

STORAGE NAME: h1823p1z.uco
DATE: June 14, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Committee on Utilities and Communications
FINAL ANALYSIS**

BILL #: PCS/HB 1823
RELATING TO: Telecommunications Companies
SPONSOR(S): Committee on Utilities and Communications and Representative C. Smith
COMPANION BILL(S): SB 2476 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS
- (2) GOVERNMENTAL RULES AND REGULATIONS
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
- (4)
- (5)

I. FINAL ACTION STATUS:

Both the bill and the proposed committee substitute died in the House Utilities and Communications Committee after the committee members heard testimony on issues raised by the bill.

II. SUMMARY:

COLLOCATION

The bill requires local exchange telecommunications companies ("LECs") to provide physical collocation of switching and other equipment necessary for the provision of telecommunications services at their premises, at just, reasonable, and nondiscriminatory rates. The LEC may provide for virtual collocation of facilities if the LEC demonstrates to the Public Service Commission ("PSC") that physical collocation is not practical for technical reasons, or because of space limitations.

UNBUNDLING, OPERATIONAL SUPPORT SYSTEMS, and RESALE

The bill requires LECs to provide network features, functions, and capabilities to other telecommunications providers at rates based on the cost for the combination requested, whether the combination is a different service or whether the combination duplicates a service currently provided by the LEC. Local exchange telecommunications companies may not offer unbundled services, network features, functions or capabilities, or unbundled local loops at a rate greater than the retail price provided for basic telephone service. The bill provides that, upon request, LECs are required to provide access and use, in a nondiscriminatory manner, of the following including databases and information associated with each: preordering; ordering; provisioning; billing; and maintenance and repair functions of the operating support systems. The bill requires the PSC to calculate LEC wholesale rates as retail rates charged to subscribers for the service requested by an alternative local exchange company ("ALEC") *minus* the portion of the rates attributable to: LEC profit; LEC contribution above cost; LEC costs for marketing, billing, collection or other avoided costs.

The bill provides an effective date of October 1, 1999.

This bill does not appear to have a fiscal impact on state or local governments.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

General Background

“Local exchange telecommunications company” is defined by s. 364.02(6), F.S., as any company that was certificated by the PSC to provide local exchange telecommunications service on or before June 30, 1995. An “alternative local exchange telecommunications company” is defined by s. 364.02(1), F.S., as any company certificated by the PSC to provide local exchange telecommunications service in Florida on or after July 1, 1995.

Based on the PSC’s 1998 Report to the Legislature on *Competition in Telecommunications Markets in Florida* (“Competition Report”) there are 191 alternative local exchange telecommunications companies (“ALECs”) certificated to provide local telecommunications services in Florida. 51 of the ALECs are providing local telecommunications to over 194,000 business and residential access lines; the remainder have not yet entered the market. See Competition Report at 7.

Alternative local exchange telecommunications companies cannot provide local service without the cooperation of local exchange telecommunications companies (“LECs”). For example, to enter the market, ALECs may need the following from the LEC in a timely and affordable manner:

- to interconnect their networks with the LEC network;
- to have access to “features, functions, and capabilities,” (elements) of the LEC network in order to make their networks work;
- to physically collocate their equipment in LEC buildings in order to interconnect their networks with the LEC;
- to purchase LEC retail services to resell to end-use customers; and
- to have access to LEC support services to do basic things like change customers from the LEC network to the ALEC network.

In the transition from a monopoly environment to a new competitive environment, development of systems to deliver LEC services to ALECs has been difficult, expensive, and awkward. This has resulted in friction between ALECs and LECs over how LECs deliver such services. The PSC reports that ALECs have identified several obstacles to the development of competition. Although additional obstacles were identified, the following appear to present the ALECs with the greatest difficulty:

- 1) LEC pricing for interconnection, unbundled network elements (“UNEs”) and resale;
- 2) problems negotiating agreements with LECs for interconnection, UNEs, and resale; and
- 3) the lack of service parity with the LEC and technical difficulties.

