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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/09

SPONSOR Cervantes LAST UPDATED _____ HB 475

SHORT TITLE Telecommunications Consumer Protection Act SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.1	\$0.1	See Narrative	See Narrative

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 475 proposes a “Telecommunications Consumer Protection Act,” to prohibit a provider, as defined in the Act, from:

1. Discontinuing service to offices that provide essential governmental services;
2. Discontinuing service to health care facilities;
3. Discontinuing service without providing proper notice to consumers;
4. Unreasonably or improperly threatening to discontinue service to a consumer; or
5. Failing to restore service in response to a valid request.

House Bill 475 would allow a consumer or provider, who may also be a consumer, or PRC staff to file a complaint with the PRC alleging violation of the Act or rules promulgated by the PRC to implement the Act. A complaint alleging threats of improper discontinuance of service may also be filed. The PRC may combine complaints. The PRC is charged with enforcing the provisions of the Act against anyone regulated in whole or in part by the PRC or over whom the PRC is given regulatory authority by state or federal law. House Bill 475 provides that the PRC may hold a provider liable for the actions of its employees, officers, affiliates and agents, and a provider's officers and employees liable for their own actions. The PRC is required to promulgate applicable rules. Additionally, House Bill 475 requires the PRC to establish an expedited consideration process for investigation and resolution of complaints files with the PRC pursuant to the Act, including the hearing of formal complaints.

House Bill 475 provides that if the PRC finds after investigation, notice and hearing that a provider engaged in any conduct that the provider knew or should have known was a violation of the Act or applicable laws or rules or orders of the PRC, it may assess an administrative penalty, of up to \$25,000/day for each day of a continuing violation arising out of the same facts. The amount of the fine must bear a reasonable relationship to the nature and severity of the violation, and the PRC must consider mitigating and aggravating circumstances in determining the amount of the fine.

Additionally, under the bill, the PRC may impose an administrative fine of up to \$100,000 for each violation that results in substantial harm to the consumers of the provider or substantial harm to the public interest. These remedies and penalties are in addition to any other penalties imposed pursuant to any other state law or other available remedies.

House Bill 475 provides that a provider or other person aggrieved by a fine assessment may appeal the order to the Supreme Court. The notice of appeal must be filed within 30 days after the entry of the PRC's order and shall name the PRC as appellee and identify the order from which the appeal is taken.

House Bill 475 contains an emergency clause.

FISCAL IMPLICATIONS

House Bill 475 makes no appropriations.

House Bill 475 does authorize the PRC to levy significant administrative penalties against telecommunications providers who are found to be in violation of the proposed Act.

There is no language in House Bill 475 that specifies the fund that would collect any deposits from administrative penalties, or whether these amounts are appropriated for use by the PRC.

SIGNIFICANT ISSUES

The PRC identified the following significant issues.

House Bill 475 addresses the problem created when a provider of telecommunications, information or internet services discontinues those services, even though the end user who relies on those essential services is not at fault and may be ignorant of the impending disconnection.

The bill broadly defines “consumer,” “provider” and “telecommunications service” to cover the variety of circumstances present in the current technological and regulatory environment.

The bill outlines prohibited acts and requires the PRC to implement rules to enforce the Act and to provide an expedited process for consumer complaints. It establishes an administrative penalty scheme including fines from one thousand (\$1,000) to twenty five thousand dollars (\$25,000) for violations, with escalation to one hundred thousand dollars (\$100,000) if the violation results in substantial harm.

ADMINISTRATIVE IMPLICATIONS

The PRC notes that if enacted, House Bill 475 would require a rulemaking proceeding by the PRC, as a modification of its current Consumer Protection Rules, NMAC 17.11.16. Although some additional resources may be devoted to implementing and enforcing those rules, these would be more efficient than current conditions that demand PRC action without a clear regulatory framework.

TECHNICAL ISSUES

The PRC suggests that one area of the bill may benefit from additional language to make it consistent with present regulatory practice. Section 5, p. 5 lines 2 through 8, set forth specific acts that are prohibited. No exceptions, limitations or conditions are expressed, although currently disconnection is permitted as a consequence for nonpayment. The language of the bill might be interpreted to allow service to continue indefinitely without payment.

The PRC also suggests that Section 5 could be amended to provide that discontinuance of service must be conditioned upon provision of sufficient notice for end user customers to make alternative arrangements, where essential governmental or public health and safety services are affected.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the PRC, there would not be clearly defined rules for complaints to the PRC regarding discontinuance of service affecting the public interest.