves all" approach to these issues. Competition would be served a serious blow if any action of this type is taken by the FCC.

II. Number Administration (§ 250)

In its NPRM the FCC has tentatively concluded that "the Commission should retain its authority to set policy with respect to all facets of numbering administration..." (§ 254). Once again, Michigan Staff believes this is unnecessary for implementation of the 1996 Act. This is particularly the case in regard to the implementation of number portability. Michigan law defines this term as follows:

"(N)umber portability' means the capability for a local exchange customer at a particular location to change providers of basic local exchange service without any change in the local exchange customer's telephone number, while preserving the full range of functionality that the customer could obtain by changing telephone numbers."¹³

This definition corresponds to so-called "provider" number portability. Further, Michigan

¹³Sec. 358 of Act 179, Attachment 1.

law requires that number portability be implemented no later than January 1, 1999 and earlier if the Commission determines it to be feasible.¹⁴ Extensive evidence has been gathered on this issue in the second local interconnection proceeding which is nearing completion in Michigan.¹⁵ Among other issues addressed in that proceeding, the Michigan Staff has urged that technical specifications and design which will afford provider number portability be left to the industry (potential customers, service providers and manufacturers). Such an industry approach was established by the Illinois Commerce Commission and the Michigan Staff has fully supported that process. As the Michigan Staff indicated in its prefiled testimony in the Michigan interconnection proceeding, "It is inconceivable...to expect a different technology in Illinois and Michigan." The Michigan Staff has urged that the technical recommendations of the Illinois task force be adopted in Michigan. The Michigan Staff has also urged that any technical solution for long term provider number portability be compatible with the future development of so-called location and service number portability. Although the latter two types of number portability are not at the forefront of consideration today, in the long term these will permit customers to move and keep the same telephone number, or change types of service and retain their telephone numbers. Technical solutions must take these longer term considerations in mind. In the meantime, however, Michigan Staff urges that if in a particular area of the country local

¹⁴Sec. 358(2) and Sec. 358(3) of Act 179, Attachment 1.

¹⁵Case No. U-10860, In the matter, on the Commission's Own Motion, to establish permanent interconnection arrangements between basic local exchange service providers.

competition has already proceeded to a point where number portability alternatives are being adopted (as is the case in Illinois and Michigan), there is no justification for delaying this while a national implementation schedule is considered. Once again, states should be permitted to adopt and implement reasonable alternatives which adhere to the 1996 Act.

III. Access to Rights-of-Way (¶ 220)

Finally, Michigan Staff notes that once again in at least a limited manner, Michigan law addresses the establishment of just and reasonable rates for attachment to poles or conduit owned or controlled by providers of telecommunications service. The law specifies that a rate is just and reasonable :

"...if it assures the provider recovery of not less than the additional costs of providing the attachments, nor more than an amount determined by multiplying the percentage of the total usage space, or the percentage of the total duct or conduit capacity, which is occupied by the attachment, by the sum of the operating expenses and actual capital costs of the provider attributable to the entire pole, duct, or right-of-way."¹⁶

This particular portion of Michigan law applies to large and small providers alike and is again not in conflict with provisions of the 1996 Act.

IV. Conclusion

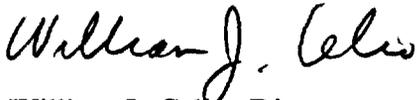
Michigan Staff urges continued progress toward a competitive telecommunications

¹⁶Sec. 361(3) of Act 179, Attachment 1.

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marketplace. The FCC should adopt minimum requirements which must be met to assure this competition and permit compliance with the 1996 Act. Alternatives to achieve these ends, however, must be permitted to proceed if goals are to be met in the shortest timeframe possible with the least potential for negative impact.

Respectfully Submitted,



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Michigan Public Service Commission

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MICHIGAN TELECOMMUNICATIONS ACT

Act 179 of 1991
as amended by
Act 216 of 1995

ARTICLE 1

GENERAL PROVISIONS

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 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. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide 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 traditionally 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.

Sec. 102. As used in this act:

(a) "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. Except for end-user common line services, access service does not include access service to a person who is not a provider.

(b) "Basic local exchange service" or "local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality 2-way interactive switched voice or data communication.

