

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1465 Telecommunications Companies  
**SPONSOR(S):** Weatherford and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2626

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee		Keating	Collins
2)	General Government Policy Council			
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Florida’s regulatory framework for local telephone service, or “local exchange service,” is codified in Chapter 364, F.S., which establishes the Public Service Commission’s (“PSC”) jurisdiction to regulate telecommunication services. HB 1465 makes several changes to the existing regulatory framework for local exchange service, including:

- Defining “Internet protocol-enabled service” and exempting such service from PSC jurisdiction;
- Removing PSC authority to oversee otherwise exempt services as specifically authorized by federal law;
- Amending the definitions of “basic local telecommunications service” and “nonbasic service” to provide that only single-line, flat-rate residential service taken with no additional calling features or other services is classified as basic service;
- Modifying price regulation of nonbasic services by allowing price increases of up to 20% in a 12-month period;
- Removing a specific prohibition against pricing nonbasic services below cost;
- Removing PSC authority to resolve service complaints concerning nonbasic services;
- Removing the requirement that customers of multi-line business local service be offered a flat-rate pricing option;
- Removing PSC authority to compel repairs to secure adequate service or facilities for the provision of nonbasic services;
- Removing the requirement that a local exchange company advise each residential customer of the least-cost service available to that customer when the customer initially requests service, unless the customer initially requests basic local telecommunications service;
- Allowing telecommunications companies to publish their rate schedules through electronic or physical media and removing the requirement that companies file the schedules with the PSC;
- Providing that companies subject to price cap regulation will be exempt from PSC regulation of the terms of telecommunications service contracts;
- Removing prohibitions against refunding or remitting any portion of a rate or charge specified in published rate schedules, against providing free or reduced service between points within the state, and against providing employee concessions without PSC approval;
- Removing provisions that shield Lifeline customers from basic local service rate increases authorized pursuant to the former s. 364.164, F.S.;
- Allowing the holder of a certificate, granted by the PSC for purposes of constructing, operating, and controlling a telecommunications facility, to transfer the certificate to another certificate holder for purposes of acquiring ownership or control of a telecommunications facility without prior PSC approval;
- Removing PSC authority to establish maximum rates and charges for operator services;
- Removing the condition that a local exchange telecommunications company be subject to the expired carrier-of-last-resort obligation in order to be eligible to request recovery of storm damage costs from the PSC; and
- Removing obsolete references.

The bill amends cross-references to conform to the changes in the bill.

The bill is not expected to impact state revenues, local revenues, or local expenditures. The bill will reduce the scope of services subject to oversight by the PSC and may reduce workload accordingly. The bill will likely reduce costs to telecommunications companies associated with regulatory oversight. The bill will likely increase the price paid by Lifeline service customers.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1465.EUP.doc  
**DATE:** 3/18/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### ***Regulatory History***

Florida's regulatory framework for local telephone service, or "local exchange service," is codified in Chapter 364, F.S. This chapter establishes the Public Service Commission's ("PSC") jurisdiction to regulate telecommunication services.

In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996.<sup>1</sup> The law sought to establish a competitive market by granting competitive local exchange companies access to the existing telecommunications network.<sup>2</sup> This was accomplished by requiring: (1) interconnection between incumbent and competitive local exchange service providers; and (2) unbundling and resale of incumbents' network features, functions, and capabilities on terms negotiated by the parties or, absent agreement, by the PSC.<sup>3</sup> The law did not impose any form of rate regulation on these new market entrants but did grant the PSC authority to set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.<sup>4</sup> The law required incumbent local exchange companies ("ILECs") to serve as carriers-of-last-resort.<sup>5</sup>

In addition, the 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, effective the later of January 1, 1996, or when a competitive company received a certificate to provide local exchange service in the incumbent's service territory.<sup>6</sup> Under price regulation, the law capped an ILEC's rates for basic local telecommunications service (defined as flat-rate residential service and flat-rate single-line business service)<sup>7</sup> for three to

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<sup>1</sup> Ch. 95-403, L.O.F.

<sup>2</sup> The law required providers of "alternative local exchange service" wishing to do business in Florida first to obtain a certificate of authority from the PSC upon a showing of sufficient technical, financial, and managerial capability. Section 23, ch. 95-403, L.O.F.

<sup>3</sup> Sections 14-16, ch. 95-403, L.O.F.

<sup>4</sup> *Id.* In addition, the law provided the Commission oversight with respect to these services to ensure "the fair treatment of all telecommunications providers in the telecommunications marketplace."

<sup>5</sup> Section 7, ch. 95-403, L.O.F.

<sup>6</sup> Sections 9-10, ch. 95-403, L.O.F.

<sup>7</sup> "Basic local telecommunications service" is service that provides "dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing."

Section 364.02(1), F.S. (2008).

five years depending on the number of lines served by the company. Upon expiration of the applicable price cap period, the law permitted the ILEC to adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent.<sup>8</sup> The law provided greater pricing flexibility for non-basic services (defined as anything other than basic services) by allowing price increases of up to 6% in a 12-month period until a competitive provider began serving in an exchange area, at which time the price for any nonbasic service could be increased up to 20% in a 12-month period. The law contained provisions to prevent anti-competitive pricing<sup>9</sup> and maintained the PSC's authority to oversee service quality.

