

COMMITTEE MEETING EXPANDED AGENDA**COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES****Senator Benacquisto, Chair****Senator Smith, Vice Chair****MEETING DATE:** Monday, March 21, 2011**TIME:** 10:15 a.m.—12:15 p.m.**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building***MEMBERS:** Senator Benacquisto, Chair; Senator Smith, Vice Chair; Senators Altman, Bogdanoff, Braynon, Diaz de la Portilla, Evers, Fasano, Flores, Joyner, Lynn, Margolis, Negron, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1524 Simmons (Identical H 1231, Compare H 4149)	Telecommunications; Creates the "Regulatory Reform Act." Revises legislative intent with respect to the jurisdiction of the Florida Public Service Commission. Repeals provisions relating to price regulation, regulatory methods for small local exchange telecommunications companies, experimental and transitional rates, limited proceedings, procedures for seeking a stay of proceedings, joint rates, tolls, and contracts, rate adjustment orders, intrastate interexchange service contracts, and unlawful charges against consumers, respectively, etc.	CU 03/21/2011 CM BC
2	SB 1198 Bogdanoff (Similar H 887)	Communications Services Tax; Provides for a rounding algorithm. Allows dealers to compute the tax using the rounding algorithm for certain aggregated state and local taxes. Provides for retroactive application. Clarifies that the act does not provide for an assessment of any tax not paid or create a right to a refund of any tax paid before a date certain. Conforms a cross-reference.	CU 03/21/2011 BC

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: SB1524

INTRODUCER: Senator Simmons

SUBJECT: Telecommunications

DATE: March 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Pre-meeting
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

Speaking broadly, the effect of the bill is to:

- Complete retail deregulation of wireline telecommunication services by repealing the statutes that:
 - require price regulation;
 - require companies to provide a flat-rate pricing option for basic local telecommunications service;
 - prohibit charging any price other than that in the scheduled rate tariff; and
 - authorize the Public Service Commission to engage in specified consumer protection activities.
- Maintain the role of the Public Service Commission in resolving wholesale disputes between service providers.

The bill substantially amends the following sections of the Florida Statutes: 364.01, 364.011, 364.012, 364.0135, 364.02, 364.04, 364.10, 364.16, 364.163, 364.183, 364.33, 364.335, 364.3375, 364.385, 364.386, 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5).

It also repeals the following sections of the Florida Statutes: 364.015, 364.016, 364.025, 364.0251, 364.252, 364.051, 364.052, 364.057, 364.058, 364.059, 364.06, 364.063, 364.07, 364.08, 364.15, 364.161, 364.162, 364.185, 364.19, 364.27, 364.337, 364.3376, 364.3381, 364.3382, 364.339, 364.345, 364.37, 364.501, 364.503, 364.506, 364.507, 364.508, 364.515, 364.516, 364.601, 364.602, 364.603, and 364.604.

II. Present Situation:

Chapter 364, F.S., provides for regulation of wireline telecommunications companies. Deregulation of the industry began in Florida in 1995. At that time, wireline voice communication services were only being offered by the incumbent local exchange companies. New providers could enter the market by three methods: a purchase and resale of a portion of an incumbent's systems and services; a lease of some of these systems; or construction of their own systems. With deregulation, various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each incumbent, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

Still, little competition developed until improvements in technology allowed the transmission of different types of communications services (voice, video, and data) on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only one form of communication service, either voice, video (cable), or data (internet). With this convergence, additional statutory changes were necessary, notably further deregulation of wireline voice communication and changes to its rate structure, the creation of a state system for obtaining a franchise for video services to replace local franchises, and the deletion or repeal of provisions that became obsolete or unnecessary.

III. Effect of Proposed Changes:

Speaking broadly, the effect of the bill is to:

- Complete retail deregulation of wireline telecommunication services by repealing the statutes that: require price regulation; require companies to provide a flat-rate pricing option for basic local telecommunications service; prohibit charging any price other than that in the scheduled rate tariff; and authorize the PSC to engage in specified consumer protection activities.
- Maintain the role of the PSC in resolving wholesale disputes between service providers.

Section 1 names the act the "Regulatory Reform Act."

Section 2 amends s. 364.01, F.S., to delete language directing the Public Service Commission (PSC or commission) to exercise its exclusive jurisdiction to:

- Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.
- Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.
- Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

- Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
- Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.
- Eliminate any rules or regulations which will delay or impair the transition to competition.
- Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
- Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
- Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 3 amends s. 364.011, F.S., which provides exclusions from PSC jurisdiction. The bill adds to the list of exempt services both basic and nonbasic services. Basic service is voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual-tone multifrequency 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. For a local exchange telecommunications company, the term includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.¹ Nonbasic service is any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement, or a network access service. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.²

Section 4 amends s. 364.012, F.S., to change the term local exchange carrier to local exchange telecommunications company, presumably to distinguish telecommunications companies from other voice service providers.

Section 5 amends s. 364.0135, F.S., to create a definition for the term “sustainable adoption” of broadband services, meaning the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

¹ s. 364.02(1), F.S.

² s. 364.02(10), F.S.

Section 6 repeals s. 364.015, F.S., which authorizes the PSC to petition the circuit court for an injunction against violations of commission orders or rules in connection with the impairment of a telecommunications company's operations or service.

Section 7 repeals s. 364.016, F.S., which authorizes the PSC to assess a telecommunications company for reasonable travel costs associated with reviewing the records of the telecommunications company and its affiliates when such records are kept out of state.