(c) "Cable service" means 1-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.

(d) "Commission" means the Michigan public service commission.

(e) "Contested case" or "case" means a proceeding as defined in section 3 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.203 of the Michigan Compiled Laws.

(f) "Educational institution" means a public educational institution or a private non-profit educational institution approved by the department of education to provide a program of primary, secondary, or higher education, a public library, or a nonprofit association or consortium whose primary purpose is education. A nonprofit association or consortium under this subdivision shall consist of 2 or more of the following:

(i) Public educational institutions.

(ii) Nonprofit educational institutions approved by the department of education.

(iii) The state board of education.

(iv) Telecommunication providers.

(v) A nonprofit association of educational institutions or consortium of educational institutions.

(g) "Energy management services" means a service of a public utility providing electric power, heat, or light for energy use management, energy use control, energy use information, and energy use communication.

(h) "Exchange" means 1 or more contiguous central offices and all associated facilities within a geographical area in which local exchange telecommunication services are offered by a provider.

(i) "Handicapper" means a person who has 1 or more of the following physical characteristics:

(i) Blindness.

(ii) Inability to ambulate more than 200 feet without having to stop and rest during any time of the year.

(iii) Loss of use of 1 or both legs or feet.

(iv) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.

(v) A lung disease from which the person's expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the person's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(vi) A cardiovascular disease from which the person measures between 3 and 4 on the New York heart classification scale, or from which a marked limitation of physical activity causes fatigue, palpitation, dyspnea, or anginal pain.

(vii) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation.

(j) "Information services" or "enhanced services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information, including energy management services, that is conveyed by telecommunications. Information services or enhanced services do not include the use of such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(k) "Interconnection" means the technical arrangements and other elements necessary to permit the connection between the switched networks of 2 or more providers to enable a telecommunication service originating on the network of 1 provider to terminate on the network of another provider.

(l) "Inter-LATA prohibition" means the prohibitions on the offering of inter-exchange or inter-LATA service contained in the modification of final judgment entered pursuant to a consent decree in United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982) and in the consent decree approved in United States v. GTE Corp., 603 F. Supp. 730 (D.D.C. 1984).

(m) "LATA" means the local access and transport area as defined in United States v. American Telephone and Telegraph Co., 569 F. Supp. 990 (D.D.C. 1983).

(n) "License" means a license issued pursuant to this act.

(o) "Line" or "access line" means the medium over which a telecommunications user connects into the local exchange.

(p) "Local calling area" means a geographic area encompassing 1 or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(q) "Local directory assistance" means the provision by telephone of a listed telephone number within the caller's area code.

(r) "Local exchange rate" means the monthly and usage rate, including all necessary and attendant charges, imposed for basic local exchange service to customers.

(s) "Loop" means the transmission facility between the network interface on a subscriber's premises and the main distribution frame in the servicing central office.

(t) "Operator service" means a telecommunication service that includes automatic or live assistance to a person to arrange for completion and billing of a telephone call originating within this state that is specified by the caller through a method other than 1 of the following:

(i) Automatic completion with billing to the telephone from which the call originated.

(ii) Completion through an access code or a proprietary account number used by the person, with billing to an account previously established with the provider by the person.

(iii) Completion in association with directory assistance services.

(u) "Operator service provider" or "OSP" means a provider of operator service.

(v) "Payphone service" means a telephone call provided from a public, semipublic, or individually owned and operated telephone that is available to the public and is accessed by the depositing of coin or currency or by other means of payment at the time the call is made.

(w) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(x) "Port" except for the loop, means the entirety of local exchange, including dial tone, a telephone number, switching software, local calling, and access to directory assistance, a white pages listing, operator services, and interexchange and intra-LATA toll carriers.

(y) "Reasonable rate" or "just and reasonable rate" means a rate that is not inadequate, excessive, or unreasonably discriminatory. A rate is inadequate if it is less than the total service long run incremental cost of providing the service.

(z) "Residential customer" means a person to whom telecommunication services are furnished predominantly for personal or domestic purposes at the person's dwelling.

(aa) "Special access" means the provision of access service, other than switched access service, to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunication service within the exchange including the use of local private lines.

