The Florida Senate

Interim Report 2011-108 *October 2010*

Committee on Communications, Energy, and Public Utilities

REVIEW CHAPTER 364, FLORIDA STATUTES, RELATING TO TELECOMMUNICATIONS COMPANIES TO IDENTIFY OBSOLETE, OUTDATED, OR UNNECESSARY REGULATIONS, AS WELL AS CONSUMER AND WHOLESALE MARKET PROTECTIONS

Issue Description

The Florida Legislature began deregulation of wireline telephone service in 1995. Since then, both the industry and the statutes[1] have undergone many changes. In the 2010 Regular Session, a bill was passed to remove some obsolete provisions from the telecommunications statutes.[2] The purpose of this project is to review the chapter, in consultation with the Florida Public Service Commission (PSC or commission) and industry, and to attempt to identify additional provisions that are either obsolete or are no longer necessary to protect consumers and the wholesale market.[3]

Background

Deregulation of the telecommunications industry began in Florida in 1995, with the federal government following closely in 1996. At that time, voice communication services were only being offered by the incumbent local exchange companies (ILECs). New providers, called competitive local exchange companies (CLECs), could enter the market by three methods:

- purchase and resale of an ILEC's unbundled network elements (UNEs);[4]
- lease of UNEs; and
- construction of their own facilities.

Various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each ILEC, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

Still, little competition developed until improvements in technology allowed the transmission of different types of communications services, video, voice, and data, on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only voice communications, those who had traditionally provided only video, and those who had provided only Internet access. With this convergence, additional statutory changes were necessary, notably the creation of a state system for obtaining a franchise for video services to replace local

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[1] Chapter 364, F.S., provides for the regulation of wireline telecommunications companies.
[2] 2010 House Bill 1377.
[3] The distinction used in this report is that obsolete language is no longer being used while unnecessary language is being used, but the underlying policy reasons for its enactment no longer apply, so it is no longer necessary from a policy perspective.
[4] Unbundled network elements include all of the ILEC's network features, functions, and capabilities, including access to signaling databases, systems and routing processes. s. 364.161, F.S.

franchises.[5]

As the industry changed and as requirements and protections expired or were phased out, some statutory provisions became obsolete. During the 2010 Regular Session, House Bill 1377 was passed to remove clearly obsolete provisions. Other obsolete provisions may remain, as well as provisions that are no longer necessary because the industry has continued to change.

Findings and/or Conclusions

A. Obsolete provisions

Both the PSC staff and CenturyLink identified provisions as being obsolete. They seldom completely agreed; for example, sometimes both addressed the same section but differed on specific subsections. The following table summarizes their positions:

Obsolete provisions			
Agreed upon	**PSC only**	**CenturyLink only**	**PSC staff opinion on CenturyLink**
		364.01(4), provides for commission exercise of jurisdiction	NO, (a) is necessary for basic; (b) for CLECs; (g),(h), (i) for wholesale
	364.025, universal service fund carrier-of-last-resort, both expired January 1, 2009, retain (1) for its application to Lifeline	Repeal entire section	Keep (1)
	364.051 (price regulation) only the part of (3) on precondition for price adjustments	Didn’t list as obsolete but would repeal entire section on price regulation to deregulate price	Don’t repeal entire section
	364.052(3), (5), and (6), small ILECs, election for price cap regulation and carrier of last resort	Entire section	Don’t repeal entire section as small ILECs are still regulated less stringently
364.059, relates to 364.051(6) on access charge parity, which was repealed in 2007.			
		364.0251, requires LECs to provide information on competition to their customers	O.K.

[5] Chapter 610, F.S.

Obsolete provisions			
Agreed upon	**PSC only**	**CenturyLink only**	**PSC staff opinion on CenturyLink**
		364.057, experimental and transitional rates	NO, have used recently
		364.06, joint rates	O.K.
364.063, rate adjustment orders			
		364.151 and 364.162, unbundling of network elements	Don't repeal as need specific state authority to implement federal law
	364.337(1), all but basic authority to grant a certificate & intent, (3), (4)	364.337 (3), (4), & (5), alternative access vendor service, can now be done as a CLEC	364.337(5), O.K., are 25 AAVs, who would have to be converted to CLECs
	364.3375(4), pay phone price limitation		
	364.385(1), (2), and (3), "save" rates, applications, that predate 1995 deregulation		

B. Unnecessary provisions

1. ILECs

Representatives of AT&T both met with staff and submitted written comments. Their position is that the PSC's 2010 competition report, which states that voice over Internet protocol (VoIP),[6] broadband, and wireless continued to gain customers while wireline continued to lose customers, supports repeal of all retail regulation of voice services. Their correspondence states that this should be no surprise as history has shown that regulation is not always able to keep up with the introduction of new technologies that replace the regulated services. The end result is that the regulated service providers have the greatest declines in customers as customers choose the newer services provided with the latest technologies. They recommend that all retail regulation be repealed except the Lifeline and Linkup programs. They also recommend that regulation of wholesale issues be maintained.