See Competition Report at pp. 25-28.

State and Federal Regulation

The 1995 Florida Telecommunications Act, Chapter 95-403, Laws of Florida (“Florida Act”), and the 1996 Federal Telecommunications Act, Pub. L. No. 104-104, 110 Stat. 56 (“Federal Act”) each provide standards for LEC provision of services needed by ALECs. Ongoing Federal Communications Commission (“FCC”) implementation of the Federal Act through rulemaking, and judicial interpretation of the Federal Act and FCC rules also establish standards to govern the relationships between LECs and ALECs. However, by its decision in *AT&T v. Iowa Utilities Board*, Case No. 97-826, the United States Supreme Court determined that the federal standards, as opposed to state standards, are to govern. Nonetheless, the states still are charged with *implementing* much of the Federal Act.

For example, pursuant to Section 271 of the Federal Act (47 U.S.C. 271), BellSouth (along with other Bell Operating Companies) is prohibited from entering the interLATA long distance market until it passes a checklist that is used to determine whether BellSouth has sufficiently opened its network to ALECs. The PSC is charged with developing a hearing record and making recommendations to the FCC with respect to any BellSouth applications under Section 271.

ALEC Complaints to the PSC

By ch. 98-277, Laws of Florida, the Legislature required the PSC to log and report to the Legislature complaints filed by ALECs against LECs. The PSC reported 17 such complaints for 1998. See Competition Report at pp. 48-50. The subjects of these complaints range from reported "surly treatment" of an ALEC by the LEC (*Id.* at Item 6, p. 48), to failure of the LEC to comply with its interconnection agreement with the ALEC (*Id.* at item 4, p. 48). According to the Competition Report, many of these matters were scheduled for hearing.

The PSC reports that the following companies filed complaints against BellSouth: Supra (2); MCI (3); AT&T (jointly with MCI); Sprint; NationalTel; The Other Phone Company; LEC-LINK; e.spire Comm.; Orlando Telephone Company; Unicom Comm.; Easy Cellular; and TCCF.

The following companies filed complaints against GTE: Utilicore; Intermedia; and NationalTel.

The Supra Hearings

According to the Competition Report, Supra Telecommunications & Information Systems, Inc. has had two PSC hearings to resolve complaints against BellSouth.

By Order No PSC-98-1001-FOF-TP, issued on July 22, 1998, in Docket No. 980119-TP ("First Order"), the PSC resolved Supra's

- 1) complaint that BellSouth had violated the Federal Telecommunications Act of 1996,
- 2) petition for resolution of disputes as to implementation and interpretation of interconnection, resale, and collocation agreements, and
- 3) petition for emergency relief.

While many of the PSC's findings of fact spread throughout the First Order appear to favor BellSouth, the PSC ultimately required both parties to make changes in their relationship with one another. Among the significant changes ordered by the PSC are requirements that BellSouth train its employees on the proper procedures for handling ALEC repairs and that BellSouth make specified changes to its operation support systems. See First Order at 47. The PSC required Supra to pay its BellSouth bills in accordance with its agreements with BellSouth and to quit representing itself as BellSouth. See *Id.* at 48.

By Order No PSC-99-0060-FOF-TP, issued on January 6, 1999, in Docket No. 980800-TP ("Second Order"), the PSC resolved Supra's petition for emergency relief against BellSouth concerning collocation and interconnection agreements. The PSC ruled that BellSouth was required to allow Supra to collocate at the BellSouth North Dade Golden Glades and Palm Beach Gardens central offices. See Second Order at pp. 20 and 25. The PSC determined that three months was an adequate amount of time for BellSouth to respond to a collocation request. See Second Order at 28. The PSC also determined that BellSouth was not required to allow the collocation of specified switching equipment necessary for the provision of "enhanced services." See Second Order at 35.

