

By Representative Goodlette

1 A bill to be entitled
2 An act relating to multitenant
3 telecommunication services; amending s. 364.01,
4 F.S.; revising legislative intent; amending s.
5 364.02, F.S.; providing additional definitions;
6 creating s. 364.341, F.S.; providing for
7 telecommunications services access to
8 multitenant environments; providing standards;
9 prohibiting certain exclusionary contracts;
10 providing for dispute resolution; providing
11 procedures and requirements; requiring the
12 Public Service Commission to adopt rules;
13 prohibiting certain compensation of landlords
14 under certain circumstances; amending ss.
15 196.012, 199.183, 212.08, 290.007, 350.0605,
16 364.602, and 489.103, F.S.; correcting cross
17 references; providing an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsection (3) of section 364.01, Florida
22 Statutes, is amended, and paragraph (j) is added to subsection
23 (4) of said section, to read:

24 364.01 Powers of commission, legislative intent.--

25 (3) The Legislature finds that the competitive
26 provision of telecommunications services, including local
27 exchange telecommunications service, is in the public interest
28 and will provide customers with freedom of choice, encourage
29 the introduction of new telecommunications service, encourage
30 technological innovation, and encourage investment in
31 telecommunications infrastructure. The Legislature further

1 finds that the transition from the monopoly provision of local
2 exchange service to the competitive provision thereof will
3 require appropriate regulatory oversight to protect consumers
4 and provide for the development of fair and effective
5 competition, but nothing in this chapter shall limit the
6 availability to any party of any remedy under state or federal
7 antitrust laws. The Legislature further finds that changes in
8 regulations allowing increased competition in
9 telecommunications services could provide the occasion for
10 increases in the telecommunications workforce; therefore, it
11 is in the public interest that competition in
12 telecommunications services lead to a situation that enhances
13 the high-technological skills and the economic status of the
14 telecommunications workforce. The Legislature also finds that
15 an important public purpose is achieved by providing access to
16 multitenant environments, public and private, residential and
17 nonresidential, for telecommunications companies seeking to
18 promote competition and choice in delivering
19 telecommunications services.

20 (4) The commission shall exercise its exclusive
21 jurisdiction in order to:

22 (j) Resolve disputes arising between
23 telecommunications companies, tenants, and landlords
24 concerning the provision of telecommunications services in
25 multitenant environments.

26 Section 2. Section 364.02, Florida Statutes, 1998
27 Supplement, is amended to read:

28 364.02 Definitions.--As used in this chapter:

29 (1) "Alternative local exchange telecommunications
30 company" means any company certificated by the commission to
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1 provide local exchange telecommunications services in this
2 state on or after July 1, 1995.

3 (2) "Basic local telecommunications service" means
4 voice-grade, flat-rate residential, and flat-rate single-line
5 business local exchange services which provide dial tone,
6 local usage necessary to place unlimited calls within a local
7 exchange area, dual tone multifrequency dialing, and access to
8 the following: emergency services such as "911," all locally
9 available interexchange companies, directory assistance,
10 operator services, relay services, and an alphabetical
11 directory listing. For a local exchange telecommunications
12 company, such term shall include any extended area service
13 routes, and extended calling service in existence or ordered
14 by the commission on or before July 1, 1995.

15 (3) "Commercial mobile radio service provider" means a
16 commercial mobile radio service provider as defined by and
17 pursuant to 47 U.S.C. ss. 153(n) and 332(d).

18 (4) "Commission" means the Florida Public Service
19 Commission.

20 (5) "Corporation" includes a corporation, company,
21 association, or joint stock association.

22 (6) "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 the
26 telecommunications service.

27 (7)~~(6)~~ "Local exchange telecommunications company"
28 means any company certificated by the commission to provide
29 local exchange telecommunications service in this state on or
30 before June 30, 1995.

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1 (8) "Marketing agreement" means an agreement between a
2 landlord or property manager and a telecommunications company
3 in which the telecommunications company provides some form of
4 remuneration to the landlord or property manager for each
5 tenant subscribing to the service of the telecommunications
6 company.

7 ~~(9)(7)~~ "Monopoly service" means a telecommunications
8 service for which there is no effective competition, either in
9 fact or by operation of law.

