HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1465 Telecommunications Companies
SPONSOR(S): General Government Policy Council, Energy & Utilities Policy Committee, Weatherford and others
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 2626

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee	22 Y, 1 N, As CS	Keating	Collins
2)	General Government Policy Council	15 Y, 2 N, As CS	Keating	Hamby
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. The bill makes several changes to the existing regulatory framework for local exchange service, including:

- Providing interconnection rights for competitive local exchange companies to transmit and route voice traffic, regardless of the technology used by an end user to originate and terminate the voice traffic;
- Amending the definitions of "basic local telecommunications service" and "nonbasic service" to provide that basic service consists of single-line, flat-rate residential service not taken in combination or conjunction with a nonbasic or unregulated service;
- Reducing allowed price increases for nonbasic services provided in exchange areas with at least one competitive provider from 20% to 10% in a 12-month period;
- 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 of facilities used 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;
- Expanding Lifeline eligibility for customers of specified eligible telecommunications companies;
- Removing provisions that shield some Lifeline customers from previous 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, or the certificate holder's parent or affiliate to transfer the certificate or control of the certificate to another certificate holder or its parent or affiliate without PSC approval;
- Removing PSC authority to establish maximum rates and charges for operator services;
- Providing for PSC resolution of complaints of anticompetitive behavior concerning a local preferred carrier freeze;
- 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

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 may increase the net price paid by some Lifeline service customers, but will expand Lifeline eligibility. For basic services reclassified as nonbasic, existing price caps will apply until July 1, 2012; thereafter, the price for such services may be increased up to 6% in a 12-month period (in exchange areas with no competitive provider) or up to 10% in a 12-month period (in exchange areas served by at least one competitive provider).

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.[1] The law sought to establish a competitive market by granting competitive local exchange companies access to the existing telecommunications network.[2] 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.[3] 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.[4] The law required incumbent local exchange companies ("ILECs") to serve as carriers-of-last-resort.[5]

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.[6] 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)[7] for three to

[1] Ch. 95-403, L.O.F.
[2] 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.
[3] Sections 14-16, ch. 95-403, L.O.F.
[4] *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."
[5] Section 7, ch. 95-403, L.O.F.
[6] Sections 9-10, ch. 95-403, L.O.F.
[7] "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.[8] 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[9] and maintained the PSC's authority to oversee service quality.

In 2003, the Legislature passed the Tele-Competition Innovation and Infrastructure Act.[10] Among other things, this law provided a mechanism to remove the support for ILECs' basic local service rates provided by intrastate access fees.[11] 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.[12] 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.[13]

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.[14] 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.[15]

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.[16] Although this state requirement has expired, ILECs remain subject to a similar requirement under federal law.[17] 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.[18] Basic local service provided by a CLEC must include access to operator

[8] Section 9, ch. 95-403, L.O.F.
[9] *Id.*
[10] Ch. 2003-32, L.O.F.
[11] 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.
[12] *Id.*
[13] 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.
[14] Sections 10, 12, and 13, ch. 2007-29, L.O.F.
[15] Section 10, ch. 2007-29, L.O.F.
[16] Section 364.025, F.S. (2008)
[17] Florida Public Service Commission presentation to the Florida House of Representatives Committee on Utilities & Telecommunications, December 13, 2007, "Telecommunications Carrier-Of-Last-Resort Obligation."
[18] Section 364.337 (2), F.S. (2008)

services, '911' services, and relay services for the hearing impaired.[19] CLECs are also subject to service quality oversight.[20]

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.[21]

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.[22]

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.[23] 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.[24]

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").[25]

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.[26]

Wireless and VoIP

According to the *PSC Competition Report*, wireline service providers have seen access lines eroded by competition from wireless and VoIP services. 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.[27]

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.[28] The

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[19] *Id.*
[20] Section 364.337(5), F.S. (2008)
[21] Section 11, ch. 2005-132, L.O.F.
[22] *PSC Competition Report*, p. 9.
[23] *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.
[24] *Id.* at p. 23.
[25] *Id.* at p. 32.
[26] *Id.* at p. 24.
[27] *Id.* at pp. 2-3.
[28] *Id.* at p. 23.