Section 8 amends s. 364.02, F.S., on definitions to:

- delete from the list of services included in the definition of "basic local telecommunications service" the providing an alphabetical directory listing;
- delete the definitions of the terms "monopoly service," "operator service," and "operator service provider"; and
- delete the existing definition of the term "VoIP" and replace it with a detailed definition of a system that enables real-time, two-way voice communications using Internet Protocol, using a broadband connection, and permitting users generally to place and receive calls on the public switched telephone network.

Section 9 repeals s. 364.025, F.S., which provides for universal service, defined as "an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas." To provide this level of service, each local exchange telecommunications company³ was required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory until January 1, 2009. This "carrier-of-last-resort" obligation has now expired by the terms of the statute.

Section 10 repeals s. 364.0251, F.S., which requires, as a part of deregulation, that by January 1, 1996, all companies providing local exchange telecommunications services provide information on competition to their customers in the form of a bill insert.

Section 11 repeals s. 364.252, F.S., which requires the PSC to inform consumers of their rights as customers of competitive telecommunications services and to assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. The PSC is authorized to require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers, including informing consumers concerning the availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

Section 12 amends s. 364.04, F.S., on rate schedules. The current statute requires every telecommunications company to publish its rates and tolls through electronic or physical means.

³ The term "local exchange telecommunications company" is defined to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995. s. 364.02(8), F.S. Basically, this means all wireline telephone companies certificated, or authorized to act in this state, prior to deregulation.

The bill retains this requirement and adds that the PSC has no jurisdiction over the content, form, or format of the schedule. The bill also provides that the section does not apply to rates, terms, and conditions established pursuant to federal law on interconnections. Finally, it provides that chapter 364 does not prohibit a telecommunications company from: contracting for different rates; offering services not included in the published schedule; or meeting competitive offerings.

Section 13 repeals s. 364.051, F.S., which provides for price regulation. The current statute provides that all local exchange telecommunications companies are subject to this price regulation, notwithstanding any other provisions of the chapter.

Basic Service

The statute requires a flat-rate pricing option for basic local telecommunications service. A company may, with 30 days' notice, adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent, upon specified conditions being met. These conditions are: 1) if it is determined that the level of competition justifies the elimination of price caps in an exchange served by a company with less than 3 million basic local telecommunications service access lines in service, or 2) at the end of 5 years for any company. If any company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature for that elimination.

In addition to this method for increasing prices, any company that believes circumstances have changed substantially enough to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase. The commission may grant the petition only after a compelling showing of changed circumstances.

Nonbasic service

Each company may set or change the rate for each of its nonbasic services on 1 day's notice. The price increase for any nonbasic service category cannot not exceed 6 percent within a 12-month period until there is another entity providing local telecommunications service in that exchange area; at that time, the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period, and the rate is presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, cannot be increased by more than the amount allowed for basic service.

The statute also provides the commission with continuing regulatory oversight of nonbasic services for purposes of preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.

Section 14 repeals s. 364.052, F.S., which provides for regulation of small local exchange telecommunications companies, which is defined as a local exchange telecommunications company certificated by the commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on that date.

The statute requires the commission to adopt streamlined procedures for regulating these companies that minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters. The commission can establish only those procedures that are cost-justified and are in the public interest so that universal service may be promoted.

These companies remained under rate of return regulation; however, the statute provides that a company may, at any time after January 1, 1996, elect to be subject to the price regulation statute discussed above, s. 364.051, F.S. (also repealed by the bill).

Any competitive local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. However, if a small local exchange telecommunications company elects to be subject to price regulation, or if it provides cable television programming services, a certificated competitive local exchange company may provide services within the territory of the electing company.

Section 15 repeals s. 364.057, F.S., which allows the commission to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.

Section 16 repeals s. 364.058, F.S., which authorizes the commission to conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction, upon petition or its own motion. The section also requires the commission to implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues.

Section 17 repeals s. 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.

Section 18 repeals s. 364.06, F.S., which provides that when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.

Section 19 repeals s. 364.063, F.S., which requires that the commission put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. The PSC must also, within that 20-day period, mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.

Section 20 repeals s. 364.07, F.S., which requires every telecommunications company to file with the commission a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. The statute also authorizes the PSC to review, and disapprove, contracts for joint provision of intrastate interexchange service.

Section 21 repeals s. 364.08, F.S., which makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time.

Section 22 amends s. 364.10, F.S., to delete an existing prohibition against undue advantage or preference. It also deletes an existing prohibition against increasing the residential basic local telecommunications service rate, as authorized by s. 364.164, F.S., of any local exchange telecommunications company customer receiving Lifeline benefits until: the local exchange telecommunications company reaches parity as defined in s. 364.164(5), F.S., until the customer no longer qualifies for the Lifeline benefits, or unless otherwise determined by the commission upon petition by a local exchange telecommunications company. Section 364.164, F.S., was repealed in 2007.

Section 23 repeals s. 364.15, F.S., which authorizes the PSC to order that repairs, improvements, changes, additions, or extensions be made in the manner to be specified in the order when it finds that these repairs or improvements to, or changes in, any telecommunications facility ought reasonably to be made, or that any additions or extensions should reasonably be made to any telecommunications facility, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services.

Section 24 amends s. 364.16, F.S., on connection of lines and number portability.

Current law

The statute currently authorizes the PSC to require line connections and transfer of telecommunications service when it finds that such connections between any two or more local exchange telecommunications companies can reasonably be made and efficient service obtained and that such connections are necessary.

Each competitive local exchange telecommunications company must provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the PSC to determine the prices or terms. Each local exchange telecommunications company must provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162.

The statute also requires that temporary means of achieving telephone number portability be established no later than January 1, 1996. Each local exchange service provider must make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards.