In 2003, the Legislature passed the Tele-Competition Innovation and Infrastructure Act.<sup>10</sup> Among other things, this law provided a mechanism to remove the support for ILECs' basic local service rates provided by intrastate access fees.<sup>11</sup> To achieve this goal, the law permitted an ILEC, upon PSC approval, to raise basic service rates and offset the increased revenues with a reduction in revenues attributed to reduced intrastate access fees.<sup>12</sup> This arrangement often is referred to as "rate rebalancing." The law provided that an ILEC could elect to have its basic services regulated in the same manner as its non-basic services when its intrastate access fees reached the level of its interstate access fees in effect January 1, 2003. Upon such an election, retail service quality requirements imposed on the ILEC could be no greater than those imposed on competitive local exchange companies. Pursuant to this law, the PSC granted rate rebalancing requests made by BellSouth (now AT&T), Verizon, and Embarq, allowing for stepped changes – increases in basic service rates and decreases in intrastate access fees – over a period of three to four years.<sup>13</sup>

In 2007, after some of the stepped rate changes authorized by the PSC had become effective, the Legislature halted any further changes. As part of the Consumer Choice Act of 2007, the Legislature terminated the rate rebalancing scheme created in the 2003 law and held rates for basic service and network access service at the levels in effect immediately prior to July 1, 2007.<sup>14</sup> The law permitted changes to these basic service rates pursuant to the price regulation scheme adopted in 1995; that is, an ILEC could adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent. The law eliminated the opportunity for ILECs to become subject to the level of service quality oversight imposed on competitive local exchange companies.<sup>15</sup>

Since 2007, no significant statutory changes have been made to the regulatory scheme for local exchange service. Today, incumbent local exchange carriers remain subject to the price regulation scheme adopted in 1995 and are subject to service quality oversight by the PSC. As of January 1, 2009, ILECs are no longer required to serve as carriers-of-last-resort under Florida law.<sup>16</sup> Although this state requirement has expired, ILECs remain subject to a similar requirement under federal law.<sup>17</sup> Competitive local exchange carriers ("CLECs") remain subject to minimal PSC regulation. A CLEC offering basic local services must file a price list with the PSC and must provide an option for flat-rate pricing for those services.<sup>18</sup> Basic local service provided by a CLEC must include access to operator

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<sup>8</sup> Section 9, ch. 95-403, L.O.F.

<sup>9</sup> *Id.*

<sup>10</sup> Ch. 2003-32, L.O.F.

<sup>11</sup> Section 15, ch. 2003-32, L.O.F. Intrastate access fees (referred to as "intrastate switched network access rates" in the law) are the rates charged by a local exchange company for other telecommunications companies to originate and terminate intrastate traffic on its network. *Intrastate* access fees have historically been higher than similar fees charged for originating and terminating *interstate* traffic and have supported rates for basic service.

<sup>12</sup> *Id.*

<sup>13</sup> PSC Order No. PSC-03-1469-FOF-TL, issued December 24, 2003, upheld in Crist v. Jaber, 908 So.2d 426 (Fla. 2005). The PSC denied Alltel Florida, Inc.'s (now Windstream) petition pursuant to this statute. PSC Order No. PSC-06-0036-FOF-TL, issued January 10, 2006.

<sup>14</sup> Sections 10, 12, and 13, ch. 2007-29, L.O.F.

<sup>15</sup> Section 10, ch. 2007-29, L.O.F.

<sup>16</sup> Section 364.025, F.S. (2008)

<sup>17</sup> Florida Public Service Commission presentation to the Florida House of Representatives Committee on Utilities & Telecommunications, December 13, 2007, "Telecommunications Carrier-Of-Last-Resort Obligation."

<sup>18</sup> Section 364.337 (2), F.S. (2008)

services, '911' services, and relay services for the hearing impaired.<sup>19</sup> CLECs are also subject to service quality oversight.<sup>20</sup>

Florida does not regulate the rates and service quality associated with certain types of telecommunications services. In 2005, the Legislature explicitly exempted intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-Internet-protocol ("VoIP") services, and wireless telecommunications services from PSC oversight, to the extent such oversight is not authorized by federal law.<sup>21</sup>

### **Status of Competition**

On August 1, 2008, the PSC issued its *Report on the Status of Competition in the Telecommunications Industry as of December 31, 2007* ("PSC Competition Report"). The PSC Competition Report found that while service provided by ILECs is still the leading telecommunications choice for Florida households, cable telephony, wireless, and VoIP are gaining mainstream acceptance as alternatives.<sup>22</sup>