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.[29]

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.[30] 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).[31] Cable telephony providers comprise a large portion of the facilities-based VoIP segment,[32] but this segment also includes companies like Verizon and AT&T who may offer VoIP service through various platforms.[33] "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.[34] 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.[35] 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.[36]

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.[37]

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.[38]

<u>Proposed Changes</u>

The bill makes several changes to the existing regulatory framework for telecommunications services. Each change is discussed separately below.

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[29] *Id.* at p. 13.
[30] *Id.* at p. 47. The report does not indicate what portion of these subscribers may also retain traditional wireline local service
[31] *Id.* at pp. 47-49.
[32] 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.)
[33] *Id.* at pp. 46-47.
[34] 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.
[35] Federal Communications Commission; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, released February 4, 2008. p. 10
[36] 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.
[37] Federal Communications Commission; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, released February 4, 2008. p. 5.
[38] 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.

Interconnection Rights

Present Situation

Current law requires that each local exchange telecommunications company provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting access and interconnection.[39]

Effect of Proposed Changes

The bill amends s. 364.013, F.S., to specify that a competitive local exchange company is entitled to interconnection with a local exchange company to transmit and route voice traffic (i.e., a phone call) between the two companies, regardless of the technology used by the end user to make or receive the call. The bill states that the PSC shall provide such competitive local exchange companies all rights available to such companies with respect to interconnection. The bill appears to clarify the interconnection rights of competitive telecommunications companies using technologies other than traditional wireline telephone technology.

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.

"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.[40] 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[41] 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 telecommunications service in an exchange area. 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

[39] Section 364.16(3), F.S.

[40] 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.

[41] Inflation for the purpose of the section is measured by change in the Gross Domestic Product Fixed 1987 Weights Price Index.

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. Specifically, s. 364.051(c), F.S., provides that the price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

Current law provides that broadband service and the provision of voice-over-Internet-protocol (VoIP), regardless of the provider, platform, or protocol, are free of state regulation except as provided in Chapter 364, F.S., or as specifically authorized by federal law.

Effect of Proposed Changes

The bill amends the definition of "basic local telecommunications service" by removing "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 basic service when combined with a nonbasic or unregulated service provided by a local exchange company or any of its affiliates, or when provided in conjunction with nonbasic or unregulated services. The following table shows how services currently classified as "basic" service will be classified under the bill:

Type of Service(s) Purchased by Consumer	**Classification under Current Law**	**Classification under HB 1465**
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

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

- Reduces allowed price increases for nonbasic services provided in exchange areas with at least one competitive provider to a maximum of 10% in a 12-month period.
- Provides that existing price caps will apply through July 1, 2012, for basic services reclassified as nonbasic services.
- Modifies 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.

The bill amends s. 364.051(5)(a), F.S., to reduce the authority of providers to increase prices for nonbasic services in exchange areas with at least one competitive provider. The bill reduces the maximum allowed price increases for such services from 20% to 10% in a 12-month period. Based on the PSC's most recent annual Competition Report, 264 of the state's 277 exchange areas were served by at least one competitive local exchange company as of December 2007.[42] Thus, the bill will reduce the existing flexibility of local exchange companies to increase prices for nonbasic service in 95% of the state's exchange areas. In the 13 exchange areas where no competitive provider is present,[43] the current law, which limits price increases for nonbasic service to a maximum of 6% in any 12-month period, will not be affected by the bill.

Based on the bill's changes to the definitions of basic service and nonbasic service, customers whose service is currently defined as basic local exchange service but who purchase additional lines or services will have the "basic" component of their service become subject to potential price increases of up to 6% in a 12-month period (in exchange areas with no competitive presence) or up to 10% in a 12-month period (in exchange areas served by at least one competitive provider) beginning July 1, 2012. Prior to July 1, 2012, the existing rate cap applicable to basic services (inflation less 1%) will continue to apply to basic service redefined by the bill as nonbasic service. In areas where competition is present, competitive pressures may protect against price increases after July 1, 2012. In areas with little or no competitive presence, it is not clear what effect the bill may have on prices after July 1, 2012.