Proposed changes

The bill deletes all of these provisions and replaces them with the following. Upon request, the PSC is required to arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections. The PSC has the authority to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation. However, this section does not confer jurisdiction on the commission for matters that are exempt from commission jurisdiction under ss. 364.011 and 364.013, F.S.

The bill prohibits a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for the terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If any telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

The PSC is directed to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service which must: be consistent with the Telecommunications Act of 1996; provide for specific verification methodologies; provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge; allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules; provide remedies for violations of the rules; and allow for the imposition of other penalties available under this chapter. The commission must resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission must determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies which must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission is required to make its determination within 120 days after a

petition is filed or a motion is made. The commission must adopt rules to administer these requirements.

Section 25 repeals s. 364.161, F.S., which requires each local exchange telecommunications company, upon request, to unbundle all of its network elements, the network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities, and sell those elements for resale to the extent technically and economically feasible. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 26 repeals s. 364.162, F.S., which allows a competitive local exchange telecommunications company 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 27 amends s. 364.163, F.S., to make conforming changes.

Section 28 amends s. 364.183, F.S., to delete existing PSC authority to have access to certain types of records of a local exchange telecommunications company's affiliated companies, including its parent company, and to require a telecommunications company to file records, reports or other data and to retain such information for a designated period of time.

Section 29 repeals s. 364.185, F.S., which authorizes the PSC to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.

Section 30 repeals s. 364.19, F.S., which authorizes the PSC to regulate the terms of telecommunications service contracts between telecommunications companies and their patrons through use of reasonable rules.

Section 31 repeals s. 364.27, F.S., which requires the PSC to investigate all interstate rates, fares, and charges for or in relation to the transmission of messages or conversations where any act relating to the transmission of messages or conversations takes place within this state and when it appears to violate The Communications Act of 1934.

Section 32 amends s. 364.33, F.S., on certificates of necessity. Currently, except for a transfer of a certificate of necessity from one person to another or to the parent or affiliate of a certificated person as provided in this section, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior PSC approval. A certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an affiliate, and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate

without prior approval of the commission by giving 60 days' written notice of the transfer or change of control to the commission and affected customers.

The bill changes this to prohibit any person from providing telecommunications services to the public without a certificate of necessity or a certificate of authority. It also prohibits the PSC from issuing any new certificates after July 1, 2011, but provides that existing certificates remain valid. A certificate may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

Section 33 amends s. 364.335, F.S., on application for a certificate of necessity. Current law requires each applicant for a certificate to:

- Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.
- File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.
- File the application fee required by the commission in an amount not to exceed \$500.
- Submit an affidavit that the applicant has given proper notice of its application.

If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the commission may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

The bill deletes all of the current language about the information an applicant is to provide the commission and replaces it with:

- The applicant's official name and, if different, any name under which the applicant will do business.
- The street address of the principal place of business of the applicant.
- The federal employer identification number or the Department of State's document number.
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed.
- Information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

It requires that the commission grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

The bill also deletes all current provisions on hearings.

Section 34 repeals s. 364.337, F.S., which provides for certification of a competitive local exchange telecommunications company prior to January 1, 1996. It also requires that a competitive local exchange telecommunications company provide a flat-rate pricing option for basic local telecommunications services and that the service include access to operator services, “911” services, and relay services for the hearing impaired.

Section 35 amends s. 364.3375, F.S. to delete existing a provision allowing a pay telephone provider to charge a rate equivalent to the local coin rate of the local exchange telecommunications company and a provision prohibiting a pay telephone provider from obtaining services from an operator service provider unless the operator service provider has obtained a certificate of public convenience and necessity.

Section 36 repeals s. 364.3376, F.S., which provides for operator services. It prohibits providing operator services without first obtaining a certificate of public convenience and necessity. All intrastate operator service providers are subject to the jurisdiction of the PSC, must render services pursuant to price schedules, and must meet prescribed requirements.

Section 37 repeals s. 364.3381, F.S., which prohibits cross-subsidization, the selling of nonbasic telecommunications service at below cost by use of subsidization from rates paid by customers of basic services.

Section 38 repeals s. 364.3382, F.S., which requires a local exchange telecommunications company to advise each residential customer of the least-cost service available to a residential customer when the customer initially requests service and to annually advise each residential customer of the price of each service option selected by that customer.

Section 39 repeals s. 364.339, F.S., which provides the PSC with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

Section 40 repeals s. 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time. It also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the commission that the proposed sale, assignment, or transfer is in the public interest and the approval of the commission.

Section 41 repeals s. 364.37, F.S., which authorizes the PSC to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.

Section 42 amends s. 364.385, F.S., to delete all references to the effects of the original deregulation act on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.

Section 43 amends s. 364.386, F.S., to make conforming changes.

Section 44 repeals s. 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.

Section 45 repeals s. 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General.

Sections 46-50 repeal ss. 364.506-.516, F.S.

Section 364.506, F.S., titles these sections, which make up Part II of chapter 364, the Education Facilities Infrastructure Improvement Act.

Section 364.507, F.S., provides legislative findings and intent.

Section 364.508, F.S., provides definitions.

Section 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997.

Section 364.516, F.S., provides for penalties.

Sections 51-54 repeal ss. 364.601-.604, F.S.

Section 364.601, F.S., titles these sections, which make up Part III of Chapter 364, the Telecommunications Consumer Protection Act.

Section 364.602, F.S., provides definitions.

Section 364.603, F.S., requires the PSC to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service.