#### *Wireline Local Service Market*

The *PSC Competition Report* states that traditional wireline access lines (residential and business) have declined from 12 million in 2001 to 9.3 million by December 2007. The report attributes nearly this entire amount to lost access lines for residential service. These losses, in turn, are attributed primarily to the substitution of wireless and VoIP services.<sup>23</sup> In that same period, the report indicates that business access lines increased by approximately 55,000, with 117,000 lines added between June 2007 and December 2007.<sup>24</sup>

According to the report, the ILECs' share of the wireline local service market has increased since 2005 in relation to the CLECs' market share. CLEC total market share has declined from 43 percent in 2005 to 25 percent by December 2007. As of December 2007, CLECs' market share for residential access lines fell to 5 percent, while their market share for business access lines fell to 20 percent. The report attributes these losses in part to the impact of decisions made by the Federal Communications Commission ("FCC").<sup>25</sup>

In general, CLECs do not serve large numbers of access lines per company. As of December 31, 2007, there were 370 companies with CLEC certificates in Florida. Only four of these companies serve more than 20,000 residential access lines. One CLEC serves between 10,000 and 20,000 residential access lines, 21 companies serve 1,000 to 10,000 residential access lines, and 39 companies each serve fewer than 1,000 residential access lines.<sup>26</sup>

#### *Wireless and VoIP*

According to the *PSC Competition Report*, wireline service providers have seen access lines eroded by competition from wireless and VoIP services. (The report does not estimate the number of lost wireline customers that ultimately take service from the wireline company's affiliated wireless or VoIP businesses.) Because these services are not subject to PSC jurisdiction, the PSC is unable to compel providers of these services to submit market data for purposes of its report. The *PSC Competition Report* does provide estimates based on some voluntary responses as well as other publicly available information.<sup>27</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Section 364.337(5), F.S. (2008)

<sup>21</sup> Section 11, ch. 2005-132, L.O.F.

<sup>22</sup> *PSC Competition Report*, p. 9.

<sup>23</sup> *Id.* at p. 23. In addition, the report indicates that decisions by the Federal Communications Commission and a sluggish economy may have negatively affected the number of residential wireline access lines.

<sup>24</sup> *Id.* at p. 23.

<sup>25</sup> *Id.* at p. 32.

<sup>26</sup> *Id.* at p. 24.

<sup>27</sup> *Id.* at pp. 2-3.

With respect to wireless service, the PSC report relies upon data gathered by the Centers for Disease Control (CDC) to estimate that approximately 1.2 million Florida households are wireless-only.<sup>28</sup> The CDC estimates that 17.1 percent of households in the South region of the U.S. are wireless-only as of December 2007. As these numbers are based on households, the report does not indicate the extent to which wireless service may have affected the business market. The PSC report cites the opinion of some industry analysts who suggest that the wireless market may be approaching saturation in North America. The report also presents a contrary view based on anticipated growth in the use of mobile data services through smartphones.<sup>29</sup>

With respect to VoIP, the PSC report relies upon voluntarily submitted data to estimate that there are at least 1 million residential VoIP subscribers in Florida.<sup>30</sup> In its report, the PSC states that it is unable to quantify VoIP's presence in the business sector with any degree of confidence. In the report, VoIP service includes both facilities-based VoIP service (estimated 800,000 subscribers) and "over-the-top" VoIP service (estimated 300,000 subscribers).<sup>31</sup> Cable telephony providers comprise a large portion of the facilities-based VoIP segment,<sup>32</sup> but this segment also includes companies like Verizon and AT&T who may offer VoIP service through various platforms.<sup>33</sup> "Over-the-top" VoIP providers rely on the public Internet to deliver traffic and rely on the customer to have a broadband connection. Vonage is probably the most well known of these providers.

### *National Market Considerations*

The FCC periodically issues statistics on local telephone competition. The FCC reports, as of December 31, 2007, nationally, the CLEC share of end-user switched access lines was approximately 18.1 percent. That report indicated in Florida, CLECs served 13 percent of all end-user switched access lines.<sup>34</sup> The FCC also reports that "[d]uring the second half of 2006, 11.8 percent of U.S. adults lived in households with only wireless phones." This rate has steadily increased since 2003.<sup>35</sup> However, the FCC has determined that only a small number of households are wireless only, and that most households have wireless service in addition to wireline service.<sup>36</sup>

For wireless service, the FCC determined at least 95 percent of U.S. residents reside in areas where three or more wireless providers are available, and at least half of the residents reside in areas with at least five providers.<sup>37</sup>

For broadband service, the FCC determined that more than 99 percent of the United States' population lives in a zip code with at least one high-speed Internet service provider. However, this does not mean that high-speed Internet service is available to every address in the zip code. The FCC concluded that high-speed DSL is available to 82 percent of households where the incumbent local exchange company is able to provide local service. Additionally, high-speed cable modem service is available to 96 percent of the households where a cable company is able to provide cable television service.<sup>38</sup>

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<sup>28</sup> *Id.* at p. 23.

<sup>29</sup> *Id.* at p. 13.

<sup>30</sup> *Id.* at p. 47. The report does not indicate what portion of these subscribers may also retain traditional wireline local service

<sup>31</sup> *Id.* at pp. 47-49.