10 (10) "Multitenant environment" includes any type of
11 structure, ownership interest, and tenancy with multiple
12 owners or tenants except:

13 (a) Condominiums, as defined in chapter 718, in which
14 the condominium owners have delegated responsibility to a
15 group of individuals, entity, board, or association to secure
16 one provider of telecommunications services for all end-users
17 in the condominium.

18 (b) Cooperatives, as defined in chapter 719, in which
19 the cooperative owners have delegated responsibility to a
20 group of individuals, entity, board, or association to secure
21 one provider of telecommunications services for all end-users
22 in the cooperative.

23 (c) Homeowners' associations, as defined in chapter
24 617.

25 (d) Short-term tenancies served by call aggregators as
26 defined by commission rule.

27 (e) Tenancies that are less than 12 months in
28 duration. As used in this chapter, the term "tenant" includes
29 any person, corporation, or entity possessing an ownership
30 interest in a condominium or cooperative which is not excluded
31 from the definition of a multitenant environment.

1 (11)~~(8)~~ "Nonbasic service" means any
2 telecommunications service provided by a local exchange
3 telecommunications company other than a basic local
4 telecommunications service, a local interconnection
5 arrangement described in s. 364.16, or a network access
6 service described in s. 364.163.

7 (12)~~(9)~~ "Operator service" includes, but is not
8 limited to, billing or completion of third-party,
9 person-to-person, collect, or calling card or credit card
10 calls through the use of a live operator or automated
11 equipment.

12 (13)~~(10)~~ "Operator service provider" means a person
13 who furnishes operator service through a call aggregator.

14 (14)~~(11)~~ "Service" is to be construed in its broadest
15 and most inclusive sense.

16 (15)~~(12)~~ "Telecommunications company" includes every
17 corporation, partnership, and person and their lessees,
18 trustees, or receivers appointed by any court whatsoever, and
19 every political subdivision in the state, offering two-way
20 telecommunications service to the public for hire within this
21 state by the use of a telecommunications facility. The term
22 "telecommunications company" does not include:

23 (a) An entity which provides a telecommunications
24 facility exclusively to a certificated telecommunications
25 company;

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

30 (c) A commercial mobile radio service provider;

31 (d) A facsimile transmission service;

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

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

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6 However, each commercial mobile radio service provider shall
7 continue to be liable for any taxes imposed pursuant to
8 chapters 203 and 212 and any fees assessed pursuant to s.
9 364.025.

10 ~~(16)~~(13) "Telecommunications facility" includes real
11 estate, easements, apparatus, property, and routes used and
12 operated to provide two-way telecommunications service to the
13 public for hire within this state.

14 Section 3. Section 364.341, Florida Statutes, is
15 created to read:

16 364.341 Multitenant environments; regulation; access;
17 exclusionary contracts prohibited; disclosure.--

18 (1) The following are standards for access by
19 telecommunications companies to tenants in multitenant
20 environments:

21 (a) Access shall be granted on a reasonable,
22 nondiscriminatory, and technologically neutral basis.

23 (b) Tenants, landlords, and telecommunications
24 providers shall make every reasonable effort to negotiate
25 terms and conditions for access.

26 (c) A landlord may charge a telecommunications company
27 or tenant the reasonable and nondiscriminatory costs of
28 installation, removal of telecommunications network equipment
29 and facilities, or other costs of providing service to the
30 tenant.

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1 (d) The tenant shall be responsible for obtaining all
2 necessary easements across another tenant's premises.

3 (e) A landlord may impose conditions reasonably
4 necessary for the safety, security, and aesthetics of the
5 property.

6 (f) A landlord may not deny access to space or conduit
7 previously dedicated to public service if that space or
8 conduit is sufficient to accommodate the facilities needed for
9 access. A landlord may deny access to space or conduit if the
10 space or conduit required for installation is not reasonably
11 sufficient to accommodate the request or where the
12 installation would unreasonably interfere with the aesthetics
13 of the building.

14 (g) A landlord shall not charge a fee for the
15 privilege of providing telecommunications service to a tenant
16 in a multitenant environment.

17 (h) Nothing in this section shall abrogate the
18 obligations of the carrier-of-last-resort described in s.
19 364.025.

20 (2) Exclusionary contracts between telecommunications
21 companies and landlords for the provision of
22 telecommunications services to multitenant environments are
23 prohibited.

24 (3) A landlord shall disclose to potential tenants the
25 existence of any marketing agreement.

