

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 654  
SPONSOR: Communication and Public Utilities Committee and Senator Haridopolos  
SUBJECT: Telecommunications  
DATE: April 8, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.			ATD	
3.			AP	
4.			RC	
5.				
6.				

## I. Summary:

This committee substitute creates the Tele-Competition Innovation and Infrastructure Enhancement Act.

The committee substitute does the following:

- o Exempts voice over Internet protocol (VOIP) service from regulation and broadband or information services from local government regulation.
- o Deregulates intrastate interexchange telecommunications companies (IXCs) (companies providing long distance service) except in certain circumstances and eliminates the requirement that IXCs providing operator service obtain a certificate or be subject to greater regulation than the incumbent local exchange telecommunications companies (ILECs).
- o Extends the ILECs' universal service and carrier-of-last-resort obligations until January 1, 2009.
- o Requires ILECs to increase Lifeline participation to 125 percent of federal poverty income level and provides for other related requirements.
- o Changes the references to competitive local exchange telecommunications company (CLEC) from alternative local exchange telecommunications company (ALEC).
- o Allows ILECs to petition the Florida Public Service Commission (PSC or commission) to reduce its access charges to parity in a revenue neutral manner and provides the criteria the commission must consider when rendering its decision. "Parity" is defined as the interstate switched network access rates in effect on January 1, 2003.

- Caps network access charges at parity levels for three years after parity is reached and requires IXCs to pass through access reductions and eliminate any “instate connection fees.”
- If an ILEC with more than one million access lines in service reduces its access charges to parity, then it may have its basic local services (residential and single line business) treated in the same manner as its non-basic services and its retail service quality requirements are no greater than the service requirements than those being imposed on the CLEC unless the PSC determines otherwise, under certain conditions.
- Allows an ILEC to petition for retail regulatory treatment no greater than CLECs when the ILEC has elected to treat its basic local services the same as its non-basic service when certain conditions are met.
- Creates a procedure for staying and resolving reductions of basic service prices in an anti-competitive manner when certain conditions are met.
- Makes cross reference corrections and conforming terminology.

This bill substantially amends the following sections of the Florida Statutes: 364.01, 364.02, 364.025, 264.0361, 364.051, 364.052, 364.058, 364.10, 364.16, 364.161, 364.162, 364.163, 364.337, 364.3376, 364.502, 365.172, 196.012, 199.183, 212.08, 290.007, 350.0605, 364.602, and 489.103.

The bill creates sections 364.059 and 364.164 of the Florida Statutes.

## **II. Present Situation:**

In 1995, the Legislature enacted chapter 95-402, Laws of Florida, that opened up the local monopoly telecommunications market to competition by allowing competing telephone companies, called alternative local exchange companies or ALECs, to operate in Florida. Prior to that time, the ILECs were rate-of-return regulated companies that had a telephone service monopoly within established service areas. Under the 1995 revisions, the rates for basic local service were capped at the rates in effect on July 1, 1995, until January 1, 2000, for all companies except BellSouth and until January 1, 2001, for BellSouth.

Section 364.01, F.S., provides for the powers of the commission and legislative intent. Under subsection (3), the provision of local exchange telecommunications service is found to be in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation and encourage investment in telecommunications infrastructure.

Section 364.02, F.S. provides for definitions. Under subsection (1), companies certificated by the commission to provide local exchange telecommunications service in Florida on or after July 1, 1995, are alternative local exchange telecommunications companies. A "local exchange telecommunications company" is defined by s. 364.02(6), F.S., as "any company certificated by the commission to provide local exchange telecommunications service in this state before June 30, 1995." Intrastate interexchange telecommunications companies are not defined. The term “service” is to be construed in its broadest and most inclusive sense.

A "telecommunications company" is defined by s. 364.02(12), F.S., as:

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. . . .

Companies that provide telecommunications facilities exclusively to certificated telecommunications companies and companies excluded from the definition of telecommunications companies are not included in this definition. Companies specifically excluded from the definition include: commercial mobile radio service providers, facsimile transmission services, private computer data networks not offering services to the public for hire, and cable television companies providing cable service as defined in 47 U.S.C. § 522.