Section 364.604, F.S., establishes requirements for the content of a customer's bill; provides that a customer is not liable for any charges for telecommunications or information services that the customer did not order or that were not provided; requires every billing party to provide a free blocking option to a customer to block 900 or 976 telephone calls; and prohibits a billing party

from disconnecting a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

Sections 55-62 amend ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

Section 63 provides an effective date of July 1, 2011.

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:

Wireline telecommunication customers will no longer be protected by PSC economic regulation, but may benefit from greater competition among intermodal service providers.

They also will no longer have a statutory right to a flat-rate pricing option for basic local telecommunications service and may be forced to choose a more expensive option, more extensive option, or one that is both.

C. Government Sector Impact:

Section 364.336, F.S., provides for telecommunications regulatory assessment fees (RAF). Each telecommunications company licensed or operating under chapter 364 must pay to the PSC every 6 months a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The commission is required to establish and assess a minimum fee in an amount up to \$1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and must, to the extent practicable, be related to the cost of regulating that type of company. Given that it will no longer be engaged in economic regulation of the retail wireline telecommunications industry or in related consumer protection, the PSC will have to reassess these RAF fees. Given the remaining level of authority, the appropriate

amount for RAF fees is uncertain; however, absent sufficient fees, a source for funding the wholesale dispute resolution duties is uncertain.

Any other impacts on the PSC are unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.



814674

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment (with title amendment)

Delete line 331.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 24 - 25
and insert:

s. 364.015, F.S., relating to injunctive relief; amending s.



537828

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 387 - 456
and insert:

(10)~~(11)~~ "Operator service" includes, but is not limited
to, billing or completion of third-party, person-to-person,
collect, or calling card or credit card calls through the use of
a live operator or automated equipment.

(11)~~(12)~~ "Operator service provider" means a person who
furnishes operator service through a call aggregator.

(12)~~(13)~~ "Service" is to be construed in its broadest and



537828

most inclusive sense. The term "service" does not include broadband service or voice-over-Internet protocol service for purposes of regulation by the commission. Nothing herein shall affect the rights and obligations of any entity related to the payment of switched network access rates or other intercarrier compensation, if any, related to voice-over-Internet protocol service. Notwithstanding s. 364.013, and the exemption of services pursuant to this subsection, the commission may arbitrate, enforce, or approve interconnection agreements, and resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or any other applicable federal law or regulation. With respect to the services exempted in this subsection, regardless of the technology, the duties of a local exchange telecommunications company are only those that the company is obligated to extend or provide under applicable federal law and regulations.

(13)~~(14)~~ "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

(a) An entity that provides a telecommunications facility exclusively to a certificated telecommunications company;

(b) An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;

(c) A commercial mobile radio service provider;

(d) A facsimile transmission service;



537828

(e) A private computer data network company not offering service to the public for hire;

(f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or

(g) An intrastate interexchange telecommunications company.

However, each commercial mobile radio service provider and each intrastate interexchange telecommunications company shall continue to be liable for any taxes imposed under chapters 202, 203, and 212 ~~and any fees assessed under s. 364.025~~. Each intrastate interexchange telecommunications company shall continue to be subject to s. ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.336, 364.501, 364.603, and 364.604, ~~shall provide the commission with the current information as the commission deems necessary to contact and communicate with the company,~~ and shall continue to pay intrastate switched network access rates or other intercarrier compensation to the local exchange telecommunications company or the competitive local exchange telecommunications company for the origination and termination of interexchange telecommunications service.

(14) ~~(15)~~ "Telecommunications facility" includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state.

(15) ~~(16)~~ "VoIP" means any service that:

(a) Enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet Protocol or any successor protocol;

(b) Uses a broadband connection from the user's location;



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and

(c) Permits users generally to receive calls that originate
on the public switched telephone network and to terminate calls
to the public switched telephone network ~~the voice over Internet~~
~~protocol as that term is defined in federal law.~~

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 26 - 28
and insert:

364.02, F.S.; removing definition for "monopoly
service" and adding a definition for "VoIP";



938092

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment

Delete lines 425 - 427
and insert:

(f) A cable television company providing cable service as
defined in 47 U.S.C. s. 522; ~~or~~

(g) An intrastate interexchange telecommunications company;
or

(h) An operator services provider.



149294

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment

Delete line 1108
and insert:

provision to pay telephone companies or operation ~~operator~~
service



166552

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment

Delete lines 784 - 817
and insert:

(7)~~(4)~~ In order to assure that consumers have access to
different local exchange service providers without being
disadvantaged, deterred, or inconvenienced by having to give up
the consumer's existing local telephone number, all providers of
local exchange services must have access to local telephone
numbering resources and assignments on equitable terms that
include a recognition of the scarcity of such resources and are



166552

in accordance with national assignment guidelines. Each local exchange provider, except small local exchange telecommunications companies under rate of return regulation, shall provide a temporary means of achieving telephone number portability. The parties, under the direction of the commission, shall set up a number portability standards group by no later than September 1, 1995, for the purposes of investigation and development of appropriate parameters, costs, and standards for number portability. If the parties are unable to successfully negotiate the prices, terms, and conditions of a temporary number portability solution, the commission shall establish a temporary number portability solution by no later than January 1, 1996. Each local exchange service provider shall make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards. The parties shall negotiate the prices, terms, and conditions for permanent telephone number portability arrangements. In the event the parties are unable to satisfactorily negotiate the prices, terms, and conditions, either party may petition the commission and the commission shall, after opportunity for a hearing, set the rates, terms, and conditions. The prices and rates shall not be below cost. Number portability between different certificated providers of local exchange service at the same location shall be provided temporarily no later than January 1, 1996.