<sup>32</sup> The PSC Competition Report indicates that some cable companies still provide voice service to customer via the legacy circuit-switched network. (See *id.* at pp. 46-47.)

<sup>33</sup> *Id.* at pp. 46-47.

<sup>34</sup> Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, September 2008, Tables 1 and 7.

<sup>35</sup> Federal Communications Commission; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, released February 4, 2008. p. 10

<sup>36</sup> Federal Communications Commission, Order FCC 08-04; In the Matter of High-Cost Universal Service Support (WC Docket No. 05-337), Federal-State Joint Board on Universal Service (CC Docket No. 96-45), Released January 29, 2008; ¶ 9.

<sup>37</sup> Federal Communications Commission; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, released February 4, 2008. p. 5.

<sup>38</sup> Federal Communication Commission, *High-Speed Services for Internet Access: Stats as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, March 2008. p. 3-4.

## **Proposed Changes**

HB 1465 proposes several changes to the existing regulatory framework for telecommunications services. Each proposed change is discussed separately below.

### ***Exemptions from PSC Jurisdiction***

#### *Present Situation*

Under current law, the following services are exempt from oversight by the PSC, except to the extent specified in Chapter 364, F.S., or specifically authorized by federal law: intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-Internet-protocol (“VoIP”) services, and wireless telecommunications services. As authorized by federal law, the PSC may designate wireless providers as “eligible telecommunications companies,” which entitles such providers to receive funds from the federal universal service fund to support Lifeline service.

VoIP is defined in s. 364.02(17), F.S., as “voice-over-Internet protocol as that term is defined in federal law.” VoIP is defined in federal law as a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.<sup>39</sup>

#### *Effect of Proposed Changes*

The bill amends several provisions of Chapter 364, F.S. to provide that “Internet-protocol enabled services such as VoIP” or “Internet-protocol enabled services, including VoIP” are exempt from oversight by the PSC. The bill defines “Internet-protocol enabled service” as “a service, capability, functionality, or application that is provided using Internet protocol or a successor protocol to enable an end user to send or receive data, video, or voice communications in Internet protocol format or a successor format.” The bill amends the following provisions of Chapter 364, F.S., to refer to the new term:

- Section 364.01(3), F.S., provides that communications activities that are not regulated by the PSC, including but not limited to VoIP, wireless, and broadband, are subject to Florida’s generally applicable business regulation and deceptive trade practices and consumer protection laws. The bill amends this provision to apply to “Internet-protocol enabled services such as VoIP, wireless, and broadband.”
- Section 364.01(3), F.S., further provides a legislative finding that the provision of VoIP free of unnecessary regulation is in the public interest. The bill amends this provision to apply this finding to “Internet-protocol enabled service, including” VoIP.
- Section 364.02, F.S., provides definitions for Chapter 364, F.S. It provides that the term “service” does not include broadband service or VoIP service for purposes of regulation by the PSC. The bill amends this provision to state that “service” does not include “broadband service or Internet-protocol enabled service, including VoIP” for purposes of regulation by the PSC.
- Section 364.02, F.S., further provides that nothing in Chapter 364, F.S., shall affect the switched network access rates or other intercarrier compensation, if any, related to VoIP service. The bill amends both provisions to include the phrase “Internet-protocol enabled service, including” VoIP.

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<sup>39</sup> 47 C.F.R. §9.3 (2008)

- Section 364.011, F.S., provides exemptions from Commission jurisdiction for intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, VoIP services, and wireless telecommunications services, except to the extent specified in Chapter 364, F.S., or specifically authorized by federal law. The bill amends this provision to add that “Internet-protocol enabled services, including” VoIP are exempt from the PSC jurisdiction. The bill also removes the PSC’s jurisdiction over the listed services where such jurisdiction is authorized by federal law.
- Section 364.013, F.S., provides that broadband service and the provision of VoIP shall be free of state regulation, except as specified in Chapter 364, F.S., or as specifically authorized by federal law, regardless of provider, platform, or protocol. The bill amends this provision to add that “Internet-protocol enabled services, including” VoIP shall be free of state regulation. (The bill also adds that these services are exempt from PSC jurisdiction. It is not clear how this provision changes existing law, which already states that the services shall be free of state regulation.) The bill also removes the PSC’s jurisdiction over broadband and Internet-protocol enabled services, including VoIP, where such jurisdiction is authorized by federal law.

Unlike traditional circuit-switched telephony, which establishes a dedicated circuit between the parties to a voice transmission, VoIP relies on packet-switching, which divides the voice transmission into packets and sends them over the fastest available route. Thus, VoIP uses available bandwidth more efficiently than traditional circuit-switched telephony and allows providers to maintain a single IP network for both voice and data.<sup>40</sup> According to the PSC, Internet protocol (“IP”) is commonly used in existing telecommunications networks because of its ability to expand capacity and improve reliability, though it is not yet commonly employed end-to-end. For example, an interexchange (long distance) call may be initiated on the traditional public switched telephone network, converted to an IP format and transported in that format, then converted back from IP format to be delivered on the public switched telephone network.<sup>41</sup>

The bill’s definition of “Internet-protocol enabled service” includes “a service, capability, functionality, or application” provided via IP technology to enable an end user to send or receive voice communications in IP format. It appears that this definition, based on its terms and the context of its use, will have a broader scope than the current definition of VoIP. It is not clear how broad the definition may be. Until the scope is defined by administrative (PSC) or judicial determination, it may be difficult to determine what present and future services are exempt from PSC jurisdiction under this definition. The PSC has raised a concern that the terms “capability, functionality, or application,” if interpreted broadly, could capture all currently provided telecommunications services and exempt those services from PSC oversight.

