

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1008

SPONSOR: Committee on Regulated Industries

SUBJECT: Local Telecommunications Services

DATE: April 15, 1999 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides legislative intent regarding universal service objectives and extends until January 1, 2001, the interim mechanism for maintaining the universal service objectives established by the commission. A local exchange telecommunications company may be relieved from its carrier of last resort obligations on January 1, 2001, if in full compliance with federal telecommunications law.

The bill requires the Legislature to establish a permanent universal service mechanism that shall take effect on or before January 1, 2001. The mechanism may not result in an increase in basic local telecommunications rates, and local exchange telecommunications companies may not recover universal service fund contributions through an explicit end-user or line-item surcharge. The Public Service Commission must recommend to the Legislature, by February 15, 2000, what the commission determines to be a specific, predictable, and sufficient mechanism for providing universal service. The commission will make its recommendation after studying and making funding regarding specified factors.

The bill makes a legislative finding of important public purpose, defines terms, establishes standards for telecommunications companies gaining generally comparable access to multitenant environments on a reasonable and technologically neutral basis, considering the private property rights of landlords. The bill provides that jurisdiction over disputes on access is with the circuit court where the multitenant environment is located.

The bill substantially amends section 364.025 of the Florida Statutes. It also creates section 364.341 and an as yet unnumbered section of the Florida Statutes.

II. Present Situation:

Telecommunications & Competition. Chapter 364, F.S., governs the regulation of telecommunications services by the commission. The “Telecommunications Act of 1995” amended Ch. 364, F.S., to allow competition for the provision of local telecommunications services in Florida. Several months after the Florida Act took effect, Congress enacted the “Telecommunications Act of 1996” to mandate that states open local telecommunications markets to competition.

Section 364.02, F.S., defines an incumbent local exchange telecommunications company (ILEC) as a company certificated to provide local service prior to July 1, 1995. The section defines an alternative local exchange company (ALEC) as a company certificated to provide local service after July 1, 1995. In addition, the section provides definitions of basic local telecommunications services, nonbasic local telecommunications services, and network access services. Section 364.025, F.S., expresses the legislative goal of maintaining universal access to basic local telecommunications services and provides for the establishment of interim and permanent universal service mechanisms.

Section 364.051, F.S., governs the prices that may be charged by ILECs for basic and nonbasic local telecommunications services. Sections 364.16, 364.161, and 364.162, F.S., govern the prices for interconnection to an ILEC’s network, for the unbundling of the network for use by competitors, and for the resale of an ILEC’s services. Section 364.163, F.S., governs the prices that may be charged by ILECs for network access.

Universal Service. Section 364.025, F.S., defines “universal service” and provides that the Legislature will establish a permanent universal service fund no later than January 1, 2000. It also provides that the implicit interim universal service funding mechanism that has been adopted by the commission expires on January 1, 2000. This section provides that each ILEC is required to furnish basic local exchange service within a reasonable time period to any person requesting such service within the company’s service territory. The responsibility to serve any person requesting such service expires on January 1, 2000. This section requires the commission to report to the Legislature by February 15, 1999, the total forward-looking cost of providing basic local telecommunications service in Florida, and the amount of support necessary to provide residential basic local telecommunications service to low-income customers.

Multitenant. Multitenant buildings are attractive to telecommunications companies because of the high density of profitable users. Commercial multitenant buildings are especially attractive because commercial tenants typically are high volume users of telecommunications services. The multitenant issue is complicated because--as a remnant the monopoly local telecommunications market--the ILECs typically do not pay for building access. This circumstance makes it difficult for the ALECs to compete and win customers in existing multitenant environments.

ALECs have argued that multitenant environments where a landlord controls access to the tenants/customers in a building are an obstacle to bringing the advantages of a competitive telecommunications market to those customers.

Building owners are concerned about possible government-authorized intrusion onto their property by alternative local exchange companies.