(bb) "State institution of higher education" means an institution of higher education described in sections 4, 5, and 6 of Article VIII of the state constitution of 1963

(cc) "Telecommunication provider" or "provider" means a person or an affiliate of the person each of which for compensation provides 1 or more telecommunication services

(dd) "Telecommunication services" or "services" includes regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage. A telecommunication service is not a public utility service.

(ee) "Toll service" means the transmission of 2-way interactive switched communication between local calling areas. Toll service does not include individually negotiated contracts for similar telecommunication services or wide area telecommunication service.

(ff) "Total service long run incremental cost" means, given current service demand, including associated costs of every component necessary to provide the service, 1 of the following:

(i) The total forward-looking cost of a telecommunication service, relevant group of services, or basic network component, using current least cost technology that would be required if the provider had never offered the service.

(i) The total cost that the provider would incur if the provider were to initially offer the service, group of services, or basic network component.

(gg) "Wide area telecommunications service" or "WATS" means the transmission of 2-way interactive switched communication over a dedicated access line.

Sec. 103. 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.

ARTICLE 2

MICHIGAN PUBLIC SERVICE COMMISSION

Sec. 201. (1) The Michigan Public Service Commission shall have the jurisdiction and authority to administer this act.

(2) In administering this act, the commission shall be limited to the powers and duties prescribed by this act.

Sec. 202. In addition to the other powers and duties prescribed by this act, the commission shall do all of the following:

(a) Establish by order the manner and form in which telecommunication providers of regulated services within the state keep accounts, books of accounts, and records in order to determine the total service long run incremental costs and imputation requirements of this act of providing a service. The commission requirements under this subdivision shall be consistent with any regulations covering the same subject matter made by the federal communications commission.

(b) Require by order that a provider of a regulated service, including access service, make available for public inspection and file with the commission a schedule of the provider's rates, services and conditions of service, including access service provided by contract.

(c) Promulgate rules under section 213 and issue orders to establish and enforce quality standards for providing telecommunications services in this state.

(d) Preserve the provision of high quality basic local exchange service.

(e) Create a task force to study changes occurring in the federal universal service fund and the need for the establishment of a state universal service fund to promote and maintain basic local exchange service in high cost rural areas at affordable rates. The task force shall issue a report to the legislature and governor on or before December 31, 1996 containing its findings and recommendations. The task force shall consist of all the following members:

(i) The chairperson of the commission.

(ii) One representative from each basic local exchange provider with 250,000 or more access lines.

(iii) Four representatives from providers who, together with affiliated providers, provide basic local exchange or toll service to less than 250,000 end users in this state.

(iv) Two representatives of other providers of regulated services.

(v) One representative of the general public.

(f) On or before January 1, 1997, the commission shall study and report to the legislature and governor on the following matters that have impact on the basic local exchange calling activities of all residential customers in the state:

(i) The percentage of intra-LATA calls and minutes of usage which are charged as basic local exchange calls.

(ii) The average size and range of sizes of basic local exchange calling areas.

(iii) The ability of customers to contact emergency services, school districts, and county, municipal, and local units of government without a toll call.

(iv) Whether there are significant differences in basic local exchange calling patterns between urban, suburban, and rural areas.

(v) The impact on basic local exchange rates which would occur if basic local exchange calling areas are altered.

(vi) The impact on basic local exchange rates when basic local exchange calling areas overlap LATA boundaries.

(vii) The impact on basic local exchange rates which would occur if basic local exchange calling areas are expanded within LATA boundaries.

(g) On or before January 1, 1997, conduct a study of internet access provider locations to determine which exchanges can reach the nearest location only by making a toll call. The commission shall then gather input from internet access providers, local exchange providers, and other interested parties and make a recommendation to the legislature as to the steps needed to allow all local exchange customers to access an internet provider by making a toll call.

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, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) An application or complaint filed under this section shall contain all information, testimony, exhibits, or other documents and information 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.

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

(4) 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.

(5) Except as otherwise provided in subsections (2) and (6), 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.

(6) 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.

(7) An order of the commission shall be subject to review as provided by section 25 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

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

(9) For all complaints involving a dispute of \$1,000.00 or more, at the option of the complainant, for a period of 45 days after the complaint is filed under section 203, the parties shall attempt to resolve the dispute by receiving the complaint.

