

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: CS/CS/SB 2626

INTRODUCER: Committee on Commerce, Committee on Communications, Energy, and Public Utilities, Senator Haridopolos and others

SUBJECT: Telecommunications Companies

DATE: April 14, 2009 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Caldwell | Caldwell | CU | Fav/CS |
| 2. | Pugh | Cooper | CM | Fav/CS |
| 3. | | | GA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Chapter 364, F.S., provides for the regulation of telecommunications companies. The Florida Public Service Commission (PSC or commission) is delegated the responsibility for the regulation of local exchange telecommunications companies.

CS/CS/SB 2626 reduces or modifies existing regulation for local exchange service by:

- Removing PSC authority to:
 - Oversee otherwise exempt services as specifically authorized by federal law;
 - Resolve service complaints concerning nonbasic services;
 - Compel repairs to secure adequate service or facilities for the provision of nonbasic services; and
 - Establish maximum rates and charges for operator services.
- 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;
- Raising the income eligibility test for Lifeline service to 150 percent of the federal poverty income level, up from the current 135 percent;

- Reducing from 20 percent to 10 percent the amount of rate increase in a 12-month period for any nonbasic telecommunication service, where competition exists;
- Specifying that the price for any nonbasic service that would have been treated as a basic service before July 1, 2009, (when this act takes effect) may not be increased by more than the amount as provided in current law until July 1, 2011;
- Adding a caveat to exemptions in s. 364.013, F.S., to entitle a competitive local exchange telecommunications company to interconnect with a local exchange telecommunication company for voice traffic purposes and requires the commission to afford procedural and substantive rights available to companies with regard to interconnection;
- Removing a specific prohibition against pricing nonbasic services below cost;
- Removing the requirement that customers of multi-line business local service be offered a flat-rate pricing option;
- 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;
- 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, its parent, or affiliate for purposes of acquiring ownership or control of a telecommunications facility without prior PSC approval;
- 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;
- Amends s. 364.603, F.S., relating to methodology for changing telecommunications providers, to require the commission to resolve anticompetitive behavior concerning a local preferred carrier freeze (“pick freeze”) and placing a burden of proof on the carrier asserting the existence of a freeze;
- Directing the Florida Department of Management Services (DMS) to engage in certain activities necessary to draw down federal stimulus funds to provide broadband service in rural, unserved, or underserved areas of Florida; and
- Removing obsolete references and changing cross-references to conform the CS.

CS/CS/SB 2626 amends ss. 364.02, 364.013, 364.04, 364.051, 364.059, 364.08, 364.10, 364.105, 364.15, 364.33, 364.345, 364.3376, 364.3382, 364.051, and 364.603, F.S., and repeals s. 364.09, F.S.

II. Present Situation:

Chapter 364, Florida Statutes, provides for the regulation of telecommunications companies. The Florida Public Service Commission (PSC or commission) is delegated the responsibility for the regulation of local exchange telecommunications companies.

Background

Regulatory History

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 3 to 5 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 12-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 percent 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 percent in a 12-month period. The law contained provisions to prevent anti-competitive pricing⁹ and maintained the PSC's authority to oversee service quality.

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 PSC 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).

⁸ Section 9, ch. 95-403, L.O.F.

⁹ *Id.*

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 3 to 4 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 12-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

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."

for flat-rate pricing for those services.¹⁸ Basic local service provided by a CLEC must include access to operator 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

¹⁸ Section 364.337 (2), F.S., (2008).

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.

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.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 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

²⁷ *Id.* at pp. 2-3.

²⁸ *Id.* at p. 23.

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

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

Technology convergence

Innovation and convergence of existing technologies are expanding communications and information services, blurring the distinctions between landline telephone, Internet, cable, wireless, and satellite services. Moreover, the business plan of these service providers has become to bundle all types of services into one package deal.³⁹

III. Effect of Proposed Changes:

CS/CS/SB 2626 proposes several changes to the existing regulatory framework for telecommunications services. The shift of basic services to nonbasic exempts most services from regulation, including price and service-quality regulation. The commission's ability to resolve bill disputes on basic services is compromised without basic price information and eliminated with respect to nonbasic services. The commission will not have authority to resolve retail contract disputes. Finally, despite the decrease in regulation, local exchange companies retain the ability to petition the commission for recovery of storm costs. Each proposed change is discussed separately below.

