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PSC REGULATION OF CELLULAR PHONE TOWERS

House Bills 4219 and 4220

Sponsor: Rep. Mickey Mortimer

Committee: Energy and Technology

Complete to 2-27-01

A SUMMARY OF HOUSE BILLS 4219 AND 4220 AS INTRODUCED 2-13-01

House Bill 4219 would create a new act, the “cellular tower attachment act,” to place the construction and certain uses of cellular towers under regulation by the Michigan Public Service Commission (PSC), while House Bill 4220 would amend the Michigan Telecommunications Act (MCL 484.2401) to place cellular and mobile services under PSC authority as provided in House Bill 4319. (Currently, cellular and mobile services are among the telecommunications services over which the PSC does not have authority except as otherwise provided by state or federal law.)

House Bill 4219 would create the “cellular tower attachment act” to require cellular tower owners to provide the Michigan Public Service Commission (PSC), in the Department of Consumer and Industry Services, with certain information and to prohibit the construction of new cellular towers without approval from the PSC.

PSC authority and jurisdiction. The bill would give the PSC jurisdiction and authority to administer the proposed act. In administering the act, the PSC would be able to conduct investigations, hold hearings, and issue its findings and orders under the contested hearings provisions of the Administrative Procedures Act of 1969. The PSC also would be required to promulgate rules to implement and administer the proposed act.

Required information. Owners of cellular towers would be required to provide the Public Service Commission with certain specified information, including the name and address of the tower owner, the location of its cellular tower, the service area served by each cellular tower, and the amount of unused attachable space available for each cellular tower. (This requirement would have to be met by owners of existing towers within 60 days after the bill took effect. Owners of towers whose construction were completed after the bill took effect would have to provide the information after the completion of the tower’s construction.) The bill would define “cellular tower” to mean a tower or antenna located in Michigan that was used to provide cellular telecommunication, personal communication, or mobile telecommunication services. “Attachable space” would be defined to mean the total area of a cellular tower suitable for an “attachment,” which in turn would be defined to mean any equipment or apparatus installed upon a cellular tower to provide cellular telecommunication, personal communication, or mobile telecommunication services.

Construction of new towers. The bill would prohibit persons from constructing new cellular towers in Michigan without first submitting a proposal to, and receiving the approval of, the Public Service Commission. The bill also would prohibit the PSC from approving a proposal to

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construct a new cellular tower if an existing cellular tower within the proposed service area had unused attachable space sufficient to provide some or all of the cellular telecommunication, personal communication, or mobile telecommunication services described in the proposal.

Existing towers. If the owner of an existing cellular tower had unused attachable space, the tower owner would be required to allow the attachment by another cellular provider proposing to provide service within the service area of the tower. (The bill would define “service area” to mean an area of Michigan for which the PSC determined a person could provide cellular telecommunication, personal communication, or mobile telecommunication services from an existing cellular tower.) The existing tower owner could establish the rates, terms, and conditions for the attachment. The rates, terms, and conditions would have to be “just and reasonable” (“not inadequate, excessive, or unreasonably discriminatory”) and would be subject to approval by the Public Service Commission.

Violations, penalties. If, after notice and hearing, the Public Service Commission found that a person had violated the proposed act, it would be required to order remedies and penalties to protect and make whole any person who suffered an economic loss as a result of the violation.

The remedies and penalties would include, but not be limited to, one of more of the following: cease and desist orders; a refund of any collected excessive rates; and a fine for the first offense of not less than \$200 nor more than \$500 a day for each day that the person were in violation of the proposed act, and, for each subsequent offense, a fine of at least \$500 nor more than \$1,000 a day.

The bill specifies that the proposed act could not be construed to alter or limit the requirements or regulations of any local unit of government regarding the construction and placement of cellular towers.

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.