Section 364.025, F.S., provides for universal service and carrier-of-last-resort requirements. Universal service is a concept that basic telephone service should be available to everyone that desires the service at affordable prices. Subsection (1) defines "universal service" 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." The carrier-of-last-resort provision requires the local exchange telecommunications company to "furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory." This requirement expires on January 1, 2004.

Section 364.0361, F.S., requires local government authorities to treat each telecommunications company in a nondiscriminatory manner when granting a franchise or establishing conditions for compensation for the use of rights-of-way or other public property by a telecommunications company.

There are currently ten local exchange companies operating in Florida. They are: BellSouth Telecommunications, Inc., Verizon (merger of GTE and Bell Atlantic), Sprint-Florida Inc., ALLTEL Florida, Inc., GT Com (formerly St. Joseph Telephone & Telegraph Company, Florida Telephone Company, Inc., and Gulf Telephone Company), TDS/Quincy Telephone Company, Smart City Telecom (formerly Vista-United Telecommunications), Northeast Florida Telephone Company, Inc., Frontier Communications of the South, Inc., and ITS Telecommunications Systems, Inc. (formerly Indiantown Telephone System, Inc.).

The following is the number of total access lines for the Florida local exchange companies as of December 2000 according to the PSC:

BellSouth	5,532,534	Smart City Telecom	17,753
Verizon	2,336,571	TDS/Quincy	14,351
Sprint	2,166,374	NE Florida	10,285
ALLTEL	94,782	Frontier	4,660
GT Com	52,191	ITS	3,903

According to the PSC, the number of residence and business basic local telecommunications access lines for the local exchange companies with more than one million access lines is as follows:

BellSouth	4,098,599 - residence and 1,434,015 - business
Sprint	1,528,371 - residence and 625,116 - business
Verizon	1,666,058 - residence and 655,352 - business

Basic local telecommunications service is defined by s. 364.02(2), F.S., as:

voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide 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, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

According to the PSC, the monthly rates for basic local telecommunications service in Florida are as follows:

	<u>Lowest Rate Group</u>	<u>Highest Rate Group</u>
BellSouth	\$7.57	\$11.04
Verizon	\$9.72	\$12.06
Sprint	\$7.63	\$11.48
ALLTEL	\$9.53	\$11.21
Frontier	\$10.85	\$10.95

GT Com	\$6.39	\$9.28
ITS	\$9.03	\$9.03
Northeast	\$9.00	\$9.00
Quincy	\$12.95	\$12.95
Smart City Telecom	\$7.35	\$11.47

Basic local telecommunication service is subject to price regulation to the extent provided in s. 364.051, F.S. Section 364.051(1), F.S., allows local exchange companies to choose price regulation instead of rate base, rate of return regulation. Subsection (1)(c) provides that each company subject to this section is exempt from rate base, rate of return regulation and the requirements of several sections dealing with rates and revenues. The rates for basic local telecommunications service are capped for local exchange companies that choose price regulation under this section. The rates were capped at the rates in effect on July 1, 1995, and could not be increased before January 1, 1999, except for BellSouth. The rates for BellSouth could not be increased before January 1, 2001. Sprint, Verizon, and BellSouth have subsequently raised their rates under this section.

Subsection (3) of s. 364.051, F.S., allows the ILEC to adjust its basic service prices once in any 12-month period in an amount not to exceed the change in inflation less one percent on 30-days' notice. Adjustments for nonbasic service are not to exceed 20 percent within a 12-month period when there is a provider of local telecommunications service in an exchange area. Otherwise, adjustments are limited to six percent in a 12-month period where there is no other provider.

Section 364.052, F.S., provides for the regulatory methods for small local exchange telecommunications companies. This section provides conditions for small ILECs to remain rate base regulated unless they elect to become subject to price caps or when an ALEC provides basic local exchange services in the small ILEC's territory.

Section 364.058, F.S., provides that the commission may, on its own motion or upon petition, conduct limited or expedited proceedings to consider and act upon any matter within its jurisdiction. The commission is given the discretion to determine the issues to be considered.