PSC Jurisdiction of intercarrier interconnection for voice service

Present Situation

Section 364.013, F.S., provides for emerging and advanced services. Broadband and VoIP service is declared free of state regulation, except as delineated in ch. 364, F.S., or as specifically authorized by federal law. The PSC has designated wireless providers as "eligible telecommunications companies," which entitles such providers to receive funds from the federal universal service fund to support Lifeline service under s. 364.013, F.S.

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.

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.

³⁹ Senate Interim Report: 2007-105, *Review of Competition and Regulation of Cable and Video Program Services*, November 2006, by the Committee on Communications and Public Utilities.

Section 364.603, F.S., provides for the prevention of unauthorized change of a subscribers telecommunications service. Commission rules allow customers to ask for their local phone service account to be “frozen” by their current local phone company to prevent unauthorized “switching” of providers. There are federal and state laws/rules governing how customers make this request, require the use of a third party to verify local porting/switching, and prescribe the records that must be maintained by the local phone company. There have been complaints that some local phone companies place these “freezes” on customers without a request – and this causes delays when these customers try to change local phone providers.

Effect of Proposed Changes

Section 364.013, F.S., is amended to provide that competitive local phone providers have the right to interconnect calls with the existing local phone company regardless of the technology used to transmit calls – traditional circuit-switched, the new Internet calls, or future technology. Section 364.603, F.S., is amended to require the PSC to deal with such complaints on an expedited basis and requires the local phone provider to produce on an expedited basis the records that contain the customer’s authorization to place a “freeze.” These are the records required to be maintained under federal and state law. Also, the telecommunications company that asserts the existence of a local preferred carrier freeze has the burden of providing through “competent evidence” that a customer did request a freeze.

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.

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 inflation⁴¹ less 1 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. Section 364.051, F.S., written in 1995, was the pricing mechanism used to transition from monopoly regulation to allow competition, and provided for protections against basic service revenues subsidizing nonbasic services.

“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 s. 364.16, F.S., or a network access service as described in s. 364.163, F.S.

⁴⁰Under 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.

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. According to the commission, there are three small incumbent local exchange telecommunications carriers that are subject to the 6 percent nonbasic cap. 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 commission 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

CS/CS/SB 2626 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. It 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 for pricing purposes under the legislation:

| Type of Service(s) Purchased by Consumer | Classification under Current Law | Classification under CS/CS/SB 2626 |
|--|--|---|
| 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 plus nonbasic or a bundled price ⁴² | Nonbasic or a bundled price |
| Residential, single-line plus any additional service (e.g., broadband, video, wireless) | Basic plus nonbasic or a bundled price | Nonbasic or a bundled price |
| Residential, two lines or more | Basic (each line) | Nonbasic |
| Business, single-line | Basic | Nonbasic |

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

- Removes a specific prohibition against pricing nonbasic service below cost and adds a provision that the price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service.
- Removes commission authority to resolve service complaints concerning nonbasic service.

⁴² Bundled pricing is not addressed in ch. 364, F.S. Customers may be able to get a bundled offering that includes traditional voice service plus other features at a lower cost than if they were to obtain voice plus other services “a-la-cart.”

- Removes a requirement of providing a flat-rate pricing option for multi-line business local service, and removes a 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 a 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, CS/CS/SB 2626 amends s. 364.051(5)(a), F.S., to:

- Reduce from 20 percent to 10 percent the amount of rate increase in a 12-month period for any nonbasic telecommunication service, where competition exists;
- Specify that the price for any nonbasic service that would have been treated as a basic service before July 1, 2009, (when this act takes effect) may not be increased by more than the amount as provided in current law until July 1, 2011; and
- Remove the requirements that tariffs are maintained with the commission or otherwise published.

The legislation also removes the prohibition in s. 364.051(5)(c), F.S., against pricing nonbasic services below cost. Florida Statutes will continue to provide the commission jurisdiction over cross-subsidization, predatory pricing, and other anticompetitive behavior under s. 364.3381, F.S. The law also will continue to provide the commission 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.