(10) Any alternative means that will result in a recommended settlement shall be 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 (9), a recommended settlement shall be made to the parties.

(11) 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.

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

(13) 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.

(5) 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.

(6) 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, sections 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

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

204. If 2 or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication issue between the providers, including but not limited to, a matter prohibited by section 305, then either telecommunication provider may file with the commission an application for resolution of the matter.

205. (1) The commission may investigate and resolve complaints regarding the quality of service. The penalties under this act shall not be imposed for a complaint first received more than 2 years before the date the complaint was received.

(2) If the commission finds, after notice and hearing, that the quality of service provided by a provider under this act, or is adverse to the public interest, the commission may require changes in how the telecommunication service is provided. The commission's authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.

207. The commission shall determine the manner in which local telephone assistance service to the end user is to be regulated under this act. The regulations shall include both rates and quality of service.

208. (1) If a competitive market for a regulated telecommunication service in which the rate is regulated exists in this state, a provider may petition the commission to classify that service for all providers within the competitive market as a competitive service.

(2) Except as provided under section 321, if a regulated service is determined to be competitive, the rate for the service shall be deregulated and not subject to review under this act.

(3) A service is competitive under this section if for an identifiable class or group of customers in an exchange, group of exchanges, or other geographically defined geographical area, the service is available from more than 1 unaffiliated provider and 3 or more of the following apply:

(a) Actual competition, including facilities based competition, exists within the local exchange, group of exchanges, or geographic area.

(b) Both residential and business end-users have service alternatives available from more than 1 unaffiliated provider or service reseller.

(2) Competition and end-user usage has been demonstrated and measured by recognized and reliable methods.

(3) Rates and charges for the service have changed within the previous month period.

(4) There is a functionally equivalent service, reasonably available to end-users from an unaffiliated provider or supplier.

(5) Except as provided under subsection (5), a service is not eligible under this section if for an identifiable class or group of end-users, in a village, group of exchanges, or other clearly defined geographic area, a provider of the service is an unaffiliated provider of facilities based basic local exchange service to less than 250,000 end-users in this state. A provider may apply to the commission for a review of the service under section 203 to determine whether the service is eligible for the rate deregulation.

(6) Subsection (5) does not apply if there are 3 or more providers of facilities based basic local exchange service throughout the competitive exchange area where the provider is a provider of facilities based basic local exchange service to less than 250,000 end-users in this state.

(7) A provider shall give notice to its customers if a service is to be deregulated, its rates and its rate deregulated. The notice shall be included on the bill of each affected customer of the provider before the effective date of the classification.

(8) The service classification under this section shall take effect 45 days after the date of the notice required by subsection (7).

(9) If a complaint is filed with the commission regarding the classification, the commission may require a bill of the provider to be used as evidence in the classification and issue an order approving, modifying, or rejecting the classification.

(10) A provider shall not file a complaint with the commission until the provider has provided the applicant of the commission all the information and data required by the commission to be provided.

(11) Except as provided in subsection (12), a provider of a local exchange service shall not be required to provide service to a customer classified as a residential service.

(12) A provider shall not be required to provide service to a customer classified as a residential service if the provider has provided the applicant of the commission all the information and data required by the commission to be provided.

- (13) The party's liability proceeds in initiating the proceeding or attempting to defame, harass, embarrass, or injure the prevailing party.
- (14) The party's liability proceeds in initiating the proceeding or attempting to defame, harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Frivolous" does not mean a complaint filed to challenge a rate alteration increase for basic local service if the complaint has been reviewed by the commission and has not been dismissed by the commission pursuant to section 203(2).

(c) "Prevailing party" means a party who wins in the proceeding.

Sec. 210. (1) Except under the terms of a mandatory protective order, trade secrets and commercial or financial information submitted under this act are exempt from the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(2) If information is disclosed pursuant to a mandatory protective order, then the information may be included in the commission's evidentiary record if admissible and remains confidential.

(3) There is a rebuttable presumption that cost studies, customer usage data, marketing studies, and contracts between providers are trade secrets or commercial or financial information protected under subsection (1). The burden of removing the presumption under this subsection is with the party seeking to have the information disclosed.