Representatives of CenturyLink also met with staff and submitted written comments. They agree with AT&T's position, adding that consumers are protected by and benefit from competition in the voice market, that the continuation of Lifeline and Linkup ensures that voice will continue to be available and affordable for the state's most vulnerable citizens, and that retention of wholesale authority is necessary to ensure that wholesale providers' interests continue to be protected. They stated that CenturyLink has lost almost one-half of their total lines at peak numbers, with wireless and VoIP[7] taking most of these customers, which they argue proves the existence of a

[6] VoIP is provided by: cable companies; ILECs using fiber-to-the-home (FTTH) or fiber-to-the-node technologies; and "over-the-top" services, which is voice over public Internet.

[7] Due to both technology and regulatory differences, cable companies began to offer voice services long before voice companies began to offer video. *See*, Senate Committee on Communications and Public Utilities, *Review of Competition and Regulation of Cable and Video Programming Services*, 2007-105, November 2006, 3. Since the creation of the state process for franchising of video services, AT&T and Verizon have become very active in video and CenturyLink is going to begin to provide video as well.

competitive market. As to basic service, approximately five percent of their customers take basic service. Furthermore, there are federal requirements that they continue to serve everyone they serve today, and Lifeline support continue for those who need financial assistance.

A representative from Verizon met with staff and stated that Verizon agrees with the positions of AT&T and CenturyLink. Also, as to basic service, if the statutory requirement is deleted they will continue to offer basic service as their competitors generally do not.

2. Wireless

A representative for Sprint argued that the statutory intrastate access charges should be lowered to the level of interstate access charges. The purpose of this project is to identify statutory provisions that are obsolete or no longer necessary due to market changes and that can therefore be repealed. This statute is still being used and no one argues either that it is unnecessary or that it should be repealed. As such, it appears that this proposal is outside the scope of this project.

3. Cable/VoIP

A representative of cable-based voice providers stated that they have no position on further retail deregulation of voice services. They do, however, want to maintain PSC jurisdiction over wholesale matters as the alternatives, going to the Federal Communications Commission or federal court, are not good alternatives as they take more time, are more expensive, and lack the expertise of the PSC on Florida voice services matters.

4. American Association of Retired Persons (AARP)

AARP made three recommendations. The first is to maintain price protections on essential services, including basic telephone service. Although the PSC's 2010 competition report found that customers are able to obtain functionally equivalent services at comparable rates, terms and conditions, the report did not make an apples-to-apples comparison. There are few competitive alternatives for residential customers, and none for those who want essential, stand-alone basic service. Wireless and VoIP are not available to all customers, are more expensive, and offer poorer service quality. When alternative service is available, it is generally a $40-50 bundled-services package, which cannot be considered a reasonable substitute for $15 stand alone telephone service. Competition for the bare bones basic telecommunications service, which is relied upon by many who are on fixed incomes, is virtually non-existent.

The second recommendation is preservation of fair marketing practices and consumer protections, including mandated disclosure of information on price, terms, and conditions. The third is to avoid any further diminishment of service quality oversight.

4. PSC

The PSC recently issued its Report on the Status of Competition in the Telecommunications Industry As of December 31, 2009.

Since 2001 total wireline access lines in Florida for both ILECs and CLECs have declined by 38 percent, from 12 million to 7.5 million.[8] Residential lines decreased by 51 percent, or 4.3 million lines, leaving a total of 4.1 million lines remaining.[9] Total business lines decreased by 11 percent, or 399,000 lines, leaving a total of 3.3 million lines remaining.[10] As a result of these losses, the composition of access lines has shifted with the percentage of business lines increasing.[11]

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[8] Florida Public Service Commission, *Report on the Status of Competition in the Telecommunications Industry As of December 31, 2009*, 23.
[9] *Id*.
[10] *Id*.
[11] *Id*.

The total number of ILEC access lines decreased by 12 percent in 2009.[12] They had a 15 percent decrease in residential lines, which make up 61 percent of all ILEC access lines, and a 7 percent decrease in business lines.[13]

The CLEC market share increased by two percent, going from 12 percent to 14 percent, with their residential market share increasing from the previous three percent to four percent and their business market share remaining at 25 percent.[14] Despite this increase in market share, total CLEC access lines decreased by 2 percent.[15] Their 32 percent increase in residential lines was more than offset by a 7 percent decrease in business lines as business lines are 83 percent of all CLEC access lines.[16] With the overall decline in wireline access lines, CLECs have a larger market share in a smaller overall market.[17]

The primary reason for the decrease in traditional wireline residential access lines is the increase in the number of wireless-only households and of VoIP services replacing wireline.[18] Other contributory factors are: the recession; the influence of broadband, video, and mobility; and the prevalence of bundled packages.[19] Wireless and VoIP are also popular among business customers and contribute to the decline there.[20]

The FCC reported that 90 percent of the U.S. population had a wireless phone by the end of 2008.[21] Eighty-six percent of the U.S. is rural (counties with a population density of 100 people or fewer per square mile), and approximately 21 percent of U.S. population lives in these areas.[22] The FCC report states that "geographic analysis indicates that 98.5 percent of the rural population is served by at least one wireless carrier."[23] The Center for Disease Control estimates that nearly 24.5 percent of U.S. households are wireless-only as of December 2009. Florida wireless trends mirrored the nationwide ones.[24]