During the 1998 Regular Legislative Session, the legislature enacted ch. 98-277, Laws of Florida, which charged the commission with studying issues associated with the access to tenants issue. The commission produced a two volume report on the subject totaling approximately 500 pages. By separate letter, the commission also provided "model legislation" on the subject, which was the starting point for development of the multitenant access provisions of this bill.

III. Effect of Proposed Changes:

Section 1 amends s. 364.025, F.S., to restrict the definition of universal service to the "first access line of residential and business customers." It specifies legislative intent that universal service objectives of providing affordable basic local telecommunications service to low-income customers and customers located in high-cost areas be maintained, and it provides that the interim mechanism for maintaining the universal service objectives established by the commission in Docket No. 950696-TP shall remain in effect until January 1, 2001.

This section provides that each local telecommunications company will be relieved of its obligations as a carrier of last resort, effective January 1, 2001, if in full compliance with federal telecommunications law.

This section also requires the Legislature to establish a permanent universal service mechanism, that operates in a competitively neutral manner, on or before July 1, 2000. The mechanism shall take effect on or before January 1, 2001.

The permanent universal service mechanism may not result in an increase in basic local telecommunications rates, and local exchange telecommunications companies may not recover universal service fund contributions through an explicit end-user or line-item surcharge.

Section 2 requires the commission to recommend to the Legislature, by February 15, 2000, what the commission determines to be a specific, predictable, and sufficient mechanism for providing universal service. The commission is instructed to consider and make specific findings regarding:

- the requirements of the federal Telecommunications Act of 1996 and any universal service support mechanism established by the Federal Communications Commission;
- whether the universal service support mechanism shall be based upon the costs determined by the commission in Docket No. 980696-TP and whether the cost determination shall be updated;
- whether there shall be a revenue benchmark and how such revenue benchmark shall be defined;
- whether the low-income support amount shall be determined by multiplying the number of customers subscribing to Lifeline service by the intrastate matching fund amount by twelve;

- the manner in which each telecommunications company shall be assessed its share of the universal service support;
- whether, and to what extent, special provisions shall be included in a mechanism that address the service areas, market conditions, information resources and other circumstances of small local exchange companies serving fewer than 100,000 access lines;
- the manner in which the local exchange telecommunications company's non-basic service prices and access charges should be changed to reflect any explicit universal service support;
- how any explicit universal service mechanism shall be administered and how any third-party administrator shall be selected;
- how a telecommunications company shall qualify to receive any explicit universal service support; and,
- whether the status of competition based upon the directives developed by the Federal Communications Commission to open the local market to competition which include interconnection, network access and resale expedites the need for the universal service fund.

The commission is allowed to recommend factors not specifically enumerated, provided that the commission specifically states the basis for its determination that such an item is necessary and the manner it should be included in the mechanism.

Section 3 creates s. 364.341, F.S., which takes effect October 1, 1999. The bill establishes a legislative finding that an important public purpose is achieved in providing access to tenants in multitenant environments, both public and private, and both non-residential and residential, for telecommunications companies seeking to promote competition and choice in delivering telecommunications services, while at the same time balancing the private property rights of landlords.

The bill defines the terms "exclusionary contract," "multitenant environment," "landlord," and "tenant" as follows:

- "Exclusionary contract" means an agreement between a landlord and a telecommunications company in which the telecommunications company is given exclusive access to the landlord's property for the purpose of providing telecommunications service.
- "Multitenant environment" means any type of structure, ownership interest, and tenancy with multiple owners or tenants *except*:
 - Condominiums, as defined in ch. 718, F.S.;
 - Cooperatives, as defined in ch. 719, F.S.;
 - Communities governed by a homeowners' association, as defined in s. 617.301, F.S.;