(8)~~(5)~~ When requested, each certificated telecommunications



796208

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment

Delete lines 784 - 817
and insert:

(7)~~(4)~~ In order to assure that consumers have access to
different local exchange service providers without being
disadvantaged, deterred, or inconvenienced by having to give up
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local exchange services must have access to local telephone
numbering resources and assignments on equitable terms that
include a recognition of the scarcity of such resources and are



796208

in accordance with national assignment guidelines. ~~Each local exchange provider, except small local exchange telecommunications companies under rate of return regulation, shall provide a temporary means of achieving telephone number portability. The parties, under the direction of the commission, shall set up a number portability standards group by no later than September 1, 1995, for the purposes of investigation and development of appropriate parameters, costs, and standards for number portability. If the parties are unable to successfully negotiate the prices, terms, and conditions of a temporary number portability solution, the commission shall establish a temporary number portability solution by no later than January 1, 1996. Each local exchange service provider shall make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards. The parties shall negotiate the prices, terms, and conditions for permanent telephone number portability arrangements. In the event the parties are unable to satisfactorily negotiate the prices, terms, and conditions, either party may petition the commission and the commission shall, after opportunity for a hearing, set the rates, terms, and conditions. The prices and rates shall not be below cost. Number portability between different certificated providers of local exchange service at the same location shall be provided temporarily no later than January 1, 1996.~~

(8) ~~(5)~~ When requested, each certificated telecommunications



192412

LEGISLATIVE ACTION

Senate

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House

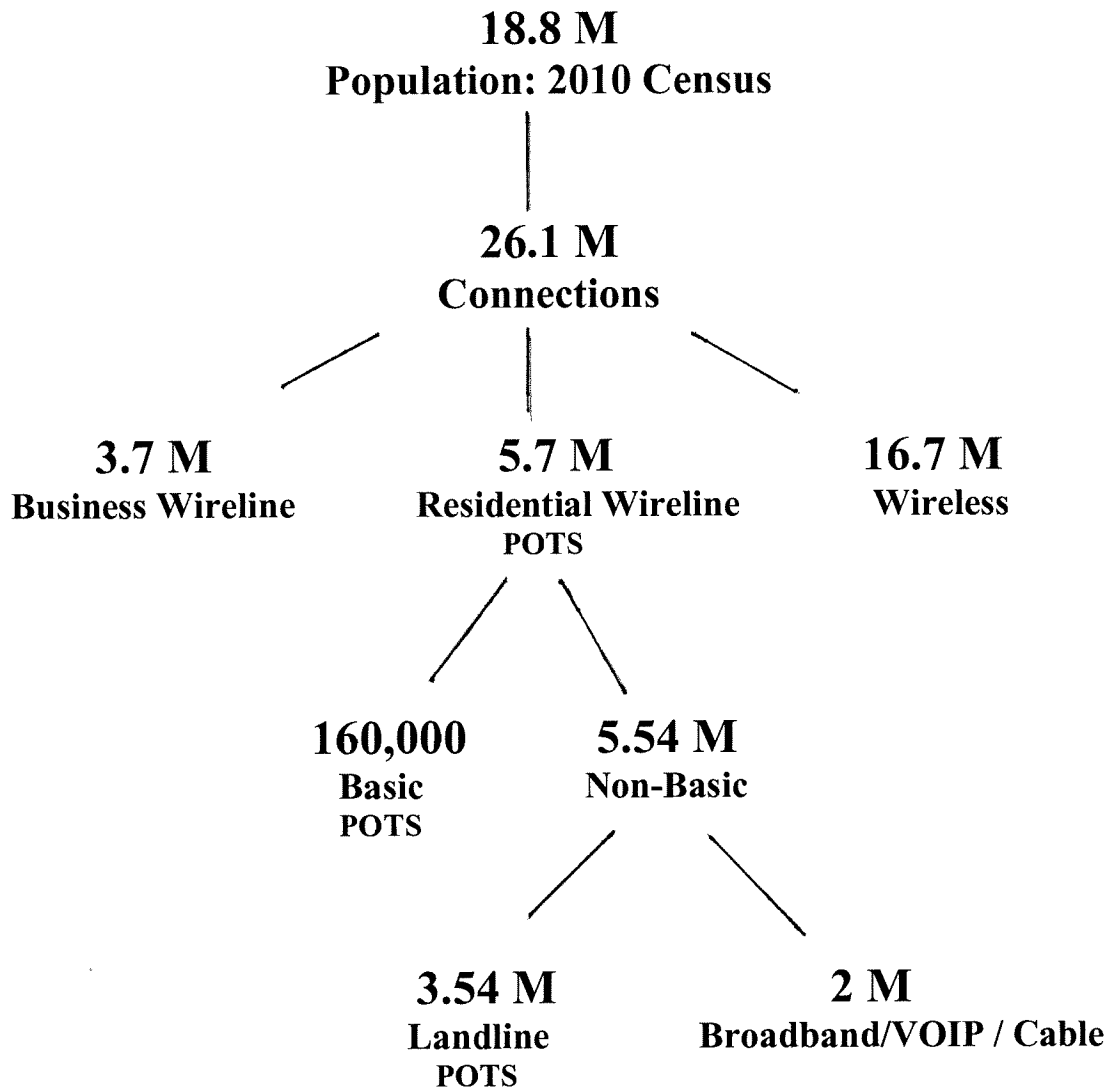
The Committee on Communications, Energy, and Public Utilities
(Smith) recommended the following:

Senate Amendment

Delete lines 1108 - 1109
and insert:

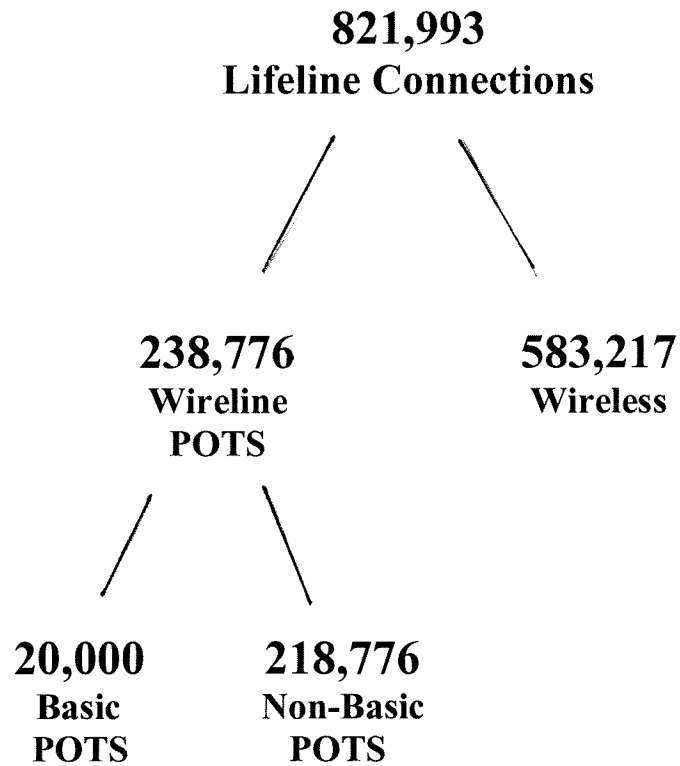
provision to pay telephone companies ~~or operator service~~
~~providers~~ to prevent fraud or as otherwise determined in the

FLORIDA TELECOM SNAPSHOT



Note: Out of the 26.1 M connections, SB1524 affects 3.7 M connections

FLORIDA LIFELINE SNAPSHOT






Florida Telecommunications Voice Providers



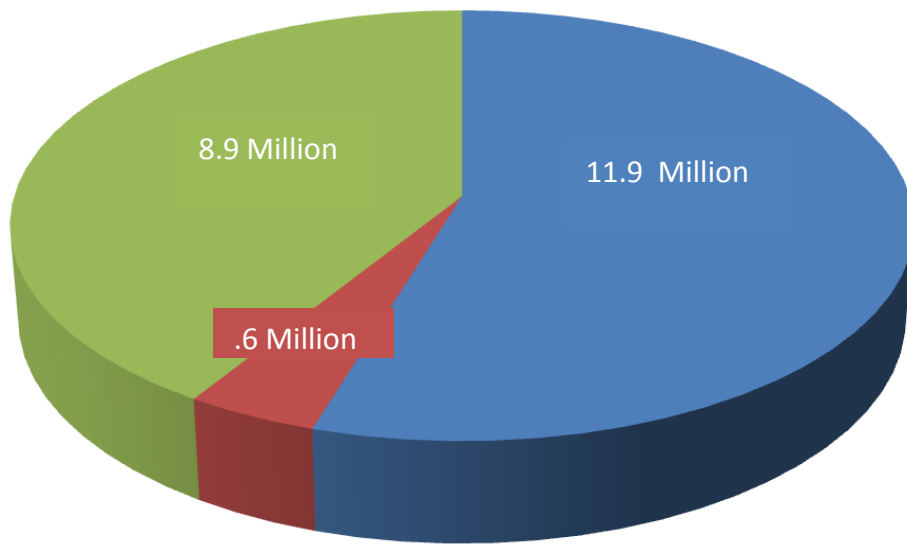
This chart addresses requirements under Florida Statute and does not address federal legal obligations that may apply.

FLORIDA CONSUMERS ARE CHOOSING BROADBAND AND WIRELESS

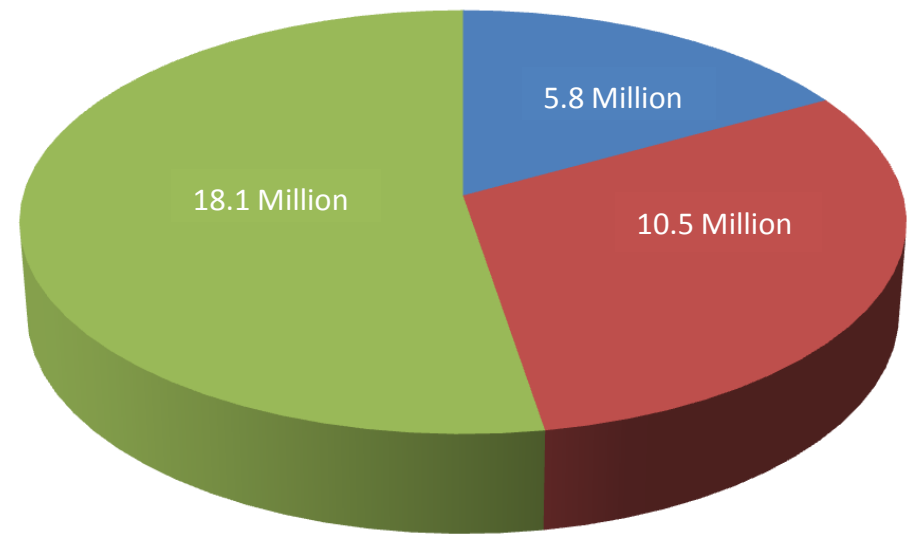
Growth Rates

- Broadband = 1,750% 
- Wireless = 203% 
- Landline (Residential, Business, CLECS) = 51% 

December 2001



Projected December 2011



Landlines (examples)