By removing the PSC’s jurisdiction to take certain actions under the authority of federal law with respect to otherwise unregulated services, specific state authority may be required for the PSC to implement responsibilities delegated to it by federal law or rule. According to the PSC, the bill would remove the PSC’s authority to designate wireless providers as “eligible telecommunications companies,” which entitles such providers to receive funds from the federal universal service fund to support Lifeline service.

## ***Services Subject to Regulation***

### ***Present Situation***

Under current law, regulatory requirements vary based on whether a service is defined as basic local telecommunications service or a nonbasic service.

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<sup>40</sup>See Federal Communications Commission Order FCC-04-97, issued April 21, 2004, in WC Docket No. 02-361, *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*.

<sup>41</sup> See *Id.*

“Basic local telecommunications service” is defined in s. 364.02(1), F.S., as voice-grade, flat-rate residential, and flat-rate, single-line business local exchange services.<sup>42</sup> The definition is silent as to the treatment of basic local service when combined with nonbasic services regardless of whether each service is priced individually or provided in combination with other services for a single price. The PSC has treated basic local service as basic service when it is combined with nonbasic services.

Pricing for basic local service is governed by s. 364.051(2), F.S. Since January 1, 2001, pricing of basic local service may only be increased once in any 12 month period by an amount not to exceed the change in inflation<sup>43</sup> less one percent. In addition, a flat-rate pricing option for basic local service is required and mandatory measured service (e.g., per minute pricing) for basic local service may not be imposed.

“Nonbasic service” is defined in s. 364.02(10), F.S., as any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection service as described in section 364.16, F.S., or a network access service as described in section 364.163, F.S.

Pricing and terms for nonbasic service are governed by s. 364.051(5)(a-c), F.S. Prices for nonbasic services are limited to increases of 6 percent in any 12 month period when no competitor is present and 20 percent in any 12 month period if there is a competitor providing local telephone service and offering similar services. A flat-rate pricing option for multi-line business local exchange service is required and mandatory measured service for multi-line business local exchange service may not be imposed. This section provides that the PSC has regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that competitors are treated fairly in the telecommunications market. This section also provides that the price charged to a consumer for a nonbasic service must cover the costs of providing the service.

*Effect of Proposed Changes*

The bill amends the definition of “basic local telecommunications service” by eliminating “flat-rate single line business” customers from the definition and limiting the definition to residential “single-line” service. The bill also amends the definition of “nonbasic service” to include any combination of basic service along with a nonbasic service or an unregulated service. The following table shows how services currently classified as “basic” service will be classified under the bill:

<b>Type of Service(s) Purchased by Consumer</b>	<b>Classification under Current Law</b>	<b>Classification under HB 1465</b>
Residential, single-line (no additional features or services)	Basic	Basic
Residential, single-line plus any additional feature (e.g., caller ID, call waiting, voice mail)	Basic (additional features not part of basic service)	Nonbasic
Residential, single-line plus any additional service (e.g., broadband, video, wireless)	Basic (additional services not part of basic service)	Nonbasic
Residential, two lines or more	Basic (each line)	Nonbasic
Business, single-line	Basic	Nonbasic

<sup>42</sup>Under s. 366.02(1), F.S., basic local telecommunications service must provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing (i.e., touchtone), and access to emergency services such as “911,” all locally available interexchange (i.e., long distance) companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

<sup>43</sup>Inflation for the purpose of the section is measured by change in the Gross Domestic Product Fixed 1987 Weights Price Index.



As discussed in detail below, the bill amends the law applicable to nonbasic service as follows:

- Allows, for all nonbasic services, price increases of up to 20% in a 12-month period, regardless of whether a competitive presence exists for local telephone service.
- Removes a specific prohibition against pricing nonbasic service below cost.
- Removes PSC authority to resolve service complaints concerning nonbasic service.
- Removes requirement of providing a flat-rate pricing option for multi-line business local service, and removes prohibition on mandatory measured service for multi-line business local service.
- Removes PSC authority to compel repairs to secure adequate service or facilities for nonbasic service.
- Removes requirement that a local exchange company advise each residential customer of the least-cost service available to that customer, if the customer requests any service other than basic service.
- Removes obsolete provisions concerning pricing for certain services.