The bill removes the prohibition in s. 364.051(5)(c), F.S., against pricing nonbasic services below cost and replaces it with a similar provision under s. 364.051(5)(b), F.S., which provides that the price charged to a consumer for a nonbasic service must cover the direct costs of providing the service. The net result of this change is to remove any imputed costs from the cost calculation. 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, customers whose service is currently defined as basic local exchange service but who purchase additional lines or services will no longer be able to resolve complaints through the PSC. Under Section 364.01(3), F.S., communications activities not regulated by the PSC remain subject to Florida's generally applicable business regulation and deceptive trade practices and consumer protection laws. Customers who can no longer resolve complaints through the PSC may be able to use the non-binding dispute resolution process generally available through the Department of Agriculture and Consumer Services. Unresolved complaints may 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, it is not clear what effect the bill may have on 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

[42] This calculation does not include wireless or VoIP providers. It does include cable companies operating under certificates as competitive local exchange companies.

[43] As of December 2007, the exchange areas not served by a competitive provider (excluding wireless and VoIP) were: Altha, Bristol, Carrabelle, East Point, Hosford, Keaton Beach, Laurel Hill, Molino, Sanderson, The Beaches, Tyndall AFB, Walnut Hill, and Wewahitchka.

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.[44] The deleted language provided price caps for these services through January 1, 2000.

The bill amends s. 364.013, F.S., to provide that broadband and VoIP services are "exempt from PSC jurisdiction." It appears that this provision reiterates existing law.[45] The bill also removes the PSC's jurisdiction over broadband and VoIP where such jurisdiction is authorized by federal law.

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 states that it 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 readily available 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.

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[44] See, generally, Chapter 282, Part I, concerning the SUNCOM network.

[45] Broadband and VoIP services are specifically exempted from PSC oversight pursuant to s. 364.011, F.S. See also, ss. 364.01(3) and 364.02, F.S.

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.

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 or 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 appear to provide additional 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, F.S., 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 an income eligibility test of 150 percent of the federal poverty guidelines.[46] 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 customers who meet the income eligibility test. In addition, this provision increases the pool of customers eligible for Lifeline service under the income eligibility test by lowering the threshold to 150 percent of the federal poverty guidelines. 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., which, when adopted in 2003, shielded existing Lifeline customers from the basic local service rate increases authorized through rate rebalancing pursuant to the former s. 364.164, F.S. The bill does not reduce the current credit of $13.50 per month for Lifeline service. For a current Lifeline customer who began receiving Lifeline service prior to any increase in basic local service rates authorized through "rate rebalancing," it appears that the rate to which that customer's Lifeline benefits apply will be the rate charged to other customers receiving similar service, which is likely to be higher. Thus, there may be a net price increase for such a customer. For a current Lifeline customer who began receiving Lifeline service after any increase in basic local service rates authorized through "rate rebalancing," it appears that the bill would not impact the net price paid by that customer. In either event, a Lifeline customer would be subject to the same rates – before application of the Lifeline credit – as other customers taking the same service or services.

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, or its parent or an affiliate, to transfer the certificate or control of the certificate to another person who holds a certificate, or its parent or an affiliate, 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 under a certificate granted by the PSC. In addition, this provision will allow mergers and acquisitions between

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[46] The 2009 Federal Poverty Guidelines establish a poverty guideline of $10,830 for an individual, $14,570 for a family of two, and $22,050 for a family of four. For a family of four, 135% of the poverty guideline is $29,768, and 150% of the poverty guideline is $33,075. See http://aspe.hhs.gov/poverty/09poverty.shtml for the full guidelines.

certificated companies and uncertificated parents or affiliates of a certificated company without review by the PSC.

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 company 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.

Preferred Carrier Freeze

Present Situation

Section 364.603, F.S., grants the PSC authority to adopt rules to prevent unauthorized changing of a customer's telecommunications service. The rules must provide verification methodologies, provide for notification to customers of the ability to "freeze" the customer's choice of telecommunications company, and allow for a customer's change of company to be considered valid if verification was performed consistent with the PSC's rules. The law also requires that the rules provide remedies for violations and allow the imposition of other available penalties.

Accordingly, under PSC rules, customers may request that a "preferred carrier freeze," or "PC freeze," be placed on their account or removed at no charge. The rules provide that the customer will be unable to change his or her choice of service provider unless the customer authorizes lifting of the PC Freeze. A PC Freeze may not be imposed or removed on a subscriber's account without the subscriber's authorization and may not be required as a condition for obtaining service.

Effect of Proposed Changes

The bill provides a means to resolve complaints concerning a telecommunications company using PC freezes in an anticompetitive manner. Specifically, the bill provides that the PSC shall resolve any complaints of anticompetitive behavior concerning a local preferred carrier freeze on an expedited basis. The bill provides that the telecommunications company asserting the existence of a local PC freeze, in response to a complaint of anticompetitive behavior, shall have the burden of proving through competent evidence that the customer requested the local PC freeze.

