Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)
611 W. Ottawa Street
Lansing, MI 48909
Phone: 517-335-8658 Fax: 517-335-9512

REGULATORY IMPACT STATEMENT and COST-BENEFT ANALYSIS (RIS)

Agency Information:

Department name:
Licensing and Regulatory Affairs

Bureau name:
Public Service Commission

Name of person filling out RIS:
Lisa Gold

Phone number of person filling out RIS:
517-284-8084

E-mail of person filling out RIS:
goldl@michigan.gov

Rule Set Information:

ARD assigned rule set number:
2019-124 LR

Title of proposed rule set:
Responsibilities of Providers of Basic Local Exchange Service that Cease to Provide the Service

Comparison of Rule(s) to Federal/State/Association Standared:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.
The Public Service Commission (PSC or Commission) is unaware of any such parallel federal rules or standards set by a state or national licensing agency or accreditation association. See the discussion of other states in Question 2 – the PSC found that other states were not parallel.

A. Are these rules required by state law or federal mandate?
MCL 484.2202(1)(c)(iv) requires the Commission to promulgate rules pursuant to MCL 484.2213 to establish and enforce quality standards for: "Providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers." MCL 484.2213 authorizes the PSC to promulgate rules under the Administrative Procedures Act of 1969, 1969 PA 306.

MCL 484.2202(2) mandates that this ruleset shall expire within three years of its effective date, and that the PSC "may, before the expiration of the rules, promulgate new rules under subsection (1)(c)." Thus, these rules sunset every three years and must be re-promulgated every three years. The rules currently sunset on March 21, 2021.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.
They do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

At the time of promulgation, the PSC reviewed requirements in the states of Illinois, Indiana, Ohio, and Wisconsin, and found the other states to be less specific than the proposed Michigan rules and not helpful. Also, unlike other states, MCL 484.2202(1)(c)(iv) requires that the rules include not only providers that cease to provide the service, but also standards pertaining to the transfer of customers to other providers and the reclaiming of unused telephone numbers.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

They do not exceed standards in other states.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The PSC is unaware of any duplication.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The PSC is unaware of any duplication and did not find any coordination to be necessary.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

The requirements of MCL 24.232(8) do not apply for two reasons. The federal government has not mandated that Michigan promulgate these rules; and the agency is not adopting rules more stringent than the applicable federally mandated standard.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

The requirements of MCL 24.232(9) do not apply because the agency is not adopting rules more stringent than the applicable federal mandated standard.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The rules are intended to address the responsibilities of providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers. Specifically, they address the roles and responsibilities of retail and wholesale providers that are involved in interconnection disputes with each other, which may result in the disconnection of end user customers.

For example, if a wholesale provider of basic local exchange service cuts off service to a retail provider for non-payment of a charge, that action could result in the disruption of service to the end user of the retail provider as well, if the end user is not given sufficient advance warning to seek another retail provider. The targeted behavior is the loss of telephone service to a customer, including 9-1-1 and emergency service, when that customer has not been given sufficient information and advance warning that the customer should seek service elsewhere. Currently, the Commission staff is aware that some retail providers are threatened with this type of service disconnection approximately two to three times per year; however, the retail provider may have thousands of residential and business customers that would in turn be affected by disconnection. These rules are intended to ensure that both the PSC and affected customers receive adequate notice from a wholesale provider and/or a retail provider of an impending discontinuance of service.

The rules will also assist the PSC in attempts to resolve disputes between providers, by requiring the notice to the PSC to contain certain information. The rules also address the reclamation of phone numbers used by a provider that ceases to provide service.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

With re-promulgation of the rules, the targeted behavior is expected to decline, hopefully to zero.

B. Describe the difference between current behavior/practice and desired behavior/practice.

The rules are intended to address the responsibilities of providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers. Specifically, they address the roles and responsibilities of retail and wholesale providers that are involved in interconnection disputes with each other, which may result in the disconnection of end user customers.