For all nonbasic services, the bill amends s. 364.051(5)(a), F.S., to allow for price increases of up to 20% in a 12-month period, regardless of whether a competitive presence exists for local telephone service. Based on the changes to the definitions of basic service and nonbasic service, many customers whose service has historically been treated as basic service will have their local exchange service become subject to potential price increases of up to 20% in a 12-month period. In areas where competition is present, competitive pressures may protect against price increases. In areas with little or no competitive presence, it is not clear what effect the bill may have on prices.

The bill removes the prohibition in s. 364.051(5)(c), F.S., against pricing nonbasic services below cost. The law will continue to provide the PSC jurisdiction over cross-subsidization, predatory pricing, and other anticompetitive behavior under s. 364.3381, F.S. The law also will continue to provide the PSC with regulatory oversight of nonbasic services to prevent cross-subsidization of nonbasic services with basic service revenues and to ensure that all providers are treated fairly in the telecommunications market under s. 364.051(5)(b), F.S.

The bill removes the PSC's authority under s. 364.051(5)(b), F.S., to resolve service complaints concerning nonbasic services. Based on the changes to the definitions of basic service and nonbasic service, many customers whose service has historically been treated as basic service will no longer be able to resolve complaints through the PSC. Instead, those customers may be able to use the non-binding dispute resolution process generally available through the Department of Agriculture and Consumer Services. Otherwise, unresolved complaints would likely require judicial action to resolve. In areas where competition is present, competitive pressures may reduce service complaints. In areas with little or no competitive presence, providers of nonbasic local service may have less motivation to resolve service complaints.

The bill removes the requirement in s. 364.051(5)(b), F.S., that customers of multi-line business local service be offered a flat-rate pricing option.

The bill removes the PSC's authority under s. 364.15, F.S., to compel repairs to secure adequate service or facilities for the provision of nonbasic services. It is not clear how local exchange companies and the PSC will distinguish between facilities providing basic service and facilities providing nonbasic services in instances where the same facilities are used to provide both services. It appears that the PSC's authority to compel repairs to a particular facility will depend upon the services selected by the customers served by a particular line or other facility.

The bill amends the requirement in s. 364.3382, F.S., that a local exchange company advise each residential customer of the least-cost service available to that customer when the customer initially requests service. This requirement will only apply if a customer initially requests basic local telecommunications service.

The bill eliminates obsolete language in s. 364.051(5)(a), F.S, relating to price caps for multi-line business local service and services provided under contract service arrangements provided to the SUNCOM network.<sup>44</sup> The deleted language provided price caps for these services through January 1, 2000.

## **Consumer Information**

### *Present Situation*

Section 364.04, F.S., currently requires every telecommunications company, upon order of the PSC, to file with the PSC schedules showing the rates, tolls, rentals, contracts, and charges of that company for services to be performed in the state. In addition, companies are required to print their rate schedules and keep them open to public inspection at places designated by the PSC. Any tariff must be produced immediately upon request. A notice providing information concerning the existence, location, and availability of current rate schedules must be posted as designated by the PSC.

In addition, Section 364.3382, F.S., currently requires that each local exchange company notify each residential customer of the price of each service option that the customer has selected. This notice must be provided annually in the form of a bill insert.

### *Effect of Proposed Changes*

The bill amends s. 364.04(1), F.S., to allow telecommunications companies to publish their rate schedules through electronic or physical media and removes the requirement that companies file the schedules with the PSC and print and keep them open to public inspection. The bill provides that a company may, as an option, file the published schedules with the PSC or publish the schedules through "other reasonably publicly available means, including on a website." A company that does not file its schedules with the commission shall inform its customers where a customer may view the schedules. The bill eliminates the requirements that rate schedules be produced immediately upon demand and that a notice be posted as designated by the PSC.

According to the PSC, it maintains historical rate schedules to help resolve billing disputes. As rate schedules change but are not filed with the PSC, the PSC may be unable to resolve some billing disputes that require historical rate information. This concern would apply only to those customers whose service is still classified as basic service under the bill, as service complaints about nonbasic services would not be subject to PSC jurisdiction. To the extent that a company publishes rate schedules only on a website, households without Internet access may not have access to the schedules.

The bill amends other provisions of law in ss. 364.051(5)(a), 364.10(3)(a), 364.3376(2), (3)(c), (8), and (9), F.S., to conform to this change.

## **Service Contracts**

### *Present Situation*

Section 364.19, F.S., provides the PSC authority to regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

### *Effect of Proposed Changes*

The bill amends s. 364.051(1)(c), F.S., to provide that companies subject to price cap regulation will be exempt from s. 364.19, F.S. Because all local exchange companies in Florida are now price cap regulated, it appears that the bill renders s. 364.19, F.S., inoperable.

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<sup>44</sup> See, generally, Chapter 282, Part I, concerning the SUNCOM network.

Local exchange service in Florida is primarily provided pursuant to rate schedules filed pursuant to s. 364.04, F.S., rather than by separate contract of agreement. At least one local exchange company operating in Florida has begun providing service through contracts or agreements in other states.

