

By the Committee on Regulated Industries

315-2058C-99

1                                   A bill to be entitled  
2           An act relating to telecommunications; amending  
3           s. 364.025, F.S.; revising legislative intent;  
4           extending time for establishment of permanent  
5           universal service mechanism; providing  
6           limitations; deleting obsolete provisions;  
7           providing for a study; creating s. 364.341,  
8           F.S.; providing legislative intent,  
9           definitions, and standards; prohibiting  
10          exclusionary contracts; limiting applicability  
11          to certain tenants; prohibiting compensation of  
12          landlords under certain circumstances;  
13          prohibiting certain exclusionary contracts;  
14          creating a civil cause of action; providing  
15          effective dates.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 364.025, Florida Statutes, 1998  
20 Supplement, is amended to read:

21           364.025 Universal service.--

22           (1) For the purposes of this section, the term  
23 "universal service" means an evolving level of access to  
24 telecommunications services that, taking into account advances  
25 in technologies, services, and market demand for essential  
26 services, the commission determines should be provided at  
27 just, reasonable, and affordable flat rates for the first  
28 access line of residential and business ~~to~~ customers,  
29 including those in rural, economically disadvantaged, and  
30 high-cost areas. It is the intent of the Legislature that  
31 universal service objectives of providing affordable basic

1 local telecommunications service to low-income customers and  
2 customers located in high-cost areas be maintained after the  
3 ~~local exchange market is opened to competitively provided~~  
4 ~~services.~~ It is also the intent of the Legislature that the  
5 interim mechanism for maintaining the universal service  
6 objectives established by the commission in Docket No.  
7 950696-TP remain in effect until January 1, 2001, and during  
8 ~~this transition period the ubiquitous nature of the local~~  
9 ~~exchange telecommunications companies be used to satisfy these~~  
10 objectives. Until January 1, 2001 ~~For a period of 4 years~~  
11 ~~after January 1, 1996,~~ each local exchange telecommunications  
12 company shall be required to furnish basic local exchange  
13 telecommunications service within a reasonable time period to  
14 any person requesting such service within the company's  
15 service territory. Each local exchange telecommunications  
16 company shall be relieved of its obligations as a carrier of  
17 last resort, effective January 1, 2001, if in full compliance  
18 with s. 214(e)(4) of the Communications Act of 1934, as  
19 amended by the Telecommunications Act of 1996, 47 U.S.C. 214.

20 (2) The Legislature finds that each telecommunications  
21 company should contribute its fair share to the support of the  
22 universal service objectives and carrier-of-last-resort  
23 obligations. ~~For a transitional period not to exceed January~~  
24 ~~1, 2000, an interim mechanism for maintaining universal~~  
25 ~~service objectives and funding carrier-of-last-resort~~  
26 ~~obligations shall be established by the commission, pending~~  
27 ~~the implementation of a permanent mechanism. The interim~~  
28 ~~mechanism shall be applied in a manner that ensures that each~~  
29 ~~alternative local exchange telecommunications company~~  
30 ~~contributes its fair share to the support of universal service~~  
31 ~~and carrier-of-last-resort obligations. The interim mechanism~~

1 ~~applied to each alternative local exchange telecommunications~~  
2 ~~company shall reflect a fair share of the local exchange~~  
3 ~~telecommunications company's recovery of investments made in~~  
4 ~~fulfilling its carrier-of-last-resort obligations, and the~~  
5 ~~maintenance of universal service objectives. The commission~~  
6 ~~shall ensure that the interim mechanism does not impede the~~  
7 ~~development of residential consumer choice or create an~~  
8 ~~unreasonable barrier to competition. In reaching its~~  
9 ~~determination, the commission shall not inquire into or~~  
10 ~~consider any factor that is inconsistent with s.~~  
11 ~~364.051(1)(c). The costs and expenses of any government~~  
12 ~~program or project required in part II of this chapter shall~~  
13 ~~not be recovered under this section.~~

14 (3) If in the event any local exchange  
15 telecommunications company party, prior to January 1, 2001  
16 ~~2000~~, believes that circumstances have changed substantially  
17 to warrant a change in the interim mechanism, that local  
18 exchange telecommunications company party may petition the  
19 commission for a change, but the commission shall grant such  
20 petition only after an opportunity for a hearing and a  
21 compelling showing of changed circumstances, including that  
22 the provider's customer population includes as many  
23 residential as business customers. The commission shall act  
24 on any such petition within 120 days. The costs and expenses  
25 of any government program or project required in part II of  
26 this chapter shall not be recovered under this subsection.