CS/CS/SB 2626 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 their complaints through the commission. However, section 364.01(3), F.S., provides:

“communications activities that are not regulated by the [commission], including but not limited to, VoIP, wireless, and broadband, are subject to this states generally applicable business regulation and deceptive trade practices and consumer protection laws, as enforced by the appropriate state authority or through actions in the judicial system. This chapter does not limit the availability to any party of any remedy or defense under state or federal antitrust laws.⁴³

CS/CS/SB 2626 also:

- 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.

⁴³ Part II of ch. 501, F.S., sections .201 through .213, are known as the Florida Deceptive and Unfair Trade Practices Act.

- 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.
- 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.
- 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.

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, s. 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

CS/CS/SB 2626 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 keep them open to public inspection. The legislation 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 legislation also 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 CS/CS/SB 2626, as service complaints about nonbasic services would not be subject to PSC jurisdiction. To the extent that a

⁴⁴ See, generally, ch. 282, Part I, F.S, concerning the SUNCOM network.

company publishes rate schedules only on a website, households without Internet access may not have access to the schedules.

CS/CS/SB 2626 also 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 commission authority to regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

Effect of Proposed Changes

CS/CS/SB 2626 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 legislation 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 of agreement. At least one local exchange company operating in Florida has begun providing service through contracts or agreements in other states. It appears that if a company offers such contracts to their consumer that disputes will be resolved in the court system, unless the contract requires some sort of mandatory arbitration.

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 commission 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

CS/CS/SB 2626 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 legislation 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 commission approval. It also 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 CS/CS/SB 2626, 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 legislation does not amend the current prohibition against unreasonable discrimination among similarly situated customers.

Lifeline Service

Present Situation

Subsections 364.10(2) and (3), F.S., govern the provision of Lifeline service. Lifeline service is a program under the federal Universal Service Fund that provides credits against the cost of basic local telecommunications service or other lifeline assistance plans 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

CS/CS/SB 2626 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 150 percent of the federal poverty guidelines, rather than the current 135 percent. This provision also replaces the reference to repealed s. 364.164, F.S., to ensure that the companies are 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 legislation 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 legislation also makes conforming cross-references in s. 364.02(14), 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 commission 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

CS/CS/SB 2626 amends s. 364.33, F.S., to allow a person holding a certificate to transfer the certificate to another person who holds a certificate, or to its parent or 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 legislation requires 60 days’ written

notice to the PSC and affected customers. This change by CS/CS/SB 2626 will reduce state oversight of mergers and acquisitions between telecommunications companies already operating in the state.

The legislation also amends other provisions of law in ss. 364.335 and 364.345, F.S., to conform with 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

CS/CS/SB 2626 removes the commission'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 legislation 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, from basic local exchange telecommunications customers in the form of a line item charge not to exceed 50 cents. 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

CS/CS/SB 2626 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 legislation does not change the scope of the companies that may request storm cost recovery and, if approved, be allowed a line item charge. Also, s. 364.051(4)(b)8., F.S., is amended to delete obsolete language.

Broadband Initiative

Present Situation

The American Recovery and Reinvestment Act of 2009 (also known as the federal stimulus bill) includes a broadband technology opportunities program. The program has two elements: mapping and grants. The federal stimulus plan authorizes \$350 million to be expended on broadband mapping. The mapping is funded at 80 percent, requiring 20 percent to come from any source other than federal funding unless a waiver is granted upon the demonstration of financial need. The grants program will be administered by the Assistant Secretary for

Communications and Information for the Department of Commerce for the development and expansion of broadband service. The program requires development of a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each state, in a form that is interactive and searchable. This map must be periodically updated and maintained.

Effect of Proposed Changes

CS/CS/SB 2626 puts Florida in the position of receiving federal stimulus money for the mapping and deployment of broadband services.

It authorizes DMS to work with and receive staffing support and other resources from Enterprise Florida, state agencies, local governments, private business, and community organizations to:

- Conduct a needs assessment of broadband Internet service to develop geographical information system maps at the census block level that identifies gaps of unserved, served by a single provider, transmission speeds, and a baseline assessment of percentage of households with broadband availability;
- Create a strategic plan with goals and strategies for increasing use;
- Build and facilitate local technology planning teams or partnerships with members representing a cross-section of the community;
- Encourage use of broadband Internet service especially in the state's rural, unserved, and underserved areas; and
- Sets priorities for grants.