AT&T
Verizon
CenturyLink
Windstream
Smart City

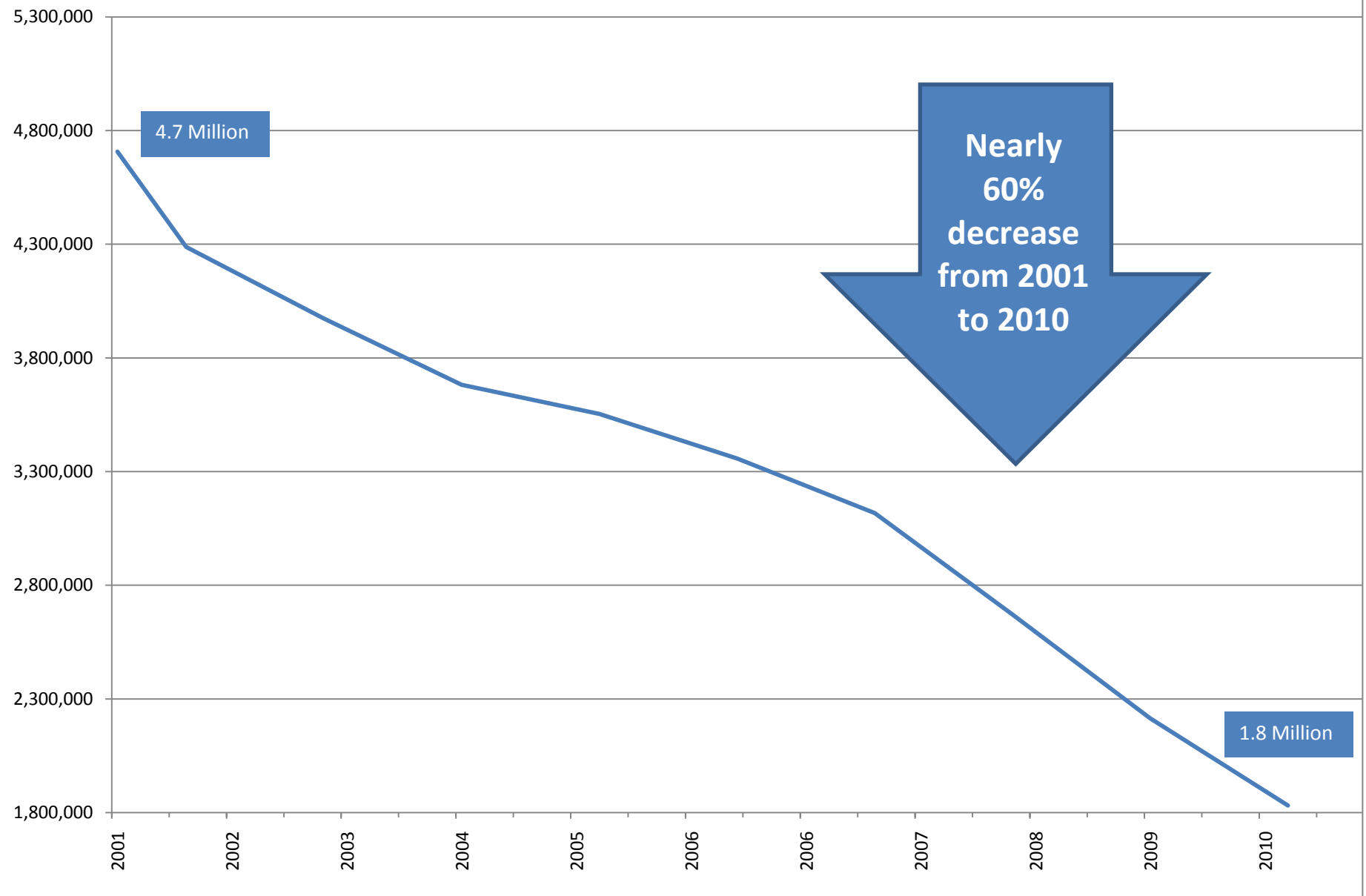
Broadband (examples)

Comcast
Verizon
AT&T
CenturyLink
BrightHouse
Cox

Wireless (examples)

Verizon
Sprint
AT&T
T Mobile
TracFone

AT&T Residential Access Lines



CITIZENS FOR A DIGITAL FUTURE

What happens when states update their telecommunications laws to reflect the digital age?

In the past two years, Alabama, Georgia and South Carolina have all updated their telecommunications laws to encourage investment in new telecommunications technologies. Florida took an important first step in 2009 by updating some laws and the state's economy has seen an incredible \$1 billion of investment since.

Funds allocated through the American Recovery and Reinvestment Act (ARRA) for broadband deployment has helped with that surge in investment, but private investment is doing its part as well. Examples of recent investment in Florida include \$195 million from Verizon Wireless in its statewide wireless network, Level 3's award of over \$2 million to provide access points for last-mile providers in Chiefland, and Motorola's \$2.9 million contract to provide infrastructure and devices for a new radio system in Orange County.

Investment = Jobs

According to reports*, it is estimated that broadband deployment can result in job growth not only directly in the telecommunications industry, but also in a wide variety of other industries impacted by the development of broadband and online capabilities.

By the numbers:



Alabama - Total investment of over \$400,000,000 with an estimated 22,204 jobs created



Florida - Total investment of over \$1 billion with potential for 51,102 jobs



Georgia - Total investment of over \$400,000,000 with an estimated 20,083 jobs created



South Carolina - Total investment of over \$21,000,000 with an estimated 1,089 jobs created

Updating telecommunications laws can be a catalyst for investment in technology and job growth.