- Environments served by call aggregators, as defined in F.A.C. 25-24.610. (Typically, call aggregators serve customers in motels, hotels and other short-term settings. The term aggregator refers to the practice of aggregating the calls of the various customers and buying volume discounted services from facilities-based providers to serve the customers.);
 - A facility licensed in whole or in part as a nursing home facility or assisted living facility under chapter 400, F.S., or a facility licensed in whole or in part to provide continuing care under chapter 651, F.S.; and
 - Housing for the elderly or disabled that is financed or insured by the U.S. Department of Housing and Urban Development or a similar federal program, or financed in whole or in part by the State Apartment Incentive Loan Program or a similar state program.
- “Landlord” means the owner or owners, owners’ agents or assigns, or successor in interest, or lessor.
 - “Tenant” means any person or entity legally entitled to occupy a unit in a multitenant environment but does not include a tenant with a non-residential rental agreement of 13 months or less if the tenant has occupied the premises for less than 13 months or a tenant with a residential rental agreement of 13 months or less.

The bill establishes standards for access by telecommunications companies to tenants in multitenant environments. Access is to be granted on a reasonable and technologically neutral basis, with all telecommunications companies to be provided generally comparable terms and conditions for access.

Landlords and telecommunications providers are to make every reasonable effort to negotiate terms for access. After a tenant makes a request for services to a telecommunications company, and either the telecommunications company or the tenant conveys this request in writing to the landlord, the telecommunications company and the landlord must enter into negotiations for access in a reasonable and timely manner.

Landlords may impose reasonable terms and conditions upon a telecommunications company or tenant and may charge reasonable compensation to the telecommunications company or tenant, including reasonable compensation for design, installation, operation, maintenance, and removal of telecommunications network equipment and facilities reasonably necessary to provide telecommunications services to tenants. A landlord is prohibited from charging a fee solely for the privilege of providing telecommunications services to a tenant. The landlord must offer generally comparable terms, conditions, and compensation arrangements to all similarly situated telecommunications companies.

A landlord may establish reasonable terms and conditions with respect to the occupation, use, safety, security, and aesthetics of the property. A landlord cannot deny access to a space if that space is sufficient to accommodate the telecommunications facilities needed to provide services and if the installation and operation of the facilities would not unreasonably interfere with the occupation, use, safety, security, and aesthetics of the property.

Section 3 of the bill does not abrogate the obligations of the carrier-of-last-resort as described in s. 364.025, F.S.

In addition to establishing these standards, the bill prohibits exclusionary contracts entered into after the effective date. It also prohibits a landlord from charging a local exchange company for access where the company is providing services as the carrier-of-last-resort and another telecommunications company is not providing services to those tenants.

The circuit court in which a multitenant environment is located is given jurisdiction over disputes arising between telecommunications companies, tenants, and landlords relating to access. Disputes may arise concerning such issues as whether access should be granted, the reasonableness of any terms or conditions thereon, or whether the compensation requested is reasonable and should be granted. In resolving these disputes, the court is to apply the standards set forth in the bill.

Section 4 provides that, except for the provisions on multitenant access, which take effect October 1, 1999, the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Increased competition and establishment of a specific, predictable, and sufficient permanent universal service mechanism that operates in a competitively neutral manner without increasing basic phone service rates will benefit consumers and providers of local telecommunications services.

The bill may encourage competition in multitenant environments, which may result in benefits to tenants, telecommunications companies, and property owners.

C. Government Sector Impact:

The report required by section 2 of this bill is a continuation of the universal service and lifeline funding report required by the 1998 legislature. Last year, the legislature authorized OPS funds to provide support for the commission while it prepared the reports to the legislature. Not all of the OPS funds authorized were spent during the 1998-1999 fiscal year. The commission is requesting that the remaining balance of those funds (approximately \$500,000) be authorized for use during the 1999-2000 fiscal year to employ temporary staff, thereby freeing experienced staff to work on the universal service mechanism report. The OPS funds also would be used to fund hearing costs, such as hiring court reporters.

The provisions on multitenant access establish jurisdiction over disputes arising between telecommunications companies, tenants, and landlords concerning access in the circuit court in which the multitenant environment is located. This will cause an indeterminable increase in costs and caseload of the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