DMS may apply for and accept federal funds for purposes of this program, as well as gifts and donations from individuals, foundations, and private organizations. It also may enter into contracts and is authorized to adopt rules to implement the program.

Miscellaneous Provisions

CS/CS/SB 2626 amends s. 364.3376(2) and (9), F.S., to remove obsolete references to commission findings that a service should not be regulated pursuant to s. 364.338, F.S., which was repealed in 1995.

The effective date of CS/CS/SB 2626 is July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/CS/SB 2626 will reduce regulatory requirements applicable to providers of local exchange service, and will likely reduce costs associated with regulatory oversight by the PSC, including compliance with existing service quality and certification requirements.

C. Government Sector Impact:

CS/CS/SB 2626 will reduce the scope of services subject to oversight by the PSC and may reduce workload accordingly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In amending the requirements for publication of rate schedules, CS/CS/SB 2626 requires only that the schedules be published through electronic or physical media. 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 legislation 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 CS/CS/SB 2626 intended this result.

In removing the requirement for PSC review of transfers of certificates, CS/CS/SB 2626, as drafted, does not differentiate between certificate holders for different types of telecommunications services. For example, a pay phone operator is granted a certificate if deemed to possess the managerial and financial expertise and financial strength to operate a pay phone company. Such a provider may not have the expertise and finances to operate a local exchange company. It is not clear if the legislation 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.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.

CS by Communications, Energy and Public Utilities on March 24, 2009:

- Deletes VoIP reference “Internet protocol-enabled service such as” in s. 364.013, F. S.; deletes the definition for the term “internet protocol-enabled service;” and removes conforming reference changes throughout the CS.
- Reinstates regulatory authority delegation to the commission as authorized by federal law over broadband and VoIP in s. 364.013, F.S., and adds a caveat to exemptions in s. 364.013, F.S., to entitle a competitive local exchange telecommunications company to interconnect with a local exchange telecommunication company for voice traffic purposes and requires the commission to afford procedural and substantive rights available to companies with regard to interconnection.
- Under s. 364.051(5)(b), F.S., relating to nonbasic services, provides that the price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.
- Reinstates provisions that shield Lifeline customers from basic local service rate increases authorized pursuant to the repealed s. 364.164, F.S., and reinstates the 6- percent price cap for nonbasic services where there is no competition.
- Amends s. 364.603, F.S., relating to methodology for changing telecommunications providers, to require the commission to resolve anticompetitive behavior concerning a local preferred carrier freeze (“pick freeze”) and placing a burden of proof on the carrier asserting the existence of a freeze.
- Makes technical changes to correct references.

CS by Commerce Committee on April 14, 2009:

- Clarifies that broadband and VOIP are not under the PSC’s jurisdiction;
- Specifies that an already certificated telecom provider does not need PSC permission to transfer its certificate of necessity to another company, or the parent or affiliate of another certificated company;
- Continues until July 1, 2011, the current pricing regulatory structure for consumers whose basic service is redefined as non-basic service under this bill. Prospectively, it reduces the rate cap for non-basic services within a 12-month period, where competition exists, from 20 percent to 10 percent after July 1, 2011;
- Raises the income eligibility level for “Lifeline” customers from the current 135 percent of the federal poverty level to 150 percent of that level;
- Provides an expedited process for the Public Service Commission to resolve any complaints about improper freezes related to preferred carriers (in current delete-all amendment), and clarifies that the party asserting this improper activity has the burden of proof to prove it;

- Authorizes DMS to work with and receive staffing support and other resources from Enterprise Florida, state agencies, local governments, private business, and community organizations to:
 - o Conduct a needs assessment of broadband Internet service to develop geographical information system maps at the census block level that identifies gaps of unserved, served by a single provider, transmission speeds, and a baseline assessment of percentage of households with broadband availability.
 - o Create a strategic plan with goals and strategies for increasing use.
 - o Build and facilitate local technology planning teams or partnerships with members representing a cross-section of the community.
 - o Encourage use of broadband Internet service especially in the rural, unserved, and underserved areas, and sets priorities for grants.
- Authorizes DMS to apply for and accept federal funds for purposes of implementing this initiative, as well as gifts and donations from individuals, foundations, and private organizations; and
- Authorizes DMS to enter into contracts and is authorized to adopt rules to carry out the purposes of this broadband initiative.

B. Amendments:

None.