For example, if a wholesale provider of basic local exchange service cuts off service to a retail provider for non-payment of a charge, that action could result in the disruption of service to the end user of the retail provider as well, if the end user is not given sufficient advance warning to seek another retail provider. The targeted behavior is the loss of telephone service to a customer, when that customer has not been given sufficient information and advance warning that the customer should seek service elsewhere. Currently, some retail providers are threatened with this type of service disconnection approximately two to three times per year; however the retail provider may have thousands of residential and business customers that would in turn be affected by disconnection. These rules are intended to ensure that both the PSC and affected customers receive adequate notice from a wholesale provider and/or a retail provider of an impending discontinuance of service.

C. What is the desired outcome?

If a dispute does arise that could cause disruption or disconnection to end users of the retail provider, the desired outcome is that customers will be given sufficient advance warning to seek another service provider so they do not lose their service. The rules will also assist the PSC in attempts to resolve disputes between providers by requiring the notice to the PSC to contain certain information.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

This is a re-promulgation of rules under the requirements of MCL 484.2202(1)(c)(iv). The harm resulting from the targeted behavior is the loss of basic local exchange service to residential and business telephone customers without sufficient advance warning. In the absence of the rules, it is possible that end-use customers could be faced with disconnection of telephone service, including 9-1-1 and emergency service, without any advance warning. Advance warning allows customers to find an alternative provider before their telephone service is disconnected.

A. What is the rationale for changing the rules instead of leaving them as currently written?

This is a re-promulgation of rules under the requirements of MCL 484.2202(1)(c)(iv).

In addition to re-promulgating this ruleset, the PSC proposes three minor changes. Two of the proposed changes are updates to CFR cites: R 484.1005(4) will be revised to change the "(2016)" to "(2018)," and R 484.1006(1) will be revised to reflect the same change. Additionally, R 484.1005 will be revised to add a new subsection (5) and the remainder of that rule is renumbered. The new subsection (5) will state "(5) If the provider fails to provide the notice under subrule (4) of this rule by the 11th business day, the Commission may post a notice of the discontinuance on its website." While the issue was resolved without disconnection, based upon its experience with a provider who failed to make the required notice under R 484.1005(4), the PSC has determined that this addition to the rule will be beneficial by allowing the PSC to post the notice on its website and potentially make customers aware that a provider is about to cease to provide service.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Michigan residents assume that they can access reliable telephone service. Though cell phones have become almost ubiquitous, there are still Michigan residents and businesses that rely solely on landline service, including for access to 9-1-1. These rules will protect the health, safety, and welfare of Michigan citizens by ensuring that when a provider-to-provider dispute could result in the loss of the end-user-customer's telephone service, that customer will receive sufficient advance notice, and enough information, to seek alternative service prior to the complete loss of telephone service. They will also assist the Commission in its attempts to resolve such disagreements by requiring providers to file certain information with the Commission in a timely manner. Finally, these rules will assist in the reclaiming of telephone numbers when a provider ceases to use those numbers. The rules were first promulgated in 2018 and expire in 2021 by legislative mandate. The PSC seeks to make sure the rules are re-promulgated so that there is continuous coverage.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

There are none.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

There is no fiscal impact on the agency.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

None has been made because there is no anticipated expenditure.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

Michigan residents assume that they can access reliable telephone service. Though cell phones have become almost ubiquitous, there are still Michigan residents and businesses that rely heavily on landline service, including for access to 9-1-1 service. These rules will protect the health, safety, and welfare of Michigan citizens by ensuring that when a provider-to-provider dispute could result in the loss of the end-user-customer's telephone service, that customer will receive sufficient advance notice, and enough information, to seek alternative service prior to the loss of service. They will also assist the Commission in its attempts to resolve such disagreements by requiring providers to file certain information with the Commission in a timely manner. Finally, these rules will assist in the reclaiming of telephone numbers when a provider ceases to use those numbers. The rules place a minimal burden on regulated entities to provide information to customers and the Commission when these disputes arise. It is a reasonable burden in relationship to the customer's burden of an unanticipated loss of telephone service including 9-1-1 service.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

Michigan residents assume that they can access reliable telephone service. Though cell phones have become almost ubiquitous, there are still Michigan residents and businesses that rely heavily on landline service, including for access to 9-1-1 service. These rules will protect the health, safety, and welfare of Michigan citizens by ensuring that when a provider-to-provider dispute could result in the loss of the end-user-customer's telephone service, that customer will receive sufficient advance notice, and enough information, to seek alternative service prior to the loss of service. They will also assist the Commission in its attempts to resolve such disagreements by requiring providers to file certain information with the Commission in a timely manner. Finally, these rules will assist in the reclaiming of telephone numbers when a provider ceases to use those numbers. The rules place a minimal burden on regulated entities to provide information to customers and the Commission when these disputes arise. It is a reasonable burden in relationship to the customer's burden of an unanticipated loss of telephone service including 9-1-1 service.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

The PSC estimates none.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There is no program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules. The rules apply only to providers of basic local exchange service.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no actions that governmental units must take to be in compliance with the rules. The rules apply only to providers of basic local exchange service.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

There is none because there are no related expenditures.

16. In general, what impact will the rules have on rural areas?

The impact on all areas is identical.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The impact on all areas is identical.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

They have none.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Basic local exchange service providers that are small businesses were not considered for exemption from the rules because the notice requirements to the Commission and customers are minimal and will benefit customers.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Basic local exchange service providers that are small businesses were not considered for exemption or reduced obligations under the rules because the notice requirements to the Commission and customers are minimal and will benefit customers, and the consequences of lack of notice (loss of service) are highly significant whether the provider is a small or large business.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Basic local exchange service providers that are small businesses were not considered for exemption from the rules because the notice requirements to the Commission and customers are minimal and will benefit customers. Approximately 130 small business basic local exchange service providers could potentially be affected by these rules if there were to be a dispute between providers that would trigger the requirements of these rules.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

Basic local exchange service providers that are small businesses were not considered for differing compliance requirements because the notice requirements to the Commission and customers are minimal and will benefit customers.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

Basic local exchange service providers that are small businesses were not considered for simplified compliance requirements because the notice requirements to the Commission and customers are minimal and will benefit customers.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

Basic local exchange service providers that are small businesses were not considered for relaxed performance standards because the notice requirements to the Commission and customers are minimal and will benefit customers.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

There is no disproportionate impact on small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

Wholesale providers are required to notify the Commission and the affected provider of the imminent disconnection of the affected provider; and the affected provider is, in turn, required to notify all of its affected customers of the imminent discontinuance of service and provide further information regarding the discontinuance to the Commission. The cost of preparing the notifications will be minimal.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The PSC estimates the costs of compliance to be de minimis.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There is none.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

The ability to absorb the costs imposed by the rules is estimated to be high for small businesses. The rules require providers to provide notice to the PSC and to include certain information in the notice. While the notice does need to be in writing, the PSC does not require that it be sent through the U.S. mail, and providers are able to email the PSC. Email should be cost-free, except for the time involved in drafting the email; U.S. mail would require the cost of a stamp and the cost of the paper and the time to type the notice. This should be a cost that a small business has the ability to absorb. Requirements for notice to customers are contained in MCL 484.2313. Those costs are not affected by these rules.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

No additional cost.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

High. Basic local exchange service providers that are small businesses were not considered for exemption from the rules because the notice requirements to the Commission and customers are minimal and will benefit customers. The rules provide protection against the unanticipated loss of telephone service including 9-1-1 service.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

In September 2016, and again in the spring of 2019, the Telecommunications Division Staff commenced an informal comment process with affected Incumbent Local Exchange Carriers and Competitive Local Exchange Carriers, seeking input on the draft rules. The proposed rules incorporate the feedback received from providers. The invitation to provide informal comments was sent to representatives of organizations representing both large and small providers, as well as individual providers who often participate in Commission proceedings.