### ***Rebates and Special Rates***

#### *Present Situation*

Section 364.08, F.S., prohibits a telecommunications company from imposing a charge for any service other than the charge applicable to that service as specified in its filed rate schedules. This section provides that a company may not refund or remit any portion of the specified rate or charge. This section further provides that a company may not give any free or reduced service between points within Florida. The law allows for employee concessions if the PSC finds such concessions to be in the public interest. Section 364.051(5)(a), F.S., provides that a local exchange company shall not unreasonably discriminate among similarly situated customers.

Section 364.09, F.S., prohibits a telecommunications company from giving a special rate or a rebate to any customer if that rate or rebate is not provided to any other customer taking similar service under the same or substantially the same circumstances and conditions.

#### *Effect of Proposed Changes*

The bill amends s. 364.08, F.S., by removing the prohibition against refunding or remitting any portion of a rate or charge specified in published rate schedules. The bill also amends this section to allow telecommunications companies to provide free or reduced service between points within the state and to provide employee concessions without PSC approval. The bill repeals s. 364.09, F.S., and amends ss. 364.059 and 364.105, F.S., to eliminate cross-references to s. 364.09, F.S. These provisions of the bill, together with the provision that repeals the specific prohibition against pricing nonbasic services below cost, appear to provide greater pricing flexibility for telecommunications companies.

The bill does not amend the current prohibition against unreasonable discrimination among similarly situated customers.

### ***Lifeline Service***

#### *Present Situation*

Section 364.10(2) and (3), F.S., governs the provision of Lifeline service. Lifeline service is a program under the federal Universal Service Fund that provides credits to qualifying low income customers in order to encourage low-income citizens to subscribe to telephone service. Florida law requires that all telecommunications companies in Florida designated as eligible telecommunications carriers pursuant to federal law must provide Lifeline service to customers who qualify based on their participation in other specified public assistance programs. In addition, the law requires that AT&T, Verizon, and Embarq – as companies authorized by the PSC to reduce switched network access rates pursuant to former s. 364.164, F.S. – must provide Lifeline service to customers who qualify with an income at 135 percent or less of federal poverty income guidelines. Current law provides that Lifeline customers are not subject to basic local service rate increases authorized pursuant to the former s. 364.164, which was created through the 2003 “rate rebalancing” law and has since been repealed.

#### *Effect of Proposed Changes*

The bill amends s. 364.10(3)(a), F.S., to provide that a local exchange company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier must provide Lifeline service to customers who meet the existing income eligibility test of 135 percent of the federal poverty guidelines. This provision replaces the reference to repealed s. 364.164, F.S., to ensure that the companies required to provide Lifeline service pursuant to the obsolete reference – AT&T, Verizon, and Embarq – are still required to provide Lifeline service to the same class of customers. The bill

does not diminish the requirement of all companies designated as eligible telecommunications carriers to provide Lifeline service to customers who qualify based on their participation in other specified public assistance programs.

The bill repeals s. 364.10(3)(c), F.S., thereby subjecting Lifeline customers to the basic local service rate increases authorized pursuant to the former s. 364.164, F.S. The bill does not reduce the current credit for Lifeline service. Rather, it appears that the rate to which Lifeline benefits apply will be the rate charged to other customers receiving similar service, which is currently higher. It is not clear if this will remain true going forward, because the bill repeals the prohibition on special rates, as discussed above.

The bill makes conforming cross-references in s. 364.02(15), F.S.

### ***Transfers of Ownership and Control of Telecommunications Companies***

#### *Present Situation*

Section 364.33, F.S., requires a person to obtain a certificate of necessity from the PSC before beginning the construction or operation of a telecommunications facility for the purpose of providing telecommunications service to the public. Prior approval by the PSC is required for a certificate to be transferred to another person or party for purposes of transferring ownership or control of telecommunications facilities.

#### *Effect of Proposed Changes*

The bill amends s. 364.33, F.S., to allow a person holding a certificate to transfer the certificate to another person who holds a certificate, who may then acquire ownership or control of a telecommunications facility, through acquisition, transfer, or assignment of majority organizational control of controlling stock ownership, without prior approval of the PSC. In the event of such a transfer, the bill requires 60 days' written notice to the PSC and affected customers. This provision of the bill will reduce state oversight of mergers and acquisitions between telecommunications companies already operating in the state.

The bill amends other provisions of law in ss. 364.335 and 364.345, F.S., to conform to this change.

### ***Operator Services***

#### *Present Situation*

Section 364.3376, F.S., requires the PSC to establish maximum rates and charges for all providers of operator services within Florida. Operator services providers must file schedules of these rates and charges with the PSC. According to the PSC, such services are frequently provided by entities unaffiliated with the local exchange companies.

#### *Effect of Proposed Changes*

The bill removes the PSC's authority to establish maximum rates and charges for operator services. Operator services rate schedules would no longer be filed with the PSC, but would be subject to the general publication requirements established in the bill for all services.