There were an estimated 1.8 million residential VoIP subscribers in Florida as of December 2009, an increase of 12.5 percent over the previous 1.6 million.[25] VoIP business subscription is also rapidly expanding.[26] The Florida Cable Telecommunications Association (FCTA) reported 1.4 million VoIP lines, an increase of 15 percent,[27] and 47 CLECs and 3 ILECs reported 252,207 lines.[28]

Despite these statistics, the FCC also reported that only 92 percent of Florida households had access to voice service in the home in 2009, a decrease of two percent.[29] The PSC found that the continuing weak economy and decreased household income, a significant factor in phone subscribership, was probably the cause of the decrease in voice access.[30]

The PSC noted that, despite the decline in wireline access lines and revenues, "wireline telecommunications remains the gold standard for service quality and reliability. Cable and wireless carriers are still working to harden their networks against natural and manmade disasters that traditional wireline networks have, in many cases,

[12] *Id*., 29.
[13] *Id*.
[14] *Id*., 25.
[15] *Id*., 26.
[16] *Id*.
[17] *Id*.
[18] *Id*., 23.
[19] *Id*.
[20] *Id*.
[21] *Id*., 39.
[22] *Id*.
[23] *Id*.
[24] *Id*., 43.
[25] *Id*., 47.
[26] *Id*.
[27] *Id*., 51.
[28] *Id*., 52.
[29] *Id*., 64.
[30] *Id*.

sustained more effectively. Moreover, wireless carriers continue to be heavily dependent on the ILEC's wireline network, as the majority of wireless call transport occurs over the wireline network, not over wireless facilities, a function commonly referred to as backhaul. While the sustainability of the wireline network appears to be tenuous, it remains a crucial element in the mix of communications technologies of the modern day." [31]

The PSC concluded that residential customers are finding alternatives through CLECs, VoIP, and wireless, and are able to obtain functional equivalent services at comparable rates, terms, and conditions.[32]

5. California price report

The California Senate Office of Oversight and Outcomes (Office) recently issued a report on telecommunications-company competition, prices, and consumer protection since a 2006 California Public Utilities Commission (CPUC) decision ended price regulation of incumbent landline carriers.[33] The Uniform Regulatory Framework decision uncapped rates for California's four largest ILECs; phased-in rate increases for basic residential rates and related Lifeline rates; and urged the companies to "detariff" themselves, ending all obligations to notify the CPUC before implementing a price increase.[34] The CPUC would return to regulation only upon evidence of market power.[35]

Among the findings in the report are findings that: price data gathered by the CPUC at the Office's request shows that some rates have increased by several hundred percent;[36] and despite CPUC findings and continued assertions of a competitive market, two ILECs control 85 percent of the state's residential landlines, allowing them to raise prices without losing market share.[37]

Options and/or Recommendations

The underlying foundation for economic regulation is that it is a substitute for competitive market forces of supply and demand when those forces do not work efficiently or effectively, such as with a natural monopoly industry. The question then is whether technological convergence has turned the voice communications market from a natural monopoly into a competitive one, and thereby rendered economic regulation unnecessary.

The PSC's 2010 competition report tends to support the ILECs' position that competition has rendered economic regulation unnecessary in that it finds that:

- wireline service providers are losing a significant number of access lines;
- both wireless and VoIP are gaining customers in similar numbers;
- this indicates a high level of competition for voice customers between the different technologies; and
- despite the decline in wireline access lines and the repeal of the carrier-of-last-resort obligation, residential voice customers are able to find alternatives through CLECs, VoIP, and wireless, and are able to obtain functional equivalent services at comparable rates, terms, and conditions.

However, the AARP position is also supported by the report's findings that:

- the competition is primarily wireless and VoIP, with a prevalence of bundled packages;
- the FCC reported that only 92 percent of Florida households had access to voice service in the home in 2009;
- the FCC reported that "geographic analysis indicates that 98.5 percent of the rural population is served by at least one wireless carrier" which evidences that there are gaps in wireless service, even without considering dead zones within a service area;

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[31] *Id*., 14.
[32] *Id*., 72.
[33] California Senate Office of Oversight and Outcomes, *California Public Utilities Commission: Gaps Emerge in Telephone Consumer Protections*, July 16, 2010.
[34] *Id*., 10.
[35] *Id*., 19.
[36] *Id*., 12.
[37] *Id*., 24.

- both ILECs and CLECs suffered access line loses;
- the CLEC market was further consolidated in that the four largest CLECs increased their share of the CLEC market to 68 percent, up from 61 percent in 2008; and
- the number of exchanges with no CLEC increased from 12 in 2008 to 15 in 2009.

Overall, the data gathered during this study indicates that while there is a high level of intermodal competition, there is a group of customers, approximately five percent of wireline subscribers, who want only basic service, and for whom wireless and VoIP are not functional equivalent services as they are not always available and, when available, are more expensive. Even with Lifeline support, this group of people may not be able to afford these alternative forms of voice service. Some vestige of regulation must remain to protect this group of customers.