27 (4)(a) On or before July 1, 2000 ~~Prior to the~~  
28 ~~expiration of this 4-year period~~, the Legislature shall  
29 establish a specific, predictable, and sufficient permanent  
30 universal service mechanism that operates in a competitively  
31 neutral manner. The mechanism shall take effect on or before

1 January 1, 2001 upon the effective date of which any interim  
2 recovery mechanism for universal service objectives or  
3 carrier-of-last-resort obligations imposed on alternative  
4 local exchange telecommunications companies shall terminate.

5 (b) To assist the Legislature in establishing a  
6 permanent universal service mechanism, the commission, by  
7 February 15, 1999, shall determine and report to the President  
8 of the Senate and the Speaker of the House of Representatives  
9 the total forward-looking cost, based upon the most recent  
10 commercially available technology and equipment and generally  
11 accepted design and placement principles, of providing basic  
12 local telecommunications service on a basis no greater than a  
13 wire center basis using a cost proxy model to be selected by  
14 the commission after notice and opportunity for hearing.

15 (c) In determining the cost of providing basic local  
16 telecommunications service for small local exchange  
17 telecommunications companies, which serve less than 100,000  
18 access lines, the commission shall not be required to use the  
19 cost proxy model selected pursuant to paragraph (b) until a  
20 mechanism is implemented by the Federal Government for small  
21 companies, but no sooner than January 1, 2001. The commission  
22 shall calculate a small local exchange telecommunications  
23 company's cost of providing basic local telecommunications  
24 services based on one of the following options:

- 25 1. A different proxy model; or
- 26 2. A fully distributed allocation of embedded costs,  
27 identifying high-cost areas within the local exchange area the  
28 company serves and including all embedded investments and  
29 expenses incurred by the company in the provision of universal  
30 service. Such calculations may be made using fully distributed  
31 costs consistent with 47 C.F.R. ss. 32, 36, and 64. The

1 ~~geographic basis for the calculations shall be no smaller than~~  
2 ~~a census block group.~~

3 ~~(d) The commission, by February 15, 1999, shall~~  
4 ~~determine and report to the President of the Senate and the~~  
5 ~~Speaker of the House of Representatives the amount of support~~  
6 ~~necessary to provide residential basic local~~  
7 ~~telecommunications service to low-income customers. For~~  
8 ~~purposes of this section, low-income customers are customers~~  
9 ~~who qualify for Lifeline service as defined in s. 364.10(2).~~

10 (5) There shall be no increase in basic local  
11 telecommunications service rates except as provided by this  
12 chapter. Local exchange telecommunications companies may not  
13 recover universal service fund contributions through an  
14 explicit end-user or line-item surcharge.

15 (6)~~(5)~~ After January 1, 2001,~~January 1, 2000,~~ an  
16 alternative local exchange telecommunications company may  
17 petition the commission to become a ~~the~~ universal service  
18 provider and carrier of last resort in areas requested to be  
19 served by that alternative local exchange telecommunications  
20 company. Upon petition of an alternative local exchange  
21 telecommunications company, the commission shall have 120 days  
22 to vote on granting in whole or in part or denying the  
23 petition of the alternative local exchange company. The  
24 commission may establish the alternative local exchange  
25 telecommunications company as a ~~the~~ universal service provider  
26 and carrier of last resort, provided that the commission first  
27 determines that the alternative local exchange  
28 telecommunications company will provide high-quality, reliable  
29 service. In the order establishing the alternative local  
30 exchange telecommunications company as a ~~the~~ universal service  
31 provider and carrier of last resort, the commission shall set

1 the period of time in which such company must meet those  
2 objectives and obligations and shall set up any mechanism  
3 needed to aid such company in carrying out these duties.

4       Section 2. To assist the Legislature in establishing a  
5 permanent universal service mechanism, the Florida Public  
6 Service Commission, by February 15, 2000, shall recommend to  
7 the President of the Senate and the Speaker of the House of  
8 Representatives what the commission determines, after notice  
9 and opportunity for hearing, to be a specific, predictable,  
10 and sufficient mechanism for providing universal service. In  
11 making its recommendation, the commission shall consider the  
12 following items listed in subsections (1) through (10) and  
13 make a specific finding as to whether an item should be  
14 included in a universal service mechanism or make a specific  
15 finding as to the manner in which an item should be included.  
16 If the commission determines that an item should be included  
17 as a component of a mechanism, it shall state with specificity  
18 the basis for its recommendation and the manner in which the  
19 component should be included. If the commission determines  
20 that an item should not be included as a component of a  
21 mechanism, it shall state with specificity the basis for its  
22 rejection of the item. Any finding by the commission as to  
23 the manner in which an item should be included in a mechanism  
24 must be detailed and comprehensive. These items to be  
25 considered are:

26       (1) The requirements of the federal Telecommunications  
27 Act of 1996 and any universal service support mechanism  
28 established by the Federal Communications Commission.