Section 364.10, F.S., prohibits companies from giving undue advantage to persons or localities. It further provides for the exception of Lifeline assistance. Both the federal and state governments have encouraged telephone subscribership for every household. Section 364.10(2), F.S., requires telecommunications companies serving as the carrier of last resort to provide a Lifeline Assistance Plan to qualified residential subscribers. The Lifeline Assistance Plan provides bill credits for qualifying low-income consumers. Consumers who receive assistance through the Temporary Aid to Needy Families program, including the Temporary Cash Assistance and Supplemental Security Income programs, the Food Stamp program, the Federal Public Housing Assistance program, the Low-Income Home Energy Assistance Program, or the Medicaid program are eligible for the plan.

According to the commission, as of December 2002, there were 819,112 people eligible for Lifeline Assistance Plan in Florida. The commission indicates that as of that date, the total number of Lifeline subscribers was 142,521 with a participation rate of 17.3%. For 2002, BellSouth has approximately 104,503 Lifeline customers, Sprint has 10,706 and Verizon has approximately 22,850. Lifeline subscribers may receive a credit of up to \$13.00 on local monthly telephone bills as of July 1, 2001. Of that amount, the local exchange telecommunications companies contribute \$3.50.

According to the commission, BellSouth executed a settlement agreement with the Office of Public Counsel in a docket before the commission concerning quality of service issues. The agreement dealt with promoting the Lifeline Assistance Plan. The company agreed to file a tariff to establish an income eligibility test of 125% of the Federal poverty guidelines for Lifeline customers. The tariff will augment, not replace, the eligibility guidelines noted above.

Section 364.16, F.S., provides for local interconnection between the ILEC and ALECs and prescribes certain conditions upon ALEC operations.

Section 364.161, F.S., provides conditions when ALECs must unbundle their service offerings and s. 364.162, F.S., provides conditions when ALECs negotiate mutually acceptable prices, terms, and conditions and for the sale of services and facilities.

Section 364.163, F.S., provides for network access services. Under this section "network access service" means "any service provided by a local exchange telecommunications company to a telecommunications company certificated under chapter 364 or licensed by the Federal Communications Commission." It does not include local interconnection arrangements, provided in s. 364.16, F.S., or the resale arrangements provided in s. 364.161, F.S. Each local exchange telecommunications company subject to s. 364.051, F.S., (price regulation) is required to maintain tariffs with the commission that contain the terms, conditions, and rates for each of its network access services.

Switched network access rates refer to the charges for network access that are paid by IXCs to the ILECs for connection to their network and facilities. The charges are for originating a call and terminating a call for both intrastate and interstate calls. The FCC has jurisdiction over interstate telecommunication services and the PSC has jurisdiction over intrastate telecommunication services. In Florida, the intrastate charge is a per minute charge and the interstate charge established by the FCC is both a per minute charge and a monthly per line charge.

Subsection (1) of s. 364.163, F.S., provides that the rates for switched network access services for each local exchange company shall be capped at the rates in effect on July 1, 1999, and shall remain capped until January 1, 2001. Upon the date of filing its election under this section (for price regulation under s. 364.051, F.S.), the access rates are capped at the rates in effect on that date and remain capped for five years. According to the PSC, all local exchange companies except Frontier Communications of the South, Inc., have elected price regulation.

Under subsection (2), after termination of the caps imposed by subsection (1) and after the local exchange company's intrastate switched access rates reach parity with its interstate switched

access rates, a company may annually adjust any network access service rate by the cumulative change in inflation, but no more than three percent annually. The company must give 30 days' notice of the adjustment.

Subsection (3) allows ILECs to petition the commission for a network access service rate change to recover the cost of governmentally mandated projects or programs or an increase in federal or state income tax incurred after that date. Criteria are provided regarding the costs and expenses of the required government program or project.

Section 364.163(4), F.S., provides that a company may choose to implement all or a portion of a rate increase allowed for network access service under subsections (1), (2), or (3). It also provides that, notwithstanding those subsections, a company may decrease its network access services rates at any time and the new rates will become effective upon seven days' notice.