B. EFFECT OF PROPOSED CHANGES:

This bill will require the following:

COLLOCATION

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Local exchange telecommunications companies ("LECs") will be required to provide physical collocation of switching and other equipment necessary for the provision of telecommunications services

- at their premises,
- at just, reasonable, and nondiscriminatory rates.

The LEC will be permitted to provide for virtual collocation of facilities if the LEC demonstrates to the Public Service Commission ("PSC") that physical collocation is not practical

- for technical reasons, or
- because of space limitations.

UNBUNDLING, OPERATIONAL SUPPORT SYSTEMS, and RESALE

LECs will be required to provide network features, functions, and capabilities to other telecommunications providers requesting the same at rates based on the cost for the combination requested, whether the combination is a different service or whether the combination duplicates a service currently provided by the LEC.

LECs will not be allowed to offer unbundled services, network features, functions, capabilities, or unbundled local loops at a rate greater than the retail price provided for basic telephone service.

Upon request, LECs will be required to provide access and use, in a nondiscriminatory manner, of the following including databases and information associated with each:

- preordering;
- ordering;
- provisioning;
- billing; and
- maintenance and repair functions of the operating support systems.

The PSC will calculate LEC wholesale rates as retail rates charged to subscribers for the service requested by an ALEC *minus* the portion of the rates attributable to the following:

- LEC profit;
- LEC contribution above cost;
- LEC costs for marketing, billing, collection or other avoided costs.

The effective date of the bill is October 1, 1999.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Indeterminate.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 364.16, 364.161, 364.162, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

N/A

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

indeterminate.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

AT&T and Florida Cable Telecommunications Association support the concept of addressing the issues that the bill is attempting to address. Neither believes that the amended bill conflicts with the federal law.

Supra observes that the PSC's 1998 Competition Report identified obstacles to competition including the following: insufficient wholesale discounts by LECs, high rates for use of LEC network elements, and the need for ALEC access to the full range of LEC operational support systems. Supra believes that the legislation specifically addresses these issues and provides clear answers to the problems. Supra notes that the language proposed in the bill is taken from federal legislation and FCC orders. Supra believes that the language should be included in the state law to provide clear direction to the PSC. Supra believes that ambiguities remain in the implementation of the federal law and that, as such, federal law without concrete state standards is not adequate to address the obstacles identified in the PSC's Competition Report. Supra believes that the bill provides a clear opportunity for smaller ALECs to compete now and that having an opportunity to compete later is not an option if such ALECs are not in business later.

Sprint believes that the issue of federal versus state authority on the subjects addressed by the bill has been resolved in favor of the Federal Communications Commission ("FCC") by the United States Supreme Court in the case of *AT&T v. Iowa Utilities Board*, Case No. 97-826 (US 1999). Sprint contends that, pursuant to the Court's decision, "the FCC has authority under the federal act to adopt rules, which the states must follow, to implement the interconnection, unbundling and resale provisions of the federal act."

BellSouth observed that collocation issues are being addressed at the federal level and believes that the state is preempted on this subject. With respect to language in the bill addressing the price for unbundled network features, functions, capabilities, and unbundled loops, BellSouth notes that the state is preempted by Section 252(d) of the Federal Telecommunications Act which also addresses those subjects.

- The PSC**
- 1) found ambiguities throughout the bill,
 - 2) noted that Section 252(d) of the Federal Act addresses wholesale rates, conflicts with the bill, and could preempt the bill where there is a conflict,
 - 3) suggested that the PSC would need rulemaking authority to implement the bill, and
 - 4) noted that it is difficult to estimate the workload resulting from implementation of the bill - --the PSC will attempt to implement the bill with existing staff and make a request for additional staff as workload dictates.

GTE and MCI provided comments to an earlier version of the bill but did not comment on the newer drafts.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VIII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Charles Murphy

Patrick L. "Booter" Imhof

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON Committee on Utilities and
Communications:**

Prepared by:

Staff Director:

Charles Murphy

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