Sec. 211. Each telecommunication provider of a regulated service in this state shall pay an assessment in an amount equal to the expenses of the commission pursuant to Act No. 299 of the Public Acts of 1972, being sections 460.111 to 460.120 of the Michigan Compiled Laws.

Sec. 213. (1) No later than July 1, 1996, the commission shall promulgate rules for the implementation and administration of this act under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(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, Act No. 306 of the Public Acts of 1969,

being sections 24.245 and 24.246 of the Michigan Compiled Laws, 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.

ARTICLE 2A

LOCAL UNITS OF GOVERNMENT

Sec. 251. (1) Except as provided in subsections (2) and (3), a local unit of government shall grant a permit for access to and the ongoing use of all rights-of-ways, easements, and public places under its control and jurisdiction to providers of telecommunications services.

(2) This section shall not limit a local unit of government's right to review and approve a provider's access to and ongoing use of right-of-way, easement, or public place or limit the unit's authority to ensure and protect the health, safety, and welfare of the public.

(3) A local unit of government shall approve or deny access under this section within 90 days from the date a provider files an application for a permit for access to a right-of-way, easement, or public place. A provider's right to access and use of right-of-way, easement, or public places shall not be unreasonably denied by a local unit of government. A local unit of government may require as a condition of a permit that a bond be posted by the provider, which shall not exceed the reasonable cost, to ensure that the right-of-way, easement, or public place is returned to its original condition during and after the provider's access and use.

Sec. 252. Any conditions of a permit granted under section 251 shall be limited to the provider's access and usage of any right-of-way, easement, or public place.

Sec. 253. Any fees or assessments made under section 251 shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting the permit and maintaining the right-of-ways, easements, or public places used by a provider.

Sec. 254. A provider using the highways, streets, alleys, or other public places, shall obtain a permit pursuant to section 251.

ARTICLE 3

REGULATED TELECOMMUNICATIONS SERVICES

A. BASIC LOCAL EXCHANGE

Sec. 301. (1) A telecommunication provider shall not provide or resell basic local exchange service in this state without a license issued from the commission pursuant to this act.

(2) Pending the determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed 1 year.

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 every person within the geographic area of the license.

(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 authorize the sale or transfer of a license to another person.

(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.

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 will 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.

Sec. 304a. (1) Upon filing with and approval of the commission, a basic local exchange provider shall restructure its rates for basic local exchange,

toll, and access services to ensure that the rates are not less than the total service long run incremental cost of providing each service.

(2) The provider may determine when each rate is restructured and may phase in the rate restructuring until January 1, 2000. After January 1, 2000, the provider's rates for basic local exchange, toll, and access services shall not be less than the total service long run incremental cost for each service.

(3) The rate restructuring may include, but is not limited to, 1 or more of the following:

(a) Touchtone capability and associated charges into basic local exchange service at rate levels no greater than the sum of the current basic local exchange service rates and the touchtone service rates. Residential customers with rotary dial service may retain such service at their current rate.

(b) Within basic local exchange rates, all or part of the existing rate elements and charges for other services that are designed to recover the costs associated with the local exchange network.

(c) Restructure existing basic local exchange rates to reflect the existing variations in costs to provide basic local exchange services based upon differences in geographic areas, classes of customers, calling patterns and volumes, technology, and other factors.

(4) The commission shall have 45 days from the date of a filing under this section to review the proposed rate restructuring to ensure that rates are not less than the total service long run incremental costs of the service, or that the rate restructuring brings rates that are below such costs closer to the costs. If the commission is unable to make a determination within the allowed 45 days under this subsection, the commission shall have an additional 15 days to review the rate restructuring.

(5) If the commission does not complete its review within the time period required under subsection (4), the rate restructuring is considered approved under this section. The basic local exchange provider may implement the restructured rates 10 days following commission approval or the end of the period provided for commission review, whichever is earlier.

(6) Except as provided in subsection (7), for purposes of this section and the act, providers who, together with any affiliated providers, provide basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state may determine total service long run incremental cost through preparation of a cost study or may determine that their total service long run incremental cost is the same as that of a provider with more than 250,000 end-users.

(7) A provider of basic local exchange service with less than 15,000 end-users in this state may determine that their total service long run incremental cost is the same as that of a provider with more than 250,000 end-users.