29       (2) Whether the universal service support mechanism  
30 shall be based upon the costs determined by the commission in  
31

1 Docket No. 980696-TP and whether the cost determination shall  
2 be updated, as necessary, to reflect changes in cost inputs.

3 (3) Whether there shall be a revenue benchmark and how  
4 such revenue benchmark shall be defined.

5 (4) Whether the low-income support amount shall be  
6 determined by multiplying the number of customers subscribing  
7 to Lifeline service by the intrastate matching fund amount by  
8 12.

9 (5) The manner in which each telecommunications  
10 company shall be assessed its share of the universal service  
11 support.

12 (6) Whether, and to what extent, the mechanism shall  
13 include special provisions that address the service areas,  
14 market conditions, information resources, or other  
15 circumstances of small local exchange companies serving fewer  
16 than 100,000 access lines.

17 (7) The manner in which the local exchange company's  
18 nonbasic service prices and access charges shall be changed to  
19 reflect any explicit universal service support net of its  
20 contributions to any universal service support mechanism.

21 (8) How any explicit universal service mechanism shall  
22 be administered and how any third-party administrator shall be  
23 selected.

24 (9) How a telecommunications company shall qualify to  
25 receive any explicit universal service support.

26 (10) Whether the status of competition based upon the  
27 directives developed by the Federal Communications Commission  
28 to open the local market to competition, which include  
29 interconnection, network access, and resale, expedites the  
30 need for the universal service fund.

31

1 In making its recommendation, the commission may include an  
2 item not listed in subsections (1) through (10) if the  
3 commission first determines that it is a necessary component  
4 of a universal service mechanism as that mechanism is  
5 described in section 346.025(4), Florida Statutes. If the  
6 commission does recommend such an item, it shall state with  
7 specificity the basis for its determination and the manner in  
8 which it should be included in the mechanism.

9           Section 3. Effective October 1, 1999, section 364.341,  
10 Florida Statutes, is created to read:

11           364.341 Public purpose; definitions; standards for  
12 access to multitenant environments; prohibitions; regulations;  
13 civil cause of action.--

14           (1) The Legislature finds that an important public  
15 purpose is achieved by providing access to tenants in  
16 multitenant environments, public and private, nonresidential  
17 and residential, for telecommunication companies seeking to  
18 promote competition and choice in delivering telecommunication  
19 services, while at the same time, balancing the private  
20 property rights of landlords.

21           (2) As used in this section, the term:

22           (a) "Exclusionary contract" means an agreement between  
23 a landlord and a telecommunications company in which the  
24 telecommunications company is given exclusive access to the  
25 landlord's property for the purpose of providing  
26 telecommunications service.

27           (b) "Multitenant environment" includes any type of  
28 structure, ownership interest, or tenancy with multiple owners  
29 or tenants except:

30           1. Condominiums, as defined in s. 718.103.

31           2. Cooperatives, as defined in s. 719.103.



1           3. Communities governed by a homeowners' association,  
2 as association is defined in s. 617.301.

3           4. Environments served by "call aggregators," as  
4 defined in F.A.C. 25-24.610.

5           5. A facility licensed in whole or in part as a  
6 nursing home facility or assisted-living facility under  
7 chapter 400 or a facility licensed in whole or in part to  
8 provide continuing care under chapter 651.

9           6. Housing for the elderly or disabled which is  
10 financed or insured by the United States Department of Housing  
11 and Urban Development pursuant to the National Housing Act, or  
12 a similar federal program, or financed in whole or in part by  
13 the State Apartment Incentive Loan Program pursuant to s.  
14 420.507, or a similar state program.

15           (c) "Landlord" means the owner or owners, the owner's  
16 agent, assigns, or successor in interest, or the lessor.

17           (d) "Tenant" means any person or entity legally  
18 entitled to occupy a unit in a multitenant environment, but  
19 does not include a tenant with a nonresidential rental  
20 agreement of 13 months or less if the tenant has occupied the  
21 premises for less than 13 months or a tenant with a  
22 residential rental agreement of 13 months or less.