Subsection (5) of this section provides that company-proposed changes made in the terms and conditions for existing network access rates pursuant to subsections (1) - (4) are presumed valid and become effective upon 15 days' notice. Company-proposed rate decreases become effective upon seven days' notice. Rate increases made by a local exchange telecommunications company are presumed valid and become effective on the date the tariff is filed, but in no event earlier than 30 days after filing the tariff. The PSC is given continuing regulatory oversight of local exchange telecommunications company-provided network access services for purposes of determining the correctness of any price increase resulting from the application of the inflation index and making any necessary adjustments, establishing reasonable service quality criteria, and assuring resolution of service complaints.

No later than 30 days after the tariff is filed, the PSC may determine if the price increase is correct and order the local exchange company to hold all the revenues collected under the increase to refund to its customers. The commission must make a determination, within 60 days of that order, whether to order a full or partial refund or release the revenues.

Chapter 98-277, Laws of Florida, amended subsection (6) of s. 364.163, F.S., to its present form and required any local exchange telecommunications company with more than 100,000, but fewer than 3 million basic local telecommunications service access lines in service on July 1, 1995, to reduce its intrastate switched access rates by 5 percent on July 1, 1998, and by 10 percent on October 1, 1998. This reduction affected Verizon (then GTE-Florida) and Sprint-Florida. Any interexchange telecommunications company whose intrastate switched access rates were reduced as a result of these rate decreases was required to reduce its intrastate long distance rates by the "amount necessary to return the benefits of such reduction to its customers ...." The IXC could not reduce its per minute intraLATA toll rates by a percentage greater than the per minute intrastate switched access rate reduction. The IXC could determine the specific intrastate rates to be decreased, provided that residential and business customers benefited from the reductions.

Prior to the changes in 1998, subsection (6) of s. 364.163, F.S., provided that any local exchange telecommunications company whose current intrastate switched access rates were higher than its interstate switched access rates in effect on December 31, 1994, shall reduce its intrastate switched access rates by 5 percent each year beginning October 1, 1996. A local exchange

telecommunications company was relieved of this requirement if it reduced its rates by a greater percentage by the relevant dates or earlier. The reductions were made pursuant to commission Order No. PSC-94-0172-FOF-TL. This order provided, among other things, that BellSouth reduce its access rates.

Section 364.163 (7), F.S., currently provides that reductions for intrastate-switched access rates and customer long distance rates shall become effective on October 1 of each relevant year. Any rate decreases proposed in tariff revisions filed with the commission by the telecommunications companies is presumed valid and becomes effective October 1 of each relevant year.

Subsection (8) provides that no later than 30 days after the tariff is filed, the commission may determine if the rate decrease is correct and order the telecommunications company to hold all intrastate switched access or customer long distance rate revenues collected after the decrease to refund to its customers. The PSC must make a determination, within 60 days of the order, whether to order a full or partial refund or release the revenues.

Subsection (9) of s. 364.163, F.S., gives the commission continuing regulatory oversight of intrastate switched access and customer long distance rates for the purpose of "determining the correctness of any rate decrease by a telecommunications company resulting from the application of this section and making any necessary adjustments to those rates, establishing reasonable service quality criteria, and assuring resolution of service complaints."

The following is a comparison of switched access charges for intrastate and interstate rates as of July 2, 2002. It includes one minute of originating and one minute of terminating switched access and assumes common transport.

	<u>Intrastate Rate</u>	<u>Interstate Rate</u>
BellSouth	\$0.0460	\$0.0098
Verizon	\$0.0982	\$0.0157
Sprint	\$0.1027	\$0.0140
ALLTEL	\$0.1132	\$0.0224
GT Com (Floral) (Gulf)	\$0.1522	\$0.0327
	\$0.1214	\$0.0368
(St. Joseph)	\$0.1306	\$0.0327
Smart City Telecom	\$0.1426	\$0.0210
TDS/Quincy	\$0.1282	\$0.0299
NE Florida	\$0.1126	\$0.0323

	<u>Intrastate Rate</u>	<u>Interstate Rate</u>
Frontier	\$0.1040	\$0.0203
ITS	\$0.1128	\$0.0364

According to the commission, intrastate network access service rates were set well above the incremental cost of providing the service in order to keep rates for basic local telecommunications service as low as possible and to encourage subscribership. The FCC has addressed the issue of access charges by reducing the per minute charge and establishing line item flat charges on the telephone bill. According to an FCC consumer facts web publication, subscriber line charge caps are now set at \$6.50.