26 (4) The commission shall have exclusive jurisdiction
27 for the purpose of resolving disputes arising between
28 telecommunications companies, tenants, and landlords
29 concerning access to tenants for the provision of
30 telecommunications services in multitenant environments.

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1 (a) The following must occur before an action for
2 access may be brought:
3 1. After a tenant initiates a request to a
4 telecommunications company for service, the telecommunications
5 company and the tenant shall convey the request for service to
6 the landlord.
7 2. If a landlord is unresponsive to a request for
8 access, a written request shall be submitted to the landlord.
9 3. If the landlord fails to timely respond, if access
10 is denied, or if reasonable and nondiscriminatory terms for
11 access cannot be agreed upon, the telecommunications company
12 and the tenant may file a petition with the commission for
13 review.
14 (b) In resolving disputes related to access, the
15 commission shall apply the standards described in subsection
16 (1).
17 (5) The commission shall adopt rules to implement the
18 provisions of this section.
19 (6) In no event shall a local exchange
20 telecommunications company be required to compensate a
21 landlord under this section if the local exchange
22 telecommunications company provides telecommunications
23 services to tenants as the carrier-of-last-resort and another
24 telecommunications company is not providing telecommunications
25 services to tenants.
26 Section 4. Subsection (6) of section 196.012, Florida
27 Statutes, is amended to read:
28 196.012 Definitions.--For the purpose of this chapter,
29 the following terms are defined as follows, except where the
30 context clearly indicates otherwise:
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1 (6) Governmental, municipal, or public purpose or
2 function shall be deemed to be served or performed when the
3 lessee under any leasehold interest created in property of the
4 United States, the state or any of its political subdivisions,
5 or any municipality, agency, special district, authority, or
6 other public body corporate of the state is demonstrated to
7 perform a function or serve a governmental purpose which could
8 properly be performed or served by an appropriate governmental
9 unit or which is demonstrated to perform a function or serve a
10 purpose which would otherwise be a valid subject for the
11 allocation of public funds. For purposes of the preceding
12 sentence, an activity undertaken by a lessee which is
13 permitted under the terms of its lease of real property
14 designated as an aviation area on an airport layout plan which
15 has been approved by the Federal Aviation Administration and
16 which real property is used for the administration, operation,
17 business offices and activities related specifically thereto
18 in connection with the conduct of an aircraft full service
19 fixed base operation which provides goods and services to the
20 general aviation public in the promotion of air commerce shall
21 be deemed an activity which serves a governmental, municipal,
22 or public purpose or function. Any activity undertaken by a
23 lessee which is permitted under the terms of its lease of real
24 property designated as a public airport as defined in s.
25 332.004(14) by municipalities, agencies, special districts,
26 authorities, or other public bodies corporate and public
27 bodies politic of the state, or which is located in a
28 deepwater port identified in s. 403.021(9)(b) and owned by one
29 of the foregoing governmental units, subject to a leasehold or
30 other possessory interest of a nongovernmental lessee that is
31 deemed to perform an aviation or airport or maritime or port

1 purpose or operation shall be deemed an activity that serves a
2 governmental, municipal, or public purpose. The use by a
3 lessee, licensee, or management company of real property or a
4 portion thereof as a convention center, visitor center, sports
5 facility with permanent seating, concert hall, arena, stadium,
6 park, or beach is deemed a use that serves a governmental,
7 municipal, or public purpose or function when access to the
8 property is open to the general public with or without a
9 charge for admission. If property deeded to a municipality by
10 the United States is subject to a requirement that the Federal
11 Government, through a schedule established by the Secretary of
12 the Interior, determine that the property is being maintained
13 for public historic preservation, park, or recreational
14 purposes and if those conditions are not met the property will
15 revert back to the Federal Government, then such property
16 shall be deemed to serve a municipal or public purpose. The
17 term "governmental purpose" also includes a direct use of
18 property on federal lands in connection with the Federal
19 Government's Space Exploration Program. Real property and
20 tangible personal property owned by the Federal Government and
21 used for defense and space exploration purposes or which is
22 put to a use in support thereof shall be deemed to perform an
23 essential national governmental purpose and shall be exempt.
24 "Owned by the lessee" as used in this chapter does not include
25 personal property, buildings, or other real property
26 improvements used for the administration, operation, business
27 offices and activities related specifically thereto in
28 connection with the conduct of an aircraft full service fixed
29 based operation which provides goods and services to the
30 general aviation public in the promotion of air commerce
31 provided that the real property is designated as an aviation