### ***Storm Damage Cost Recovery***

#### *Present Situation*

Section 364.051(4)(b), F.S., provides that a local exchange telecommunications company that is a carrier-of-last-resort may petition the PSC to recover intrastate costs and expenses relating to repairing, restoring, or replacing lines, plants, or facilities damaged by a named tropical system

occurring after June 1, 2005. The carrier-of-last-resort obligation expired by sunset on January 1, 2009. Thus, a local exchange telecommunications companies can no longer seek storm damage recovery through s. 364.051(4)(b), F.S.

### *Effect of Proposed Changes*

The bill amends s. 364.051(4)(b), F.S., to remove the condition that a local exchange telecommunications company be subject to the carrier-of-last-resort obligation in order to be eligible to request recovery of storm damage costs. Because all local exchange telecommunications companies were previously subject to the carrier-of-last-resort obligation, the bill does not change the scope of the companies that may request storm cost recovery. Section 364.051(4)(b)8., F.S., is amended to delete obsolete language.

### **Miscellaneous Provisions**

The bill amends s. 364.3376(2) and (9), F.S., to remove obsolete references to PSC findings that a service should not be regulated pursuant to s. 364.338, F.S., which was repealed in 1995.

The bill amends ss. 196.012, 199.183, 212.08, 290.007, 350.0605, 364.602, and 489.103, F.S., to conform cross references to definitions in s. 364.02, F.S., that are renumbered by the bill.

## **B. SECTION DIRECTORY:**

**Section 1.** Provides a short title.

**Section 2.** Amends s. 364.01, F.S., relating to powers of the Public Service Commission and legislative intent.

**Section 3.** Amends s. 364.02, F.S., relating to definitions applicable to Chapter 364, F.S.

**Section 4.** Amends s. 364.011, F.S., relating to exemptions from PSC jurisdiction.

**Section 5.** Amends s. 364.013, F.S., relating to emerging and advanced services.

**Section 6.** Amends s. 364.04, F.S., relating to schedules of rates, tolls, rentals, contracts, and charges; filing; and public inspection.

**Section 7.** Amends s. 364.051, F.S., relating to price regulation.

**Section 8.** Amends s. 364.08, F.S., relating to the unlawfulness of charges other than schedule rates or charges; prohibition against free and reduced rates.

**Section 9.** Amends s. 364.10, F.S., relating to Lifeline service.

**Section 10.** Amends s. 364.15, F.S., relating to compelling repairs, improvement, changes, additions, or extensions.

**Section 11.** Amends s. 364.33, F.S., relating to certificates of necessity prerequisite to construction, operation, or control of telecommunications facilities.

**Section 12.** Amends s. 364.335, F.S., relating to application for certification.

**Section 13.** Amends s. 364.3376, F.S., relating to operator services.

**Section 14.** Amends s. 364.3382, F.S., relating to disclosure.

**Section 15.** Amends s. 364.345, F.S., relating to certificates; territory served; and transfer.

- Section 16.** Repeals s. 364.09, F.S., relating to prohibition against giving rebates or special rates.
- Section 17.** Amends s. 196.012, F.S., to conform cross-references.
- Section 18.** Amends s. 199.183, F.S., to conform cross-references.
- Section 19.** Amends s. 212.08, F.S., to conform cross-references.
- Section 20.** Amends s. 290.007, F.S., to conform cross-references.
- Section 21.** Amends s. 350.0605, F.S., to conform cross-references.
- Section 22.** Amends s. 364.059, F.S., to conform cross-references.
- Section 23.** Amends s. 364.105, F.S., to conform cross-references.
- Section 24.** Amends s. 364.602, F.S., to conform cross-references.
- Section 25.** Amends s. 489.103, F.S., to conform cross-references.
- Section 26.** Provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce regulatory requirements applicable to providers of local exchange service. The bill will likely reduce costs associated with regulatory oversight by the PSC, including compliance with existing service quality and certification requirements. The bill likely will increase revenues from customers of Lifeline service to local exchange service providers.

### D. FISCAL COMMENTS:

The bill will reduce the scope of services subject to oversight by the PSC and may reduce workload accordingly. The bill will likely increase the price paid by Lifeline service customers.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

In amending the requirements for publication of rate schedules, the bill requires only that the schedules be published through electronic or physical means. It provides companies, "as an option," the choice to file those schedules with the PSC or publish the schedules through reasonably publicly accessible means, such as a website. By providing these choices as an option to companies, neither choice is required. Thus, as drafted, the bill appears to provide considerable latitude as to how and where rate schedules are published, including by means that may not be "reasonably publicly accessible." It is not clear if the bill intended this result.

In removing the requirement for PSC review of transfers of certificates, the bill, as drafted, does not differentiate between certificate holders for different types of telecommunications services. For example, a payphone operator is granted a certificate if deemed to possess the managerial and financial expertise and financial strength to operate a payphone company. Such a provider may not have the expertise and finances to operate a local exchange company. It is not clear if the bill intended to permit a transfer, without PSC approval, between certificate holders for different types of services. In addition, the requirement that a company provide 60 days' written notice of a certificate transfer may need to be clarified to specify whether the notice must be provided 60 days prior to the transfer or within 60 days following the transfer.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES