

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-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Public Service Commission

Name of person filling out RIS:

Kelly Barber-Dodge

Phone number of person filling out RIS:

517-284-8094

E-mail of person filling out RIS:

BarberDodgeK@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2021-56 LR

Title of proposed rule set:

Basic Local Exchange Service Customer Migration

Comparison of Rule(s) to Federal/State/Association Standard

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.

There are portions of the rules that reference federal and industry standards. See R 484.85(2), (3), (6), (8); R 484.86 (1)(e), and (g); R 484.87; and R 484.88(1)(b). The Federal Communications Commission (FCC) accepted comments on the North American Numbering Council's (NANC) Number Portability Industry Forum Best Practices 67 and 70 that address some of the same guidelines that are in R 484.86 and R 484.88 of the migration rules. As the FCC has not taken final action and further revisions may be forthcoming on those Best Practices. Staff did not deviate from the current rules in this respect. The rules also specify that federal standards should be adhered to in parallel with these rules.

A. Are these rules required by state law or federal mandate?

These rules are promulgated pursuant to MCL 484.2202(1)(c)(iii), which provides that "[T]he commission shall do all of the following: . . . Promulgate rules under section 213 to establish and enforce quality standards for all of the following: . . . The timely and complete transfer of an end user from 1 provider of basic local exchange service to another provider." Transfer of an end user is known as migration. While the Michigan Telecommunications Act (MTA) was substantially amended in 2011 by 2011 PA 58, and several other rules sets were repealed by that act, the legislature chose to retain the rules created under MCL 484.2202(1)(c)(iii) and preserve the Commission's authority to promulgate such rules.

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.

The standards set forth in these rules do not exceed national compliance requirements but do vary from some voluntary industry standards.

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

Similarly situated states are Illinois, Indiana, Ohio, and Wisconsin. The Telecommunications Division staff does not find that this rule set exceeds the standards of those similarly situated states. These rules are similar to federal standards and those that are already practiced throughout the Midwest and the rest of the country.

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

These rules do not exceed standards in those states.

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

There are no known conflicts, duplications, or overlaps with other legal requirements, other than as noted in (1).

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 rules have been coordinated to the extent practicable, with other federal rules and industry standards, so duplication is minimal.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan 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.

The proposed rules are not more stringent than any federally mandated standard.

Purpose and Objectives of the Rule(s)

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

These rules are designed to streamline the processes and provide guidelines for providers of basic local exchange service when transferring an end user from one provider to another. Having reasonable standards protects both end users and providers during the migration process by ensuring all needed information is provided to each provider involved in the transfer on a timely basis.

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

Frequency of conduct will vary from provider to provider based on its number of end users and the number of competitors in the exchange. These rules are necessary because there are natural incentives to prevent or delay such transfers on the part of the currently serving provider. These rules govern provider-to-provider conduct, rather than provider-to-end-user conduct. The rules are similar in nature to those voluntarily practiced by the telecommunications industry and are designed to adhere to the MTA's goal of promoting competition in Michigan.

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

There are natural incentives to prevent or delay such transfers on the part of the currently serving provider. These rules govern provider-to-provider conduct, rather than provider-to-end-user conduct. The rules are similar in nature to those voluntarily practiced by the telecommunications industry and are designed to adhere to the MTA's goal of promoting competition in Michigan. Having reasonable standards allows providers to operate with consistency and efficiency but without unnecessary regulatory interference. The rules target those companies that do not act on a timely basis to provide their industry counterparts with the necessary information to transfer an end user from one provider to another. There is presently no known reason to believe there will be any negative effects from re-promulgation of these rules.

C. What is the desired outcome?

Having standards for providers in place to transfer a customer from one provider to another benefits the consumer who can be assured of reasonable and consistent guidelines and established time frames when switching service from one provider to another; and benefits providers who could be subject to abuse by competitor providers.

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.

These rules are designed to streamline the processes and provide guidelines for providers of basic local exchange service when transferring an end user from one provider to another. Having reasonable standards protects both end users and providers during the migration process by ensuring all needed information is provided to each provider involved in the transfer on a timely basis.

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

No changes to the rules are proposed at this time.

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.

These rules are designed to streamline the processes and provide guidelines for providers of basic local exchange service when transferring an end user from one provider to another. Having reasonable standards protects both end users and providers during the migration process by ensuring all needed information is provided to each provider involved in the transfer on a timely basis.

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

There has been no demonstration of such at this time.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

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 foreseen additional cost to the Commission, as this rule set will result in no change to the existing migration process that will impose additional expense on the agency. Current staffing levels are sufficient to monitor compliance with these rules.

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

There is no foreseen additional cost to the Commission.

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.

There are no additional burdens placed on individuals.

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

There are no additional burdens placed on individuals.

Impact on Other State or Local Governmental Units

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.

There are none.

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

There are none.

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 none.

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 are none.

Rural Impact

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

There is no disproportionate impact on rural areas.

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

The rules require telecommunications providers in rural areas to adhere to the same migration standards as providers in urban areas, which benefits both public and private interests in that those in rural areas are assured of the same level of service as those in urban areas.

Environmental Impact

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

There is no environmental impact.

Small Business Impact Statement

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

The Commission did not consider exempting small businesses because there is no disproportionate impact on small businesses. See, MCL 24.240(1).

The agency has crafted the rules with consideration paid to both small and large providers so that the standards can be applied to all providers. Impact on providers should be minimal, as both small and large providers are routinely involved in the transfer of an end user from one provider to another, and there should be no disproportionate impact based on a provider's size. Setting lesser standards for small providers would put end users at a disadvantage when they transfer to a new provider. However, if a provider feels compliance with a particular rule or series of rules would be economically burdensome or technologically infeasible, R 484.90(1) allows for the provider to petition the Commission for a permanent or temporary waiver of such rule(s).

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.

There is no disproportionate impact on small businesses.

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

There are approximately 110 small business basic local exchange service providers that are affected by these rules. However, these rules do not impose a new regulatory scheme on these providers.

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.

There are no differing compliance or reporting requirements or timetables in these rules.

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.

There are no differing compliance or reporting requirements in these rules. Providers that do not comply with the standards in the rules are required to provide the Commission with a 2-part report as described under Rule 9 and additional status reports each month thereafter until the provider again meets the applicable standards. The skills required for drafting this report are analytical and cognitive in nature and require basic knowledge of computing software.

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

These performance standards were not designed to replace design or operation standards.

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.

There are no new reporting requirements in this rule set, which is being re-promulgated due to the fact that it is subject to automatic expiration.

R 484.89 requires that a provider who fails to meet any of the standards set forth in R 484.85 - R 484.88 for 3 consecutive months must notify Commission Staff within 10 days of such failure. The provider is further required to file a report with the Commission within 30 days providing analysis of the violation or violations. The report should include: (1) a root cause analysis explaining why the provider failed to meet the applicable standard and (2) a corrective action plan to bring its performance up to a level to meet the applicable standard and a timeline for doing such. The costs of preparing this report are incurred only by a provider that fails to meet the standards and should be minimal to both large and small providers and are non-existent for providers that adhere to the standards.

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 businesses exclusively affected by these rules are providers of basic local exchange service. There are no additional costs incurred as the regulated businesses, specifically providers of telecommunications services who are required to allow customers to migrate to other providers, should already be in compliance under federal law and adhering to industry standards. Nearly all providers are routinely involved in the transfer of an end user from one provider of basic local exchange service to another provider, therefore no training or additional education should be required, and the rules do not require businesses to obtain such.

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 are none.

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

These rules are being re-adopted with no changes.

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.

Costs to the Commission could increase, because the number of customer and provider complaints to the Commission may increase.

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

Providers seek to retain customers in nearly all circumstances. In the absence of migration standards, the quality of telecommunications service can be expected to deteriorate, because old providers will fail to provide a reasonable and timely migration to new providers when requested by customers. These rules allow for regulatory certainty for both large and small providers in the operation of their businesses. These rules do not impose a new regulatory scheme.

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

In anticipation of the repromulgation of these rules prior to their June 17, 2022 expiration, the staff commenced an informal comment process in March 2021, with representatives of affected incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs), which include small businesses, regarding the re-adoption of these rules.

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

Small business-ILECs and CLECs were invited to participate in this process.

Cost-Benefit Analysis of Rules (independent of statutory impact)

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

The rules do not impose a new regulatory scheme and there will be no additional costs imposed as a result of these rules. The rules allow for regulatory certainty for basic local exchange service providers in continuation of their operations as they migrate customers among themselves.

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

Basic local exchange providers throughout the state will be affected by and will benefit from 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.

These rules are being re-adopted with no changes and will not generate additional costs on businesses or groups.

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.

There are no such statewide costs applicable to individuals.

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

These rules are applicable to providers of basic local exchange service.

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

These rules are applicable to providers of basic local exchange service.

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

Clear standards for the migration process benefit all of these stakeholders by increasing the quality of telecommunications service and decreasing the number of complaints to businesses and governmental units.

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.

These rules are designed to streamline the processes and provide guidelines for providers of basic local exchange service when transferring an end user from one provider to another. Having reasonable standards protects both end users and providers during the migration process by ensuring all needed information is provided to each provider involved in the transfer on a timely basis.

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

The proposed rules will not impact business growth or job creation in Michigan.

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.

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

Estimates and assumptions were made on the basis of information in the possession of those employees. The proposed rules are mandated by MCL 484.2202.

Alternative to Regulation

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

Although there are references in the rules to federal and industry standards, the Commission is unaware of any reasonable alternatives to the proposed rules that would achieve the same or similar goals. In 2011, the Legislature made the decision to expand the Commission's ability to promulgate migration rules by changing the language of MCL 484.2202(2) from allowing the Commission to promulgate new migration rules "prior to the expiration of the rules" to allowing the Commission to promulgate new migration rules "at any time."

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

There are no alternatives proposed.

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.

Federal law and industry standards (as well as state law) dictate that providers follow certain procedures during customer migration. Thus, private market-based mechanisms would not operate in any case, even if state law did not mandate the promulgation of migration rules.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The significant alternative of allowing the rules to lapse without taking action was considered. However, based on stakeholder input, staff does not advocate this position at this time.

Additional Information

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

This is not applicable.