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.

B. SECTION DIRECTORY:

Section 1. Provides a short title.

Section 2. Amends s. 364.013, F.S., relating to emerging and advanced services.

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

Section 4. Amends s. 364.04, F.S., relating to schedules of rates, tolls, rentals, contracts, and charges; filing; and public inspection.

Section 5. Amends s. 364.051, F.S., relating to price regulation.

Section 6. 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 7. Repeals s. 364.09, F.S., relating to prohibition against giving rebates or special rates.

Section 8. Amends s. 364.10, F.S., relating to Lifeline service.

Section 9. Amends s. 364.15, F.S., relating to compelling repairs, improvement, changes, additions, or extensions.

Section 10. Amends s. 364.33, F.S., relating to certificates of necessity prerequisite to construction, operation, or control of telecommunications facilities.

Section 11. Amends s. 364.335, F.S., relating to application for certification.

Section 12. Amends s. 364.3376, F.S., relating to operator services.

Section 13. Amends s. 364.3382, F.S., relating to disclosure.

Section 14. Amends s. 364.345, F.S., relating to certificates; territory served; and transfer.

Section 15. Amends s. 364.603, F.S., relating to methodology for changing telecommunications provider.

Section 16. Amends s. 364.059, F.S., to conform cross-references.

Section 17. Amends s. 364.105, F.S., to conform cross-references.

Section 18. 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 reduces 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 may increase the net price paid by some Lifeline service customers, depending on the date the customer began receiving Lifeline service. The bill expands Lifeline eligibility. For nonbasic services provided in exchange areas with at least one competitive provider, the bill reduces allowed rate increases from 20% to 10% in a 12-month period. For basic services reclassified as nonbasic, existing price caps will apply until July 1, 2012; thereafter, the price for such services may be increased up to 6% in a 12-month period (in exchange areas with no competitive presence) or up to 10% in a 12-month period (in exchange areas served by at least one competitive provider).

D. FISCAL COMMENTS:

The bill reduces the scope of services subject to oversight by the PSC and may reduce workload accordingly.

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.

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 or finances to operate a local exchange company. Similarly, the bill allows for a certificate transfer to an uncertificated parent or affiliate of a certificate holder. 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

On March 19, 2009, the Energy & Utilities Policy Committee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The strike-all amendment results in the following changes to the bill as filed:

- Removes the term "Internet protocol-enabled service" and the exemption from PSC jurisdiction for such service and removes sections that required conforming cross-references;
- Maintains PSC authority over otherwise exempt services if specifically authorized by federal law;
- Provides specific interconnection rights to competitive local exchange companies for voice traffic, regardless of technology used;
- Modifies provisions concerning the pricing of nonbasic services below cost; and
- Provides a process to resolve anticompetitive preferred carrier freeze disputes.

On April 14, 2009, the General Government Policy Council adopted a strike-all amendment to the bill, with two amendments to the strike-all, and reported the bill favorable as a council substitute. The strike-all amendment, as amended, results in the following changes to the bill:

- Provides that "nonbasic service" includes basic service when combined with a nonbasic or unregulated service provided by a local exchange company or any of its affiliates, or when provided in conjunction with nonbasic or unregulated services;
- Provides that existing price caps will apply through July 1, 2012, for basic services reclassified as nonbasic services;
- Reduces allowed price increases for nonbasic services provided in exchange areas with at least one competitive provider to a maximum of 10% in a 12-month period;
- Increases the pool of customers eligible for Lifeline service under the income eligibility test by lowering the threshold to 150 percent of the federal poverty guidelines;
- Removes the PSC's jurisdiction over broadband and VoIP where such jurisdiction is authorized by federal law;
- Provides that the parent or affiliate of a person holding a certificate, granted by the PSC for purposes of constructing, operating, and controlling a telecommunications facility, may transfer the certificate or control of the certificate to another person who holds a certificate, or its parent or an affiliate, 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; and
- Provides that the PSC shall resolve any complaints of anticompetitive behavior concerning a local preferred carrier freeze on an expedited basis, and establishes burden on the telecommunications company asserting the existence of such a freeze to prove that the customer requested it.