23           (3) The following standards for access by  
24 telecommunications companies to tenants in multitenant  
25 environments shall be applied on a reasonable and  
26 technologically neutral basis and all telecommunication  
27 companies shall be provided generally comparable terms and  
28 conditions for access:

29           (a) Access shall be granted on reasonable,  
30 technologically neutral, and generally comparable terms and  
31 conditions.

1           (b) Landlords and telecommunications companies shall  
2 make every reasonable effort to negotiate terms and conditions  
3 for access, which may be evidenced by license, access, or  
4 similar customary agreements.

5           (c) After a tenant initiates a request to a  
6 telecommunications company for service and the  
7 telecommunications company or the tenant conveys a written  
8 request for such service to the landlord, the landlord and the  
9 telecommunications company shall comply with paragraph (b) in  
10 a reasonable and timely manner.

11           (d) A landlord may impose upon a telecommunications  
12 company or tenant reasonable terms and conditions and charge  
13 reasonable compensation to the telecommunications company or  
14 tenant, including reasonable compensation for design,  
15 installation, operation, maintenance, and removal of  
16 telecommunications network equipment and facilities reasonably  
17 necessary to provide telecommunications service to tenants.  
18 However, a landlord may not charge a fee to the  
19 telecommunications company solely for the privilege of  
20 providing telecommunications service to a tenant in a  
21 multitenant environment. The landlord shall offer generally  
22 comparable terms, conditions, and compensation arrangements to  
23 all similarly situated telecommunications companies.

24           (e) A landlord may establish reasonable terms and  
25 conditions with respect to the occupation, use, safety,  
26 security, or aesthetics of its property.

27           (f) A landlord may not deny a telecommunications  
28 company access to space or conduit if that space or conduit is  
29 sufficient to accommodate the facilities needed for access and  
30 the installation and operation of the facilities would not  
31 unreasonably interfere with the occupation, use, safety,

1 security, or aesthetics of the property. A landlord may deny a  
2 telecommunications company access to its property where the  
3 space or conduit required for installation and operation of  
4 the facilities needed for access is not reasonably sufficient  
5 to accommodate the request or where the installation and  
6 operation would unreasonably interfere with the occupation,  
7 use, safety, security, or aesthetics of the property.

8 (g) This section does not abrogate the obligations of  
9 the carrier of last resort described in s. 364.025.

10 (4) Exclusionary contracts entered into on or after  
11 the effective date of this act are prohibited.

12 (5) A local exchange telecommunications company is not  
13 required to compensate a landlord under this section if the  
14 local exchange telecommunications company provides  
15 telecommunications services to tenants as the carrier of last  
16 resort and another telecommunications company is not providing  
17 telecommunications services to tenants.

18 (6) The circuit court in the circuit in which the  
19 multitenant environment is located has jurisdiction over  
20 disputes arising between telecommunications companies,  
21 tenants, and landlords concerning access to tenants for the  
22 provision of telecommunications services to the multitenant  
23 environment. In resolving disputes related to access, the  
24 circuit court shall apply the standards described in  
25 subsection (3).

26 Section 4. Except as otherwise provided in this act,  
27 this act shall take effect upon becoming a law.  
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 1008

4 Provides legislative intent regarding universal service  
5 objectives and extends the interim mechanism for maintaining  
6 the universal service objectives established by the commission  
7 until January 1, 2001.

8 Provides that a local exchange telecommunications company may  
9 be relieved from its carrier of last resort obligations on  
10 January 1, 2001, if in full compliance with federal  
11 telecommunications law.

12 Requires the Legislature to establish a permanent universal  
13 service mechanism that will take effect on or before January  
14 1, 2001.

15 Provides that the mechanism may not result in an increase in  
16 basic local telecommunications rates; provides that local  
17 exchange telecommunications companies may not recover  
18 universal service fund contributions through an explicit  
19 end-user or line item surcharge.

20 Requires the commission, after studying and making findings  
21 regarding specified factors, to recommend to the Legislature,  
22 by February 15, 2000, what the commission determines to be a  
23 specific, predictable, and sufficient mechanism for providing  
24 universal service.

25 Establishes a legislative finding that an important public  
26 purpose is achieved in providing access to tenants in  
27 multitenant environments for telecommunications companies  
28 seeking to promote competition and choice in delivering  
29 telecommunications services, while at the same time balancing  
30 the private property rights of landlords.

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

Confers jurisdiction over access or compensation disputes to  
the circuit court where the multitenant environment is  
located.