1 area on an airport layout plan approved by the Federal
2 Aviation Administration. For purposes of determination of
3 "ownership," buildings and other real property improvements
4 which will revert to the airport authority or other
5 governmental unit upon expiration of the term of the lease
6 shall be deemed "owned" by the governmental unit and not the
7 lessee. Providing two-way telecommunications services to the
8 public for hire by the use of a telecommunications facility,
9 as defined in s. 364.02(~~13~~), and for which a certificate is
10 required under chapter 364 does not constitute an exempt use
11 for purposes of s. 196.199, unless the telecommunications
12 services are provided by the operator of a public-use airport,
13 as defined in s. 332.004, for the operator's provision of
14 telecommunications services for the airport or its tenants,
15 concessionaires, or licensees, or unless the
16 telecommunications services are provided by a public hospital.
17 However, property that is being used to provide such
18 telecommunications services on or before October 1, 1997,
19 shall remain exempt, but such exemption expires October 1,
20 2004.

21 Section 5. Paragraph (b) of subsection (1) of section
22 199.183, Florida Statutes, is amended to read:

23 199.183 Taxpayers exempt from annual and nonrecurring
24 taxes.--

25 (1) Intangible personal property owned by this state
26 or any of its political subdivisions or municipalities shall
27 be exempt from taxation under this chapter. This exemption
28 does not apply to:

29 (b) Property related to the provision of two-way
30 telecommunications services to the public for hire by the use
31 of a telecommunications facility, as defined in s. 364.02(~~13~~),

1 and for which a certificate is required under chapter 364,
2 when such service is provided by any county, municipality, or
3 other political subdivision of the state. Any immunity of any
4 political subdivision of the state or other entity of local
5 government from taxation of the property used to provide
6 telecommunication services that is taxed as a result of this
7 paragraph is hereby waived. However, intangible personal
8 property related to the provision of such telecommunications
9 services provided by the operator of a public-use airport, as
10 defined in s. 332.004, for the operator's provision of
11 telecommunications services for the airport or its tenants,
12 concessionaires, or licensees, and intangible personal
13 property related to the provision of such telecommunications
14 services provided by a public hospital, are exempt from
15 taxation under this chapter.

16 Section 6. Subsection (6) of section 212.08, Florida
17 Statutes, 1998 Supplement, is amended to read:

18 212.08 Sales, rental, use, consumption, distribution,
19 and storage tax; specified exemptions.--The sale at retail,
20 the rental, the use, the consumption, the distribution, and
21 the storage to be used or consumed in this state of the
22 following are hereby specifically exempt from the tax imposed
23 by this chapter.

24 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
25 also exempt from the tax imposed by this chapter sales made to
26 the United States Government, a state, or any county,
27 municipality, or political subdivision of a state when payment
28 is made directly to the dealer by the governmental entity.
29 This exemption shall not inure to any transaction otherwise
30 taxable under this chapter when payment is made by a
31 government employee by any means, including, but not limited

1 to, cash, check, or credit card when that employee is
2 subsequently reimbursed by the governmental entity. This
3 exemption does not include sales of tangible personal property
4 made to contractors employed either directly or as agents of
5 any such government or political subdivision thereof when such
6 tangible personal property goes into or becomes a part of
7 public works owned by such government or political
8 subdivision. A determination whether a particular transaction
9 is properly characterized as an exempt sale to a government
10 entity or a taxable sale to a contractor shall be based on the
11 substance of the transaction rather than the form in which the
12 transaction is cast. The department shall adopt rules that
13 give special consideration to factors that govern the status
14 of the tangible personal property before its affixation to
15 real property. In developing these rules, assumption of the
16 risk of damage or loss is of paramount consideration in the
17 determination. This exemption does not include sales, rental,
18 use, consumption, or storage for use in any political
19 subdivision or municipality in this state of machines and
20 equipment and parts and accessories therefor used in the
21 generation, transmission, or distribution of electrical energy
22 by systems owned and operated by a political subdivision in
23 this state for transmission or distribution expansion.
24 Likewise exempt are charges for services rendered by radio and
25 television stations, including line charges, talent fees, or
26 license fees and charges for films, videotapes, and
27 transcriptions used in producing radio or television
28 broadcasts. The exemption provided in this subsection does not
29 include sales, rental, use, consumption, or storage for use in
30 any political subdivision or municipality in this state of
31 machines and equipment and parts and accessories therefor used