For more information and details on the investments states are seeing, check out our investment tracker at www.CitizensforaDigitalFuture.org.

*Numbers are estimated based on a report by Communications Workers of America that cites studies that "show that each additional \$5 billion investment in broadband creates 250,000 jobs - 100,000 direct and indirect jobs from telecom and IT equipment spending plus another 150,000 in "network effects" spurring new online applications and services." ("Speed Matters: Benefits of Broadband", Communications Workers of America. 2010).

P.O. Box 4658 • Atlanta, GA 30302 • 1-877-766-6673

www.citizensforadigitalfuture.org

Paid for by Citizens for a Digital Future

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: SB 1198

INTRODUCER: Senator Bogdanoff

SUBJECT: The Communications Services Tax

DATE: March 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill changes the tax calculation information the Department of Revenue is to provide to communication service providers, which will in turn change how communications service providers calculate the amount of communications services tax owed. The new provision is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

The bill substantially amends sections 202.16 and 202.11 of the Florida Statutes.

II. Present Situation:

Chapter 202, F.S., establishes the Communications Services Tax Simplification Law. This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.8 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.

Section 202.16(3), F.S., requires the Department of Revenue (DOR) to make available to dealers, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapters 202 and 203, F.S.

Chapter 203, F.S., provides for gross receipts taxes, taxes on the receipts for utility and communications services. Section 203.001, F.S., authorizes a dealer of communication services to collect a combined rate of 6.8 percent comprised of 6.65 percent and 0.15 percent required by ss. 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the provider properly reflects the tax collected with respect to the two provisions as required in the return to the DOR.

III. Effect of Proposed Changes:

Section 1 amends s. 202.16, F.S., to provide that the information that DOR is required to provide to dealers must be based on a rounding algorithm that carries the tax computation to the third decimal place and rounds the tax to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Dealers may compute the tax due on a transaction, on an item, or an invoice basis, but must allow the rounding algorithm to be applied to the aggregate state and local taxes imposed pursuant the CST and the gross receipts tax. DOR may allow but cannot require a dealer to collect the tax based on a bracket system such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapters 202 and 203. This will change how communications service providers calculate the tax owed.

The new provision is intended to be remedial in nature and to apply retroactively; however, it is not intended to provide a basis for an assessment of any tax not paid or to create a right to a refund of any tax paid under this section before July 1, 2011.

Section 2 amends s. 202.11(11), F.S., to conform a statutory cross-reference in the definition of the term “retail sale.”

Section 3 provides that the bill takes effect July 1, 2011.

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:**

By changing how communications service providers calculate the amount of communications services tax owed, there will be an impact on the resulting tax revenue, the amount of which is unknown at this time.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



485338

LEGISLATIVE ACTION

Senate

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House

The Committee on Communications, Energy, and Public Utilities
(Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 202.16, Florida
Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under
this chapter and chapter 203 shall be collected from all dealers
of taxable communications services on the sale at retail in this
state of communications services taxable under this chapter and
chapter 203. The full amount of the taxes on a credit sale,
installment sale, or sale made on any kind of deferred payment



485338

plan is due at the moment of the transaction in the same manner as a cash sale.

(3) (a) A dealer must compute the tax due on a sale of communications services imposed pursuant to this chapter and chapter 203 based on a rounding algorithm that meets the following criteria:

1. The tax computation must be carried to the third decimal place.

2. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

(b) A dealer may elect to compute the tax due on a sale of communications services on an item or an invoice basis.

(c) The rounding algorithm must be applied to the local communications services tax imposed pursuant to this chapter separately from its application to the communications services tax imposed pursuant to s. 202.12 and gross receipts tax pursuant to s. 203.01.

(d) A dealer may elect to apply the rounding algorithm to the communications services taxes imposed pursuant to ss. 202.12 and 203.01 in one of the following manners:

1. Apply the rounding algorithm to the combined communications services tax imposed pursuant to ss. 202.12 and 203.01.

2. Apply the rounding algorithm separately to the communications services tax imposed pursuant to s. 202.12(1)(a) and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2. and
3.

3. Apply the rounding algorithm to the combined taxes



485338

imposed pursuant to ss. 202.12(1)(a) and 203.01(1)(b)3., as
allowed by s. 203.001, and apply the rounding algorithm
separately to the gross receipts tax pursuant to s.
203.01(1)(b)2.

(e) A dealer is not required to collect the tax based on a
bracket system. ~~Notwithstanding the rate of tax on the sale of
communications services imposed pursuant to this chapter and
chapter 203, the department shall make available in an
electronic format or otherwise the tax amounts and brackets
applicable to each taxable sale such that the tax collected
results in a tax rate no less than the tax rate imposed pursuant
to this chapter and chapter 203.~~

Section 2. This act is intended to be remedial in nature
and applies retroactively. This act does not provide a basis for
an assessment of any tax not paid or create a right to a refund
or credit of any tax paid under s. 202.16, Florida Statutes,
before July 1, 2011.

Section 3. This act shall take effect July 1, 2011.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to communications services tax;
amending s. 202.16, F.S.; requiring that a dealer
compute the communications services tax based on a
rounding algorithm; providing criteria; providing for
application of the tax; providing options to the



485338

71 dealer for applying the rounding algorithm; providing
72 that a dealer is not required to collect the tax based
73 on a bracket system; removing the provision requiring
74 the Department of Revenue to make available tax
75 amounts and applicable brackets; providing that the
76 provisions of the act are remedial in nature and apply
77 retroactively; providing that the act does not provide
78 a basis for assessment of any tax not paid or create a
79 right to certain refunds or credits; providing an
80 effective date.