A. If small businesses were involved in the development of the rules, please identify the business(es).

Invitations to provide informal comments were sent to representatives of the Telecommunications Association of Michigan and the Michigan Internet & Telecommunications Alliance (MITA), which have members that include small businesses. The Staff received feedback from MITA.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The PSC estimates none.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The group directly benefiting from these re-promulgated rules consists of all landline telephone customers in Michigan, whether residential or business customers. The group affected by the rules, and bearing the cost of the rules, consists of all wholesale and retail providers of landline service who enter into a contract or billing dispute that could result in the discontinuation of landline service to end user customers. No additional costs will be imposed on businesses and other groups as a result of the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on businesses and other groups as a result of the proposed rules.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

The PSC estimates none.

A. How many and what category of individuals will be affected by the rules?

All individuals that rely on landline basic local exchange service will benefit from the rules.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The rules provide protection against the unanticipated loss of telephone service including 9-1-1 service.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

Costs associated with the unanticipated disconnection of landline service could be an issue if a disconnection dispute arises. The Commission is unable to quantify such costs.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The rules are intended to address the responsibilities of providers of basic local exchange service that cease to provide the service to any segment of end users or geographic area, go out of business, or withdraw from the state, including the transfer of customers to other providers and the reclaiming of unused telephone numbers. Specifically, they address the roles and responsibilities of retail and wholesale providers that are involved in interconnection disputes with each other, which may result in the disconnection of end user customers.

For example, if a wholesale provider of basic local exchange service cuts off service to a retail provider for non-payment of a charge, that action could result in the disruption of service to the end user of the retail provider as well, if the end user is not given sufficient advance warning to seek another retail provider. The targeted behavior is the loss of telephone service to a customer including 9-1-1 and emergency service, when that customer has not been given sufficient information and advance warning that the customer should seek service elsewhere. Some retail providers are threatened with this type of service disconnection approximately two to three times per year; however, the retail provider may have thousands of residential and business customers that would in turn be affected by disconnection. These rules are intended to ensure that both the PSC and affected customers receive adequate notice from a wholesale provider and/or a retail provider of an impending discontinuance of service.

Michigan residents assume that they can access reliable telephone service. Though cell phones have become almost ubiquitous, there are still Michigan residents and businesses that rely heavily on landline service, including for access to 9-1-1 service. These rules will protect the health, safety, and welfare of Michigan citizens by ensuring that when a provider-to-provider dispute could result in the loss of the end-user-customer's telephone service, that customer will receive sufficient advance notice, and enough information, to seek alternative service prior to the loss of service. They will also assist the Commission in its attempts to resolve such disagreements by requiring providers to file certain information with the Commission in a timely manner. Finally, these rules will assist in the reclaiming of telephone numbers when a provider ceases to use those numbers.

The PSC cannot provide a quantitative value for the retention of 9-1-1 access. Presumably, to someone facing a life-threatening emergency, it is immeasurable.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

They will not.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

There are none.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The Commission relied on the staffs of the Telecommunications Division and the Regulatory Affairs Division in compiling this RIS. The proposed rules are mandated by MCL 484.2202(1)(c)(iv).

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

No estimates were required.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The proposed rules are mandated by MCL 484.2202(1)(c)(iv). The Commission is unaware of any reasonable alternatives. Voluntary informal notification to the Commission has not been found to be effective.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

The proposed rules are mandated by MCL 484.2202(1)(c)(iv). The Commission is unaware of any reasonable alternatives. Voluntary informal notification to the Commission has not been found to be effective.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

Private market-based mechanisms result in the disputes that lead to the disconnection of service to customers. The Michigan Legislature determined that rules should be promulgated.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The PSC did not identify any significant alternatives, and thus did not discuss any. As mentioned above, as a result of the stakeholder process the PSC received feedback only from MITA. On October 14, 2019, at 10:23 a.m. MITA sent staff an email indicating that it needed more time to provide comments. On October 14, 2019, at 11:05 p.m., the PSC staff received an email from MITA stating "On behalf of MITA, I can now advise you that MITA does not oppose the changes to the Sec. 202(1)(c)(iv) rules that Staff is proposing."

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are none. The rules speak for themselves.