1 in providing two-way telecommunications services to the public
2 for hire by the use of a telecommunications facility, as
3 defined in s. 364.02~~(13)~~, and for which a certificate is
4 required under chapter 364, which facility is owned and
5 operated by any county, municipality, or other political
6 subdivision of the state. Any immunity of any political
7 subdivision of the state or other entity of local government
8 from taxation of the property used to provide
9 telecommunication services that is taxed as a result of this
10 section is hereby waived. However, the exemption provided in
11 this subsection includes transactions taxable under this part
12 which are for use by the operator of a public-use airport, as
13 defined in s. 322.004, in providing such telecommunications
14 services for the airport or its tenants, concessionaires, or
15 licensees, or which are for use by a public hospital for the
16 provision of such telecommunications services.

17 Section 7. Subsection (8) of section 290.007, Florida
18 Statutes, is amended to read:

19 290.007 State incentives available in enterprise
20 zones.--The following incentives are provided by the state to
21 encourage the revitalization of enterprise zones:

22 (8) Notwithstanding any law to the contrary, the
23 Public Service Commission may allow public utilities and
24 telecommunications companies to grant discounts of up to 50
25 percent on tariffed rates for services to small businesses
26 located in an enterprise zone designated pursuant to s.
27 290.0065. Such discounts may be granted for a period not to
28 exceed 5 years. For purposes of this subsection, "public
29 utility" has the same meaning as in s. 366.02(1) and
30 "telecommunications company" has the same meaning as in s.
31 364.02~~(7)~~.

1 Section 8. Subsection (3) of section 350.0605, Florida
2 Statutes, is amended to read:

3 350.0605 Former commissioners and employees;
4 representation of clients before commission.--

5 (3) For a period of 2 years following termination of
6 service on the commission, a former member may not accept
7 employment by or compensation from a business entity which,
8 directly or indirectly, owns or controls a public utility
9 regulated by the commission, from a public utility regulated
10 by the commission, from a business entity which, directly or
11 indirectly, is an affiliate or subsidiary of a public utility
12 regulated by the commission or is an actual business
13 competitor of a local exchange company or public utility
14 regulated by the commission and is otherwise exempt from
15 regulation by the commission under ss. 364.02~~(7)~~and
16 366.02(1), or from a business entity or trade association that
17 has been a party to a commission proceeding within the 2 years
18 preceding the member's termination of service on the
19 commission. This subsection applies only to members of the
20 Florida Public Service Commission who are appointed or
21 reappointed after May 10, 1993.

22 Section 9. Subsection (4) of section 364.602, Florida
23 Statutes, 1998 Supplement, is amended to read:

24 364.602 Definitions.--For purposes of this part:

25 (4) "Originating party" means any person, firm,
26 corporation, or other entity, including a telecommunications
27 company or a billing clearinghouse, that provides any
28 telecommunications service or information service to a
29 customer or bills a customer through a billing party, except
30 the term "originating party" does not include any entity
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1 specifically exempted from the definition of
2 "telecommunications company" as provided in s. 364.02~~(12)~~.
3 Section 10. Subsection (5) of section 489.103, Florida
4 Statutes, 1998 Supplement, is amended to read:
5 489.103 Exemptions.--This part does not apply to:
6 (5) Public utilities, including special gas districts
7 as defined in chapter 189, telecommunications companies as
8 defined in s. 364.02~~(7)~~, and natural gas transmission
9 companies as defined in s. 368.103(4), on construction,
10 maintenance, and development work performed by their
11 employees, which work, including, but not limited to, work on
12 bridges, roads, streets, highways, or railroads, is incidental
13 to their business. The board shall define, by rule, the term
14 "incidental to their business" for purposes of this
15 subsection.

16 Section 11. This act shall take effect October 1,
17 1999.

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20 HOUSE SUMMARY

21 Provides for telecommunications services access to
22 multitenant environments. Provides standards, prohibits
23 exclusionary contracts between landlords and
24 telecommunications companies, provides for dispute
25 resolution, and prohibits requiring a local exchange
26 telecommunications company to compensate a landlord if
27 such company provides telecommunications services to
28 tenants as a carrier-of-last-resort.
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