Sec. 304b. (1) A provider of basic local exchange service shall develop and offer various rate plans that reflect residential customer calling patterns that shall include, but not limited to, all of the following at the option of the customer unless it is not technologically feasible:

(a) A flat rate allowing unlimited personal and domestic outgoing calls.

(b) A flat rate allowing personal and domestic outgoing calls up to 400 calls per month per line. Calls in excess of 400 per month may be charged at an incremental rate as set by the provider under section 304. If a customer has more than 1 line at the same location that appears on the customer's bill, the allowable calls under this subdivision shall be the aggregate of all the lines regardless from which line the calls originate. A person who is handicapped or is voluntarily providing a service for an organization classified by the internal revenue service as a section 501(c)(3) or (19) organization, or a congressionally chartered veterans organization or their duly authorized foundations, is exempt from the 400 calls per month limitation and shall receive a flat rate allowing unlimited calls per month. A person exempt from the call cap under this subdivision shall not be charged a rate greater than the flat rate charged other residential customers for 400 calls.

(c) A flat rate allowing personal and domestic outgoing calls of not less than 50 nor more than 150 per month, per line. Providers may offer additional plans allowing personal and domestic calls of not less than 150 per month nor more than 400 per month, per line. Calls in excess of upper per call limit per month may be charged at an incremental rate as set by the provider under section 304. If a customer has more than 1 line at the same location that appears on the customer's bill, the allowable calls under this subdivision shall be the aggregate of all the lines regardless from which line the calls originate.

(d) A rate determined by the time duration of service usage or the distance between the points of service origination and termination.

(e) A rate determined by the number of times the service is used.

(f) A rate that includes 1 or more of the rates allowed by this section.

(g) A rate that includes toll-free calling to contiguous Michigan local calling exchanges.

(2) If an option required under subsection (1) is not being offered by the provider on January 1, 1996, the provider shall set the initial rate for the option.

(3) A provider who, together with any affiliated providers, provides basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state is not required to provide a rate plan required under subsection (1) if it is not economically feasible to provide the rate plan.

Sec. 305. (1) A provider of basic local exchange service shall not do any of the following:

(a) Discriminate against another provider by refusing or delaying access service to the local exchange.

(b) Refuse or delay interconnections or provide inferior connections to another provider.

(c) Degrade the quality of access service provided to another provider.

(d) Impair the speed, quality, or efficiency of lines used by another provider.

(e) Develop new services to take advantage of planned but not publicly known changes in the underlying network.

(f) Refuse or delay a request of another provider for information regarding the technical design, equipment capabilities and features, geographic coverage, and traffic patterns of the local exchange network.

(g) Refuse or delay access service or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access service requirements.

(h) Upon a request, fail to fully disclose in a timely manner all available information necessary for the design of equipment that will meet the specifications of the local exchange network.

(i) Discriminate against any provider or any party who requests the information for commercial purposes in the dissemination of customer proprietary information. A provider shall provide without unreasonable discrimination or delay telephone directory listing information and related services to persons purchasing telephone directory listing information to the same extent and in the same quality as provided to the provider, affiliates of the provider, or any other listing information purchaser.

(j) Refuse or delay access service by any person to another provider.

(k) Sell, lease, or otherwise transfer an asset to an affiliate for an amount less than the fair market value of the asset.

(l) Buy, lease, or otherwise acquire an asset from an affiliate of the provider for an amount greater than the fair market value of the asset.

(m) Bundle regulated services or products for sale or lease to another provider.

(n) Perform any act that has been prohibited by this act or an order of the commission.

(o) Sell services or products, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider than the provider offers to other providers.

(p) Discriminate in favor of an affiliated burglar and fire alarm service over a similar service offered by another provider.

(2) A provider of cellular telecommunication services shall not do either of the following:

(a) Unreasonably provide services, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider or to its retail department that sells to end users than the provider offers to other providers.

(b) Unreasonably use 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.

(3) Until a provider has complied with section 304a, the provider of a rate regulated service shall not provide that service in combination with an unregulated service in section 401 or an unbundled or resold service under section 357 at a price that does not exceed the total service long run incremental cost of each service.

Sec. 306. Except as provided in section 312B, a telecommunication provider of basic local exchange service is not required to provide toll