Section 364.337, F.S., provides for oversight of alternative local exchange telecommunications companies.

Section 364.3376, F.S., provides for the regulation of operator service providers and requires a certificate of convenience and necessity as an operator services provider or an interexchange telecommunications company in order to provide such services.

Section 364.502, F.S., establishes criteria ILECs and ALECs must meet when video programming is offered. Section 365.172, F.S., relates to the Wireless Emergency Communications Act.

Subsection 196.012(6), F.S., establishes certain exemptions for tax purposes, paragraph 119.183(1)(b), F.S., provides for certain exemptions from annual and non-recurring taxes, and subsection 212.08(6), F.S., provides for sales, rental, use, consumption, distribution and storage taxes and certain exemptions and each provision references telecommunications facility as defined in 364.02(13), F.S.

Subsection 290.007(8), F.S., provides for state incentives that are available in enterprise zones, subsection 350.0605(3), F.S., provides certain prohibitions and conditions for former commissioners and employees representing clients before the commission, subsection 364.602(4), F.S., provides for the definition of originating party with respect to the Telecommunications Consumer Protection Act, and subsection 489.103(5), F.S., relating to construction contracting and providing exemptions and each provision refers to the definition of telecommunications companies in 364.02(13), F.S.

### III. **Effect of Proposed Changes:**

**Section 1** creates s. 364.012, F.S., to name the act the “Tele-Competition Innovation and Infrastructure Enhancement Act”

**Section 2** of this bill amends the legislative intent provisions in s. 364.01(3), F.S., to find that unnecessary regulation, regardless of the provider, of the provision of voice over Internet protocol (VOIP) is not in the public interest. There is no definition of VOIP contained in s. 364.02, F.S.

VOIP is an emerging service that uses digital technology to provide voice communications service rather than traditional analog technology. There is currently regulatory uncertainty regarding VOIP since the FCC has not determined whether VOIP service is a “telecommunications service” or an “information service” under federal law. The federal regulatory framework is substantially different for these classifications.

The commission states that the concept of a regulatory distinction based on technology rather than services is new. Historically, both state and federal law and regulatory regimes have focused on the nature of services, such as “telecommunications services” versus “information services,” rather than the underlying technological provision of the service. The commission continues that such an approach permits the evolution of technology without retooling regulatory frameworks at every evolutionary stage. Today’s merging of telecommunications technologies and computing technologies adds further ambiguity when determining an appropriate method by which to distinguish those things to which regulation should apply. By example, the commission states that currently, some local exchange companies in Florida employ VOIP technology in their existing networks. The commission opines that it is unclear whether this provision has any impact on existing regulation of the local exchange company services based on the fact that some of those services are provided, in part, through VOIP technology.

**Section 3** amends s. 364.02, F.S., regarding definitions. The term “alternative” local exchange telecommunications company is changed to “competitive” local exchange telecommunications company. Since passage of the Telecommunications Act of 1995, the FCC and the industry more commonly use the term competitive local exchange telecommunications company rather than alternative local exchange company. This change conforms Florida’s laws with industry and federal use.

Subsection (7) is added to define the term “intrastate interexchange telecommunications company” to mean any entity that provides intrastate interexchange telecommunications service. Subsection (11) is renumbered to (12) and the definition of the term “service” is modified to exclude VOIP except as it relates to the rights and obligations on any entity providing VOIP to pay access charges or intercarrier compensation to the extent that those charges are implemented by the FCC or the commission at some future date. This issue is currently pending before the Federal Communications Commission.

The definition of “telecommunications company” is renumbered subsection (13) and amended to exempt intrastate interexchange telecommunications companies from the definition and, therefore, from regulation. However, the exemption would not apply to: chapters 202, 203, and 212, F.S., pertaining to taxation; s. 364.025, F.S., charges relating to universal service; and s. 364.336, F.S., relating to regulatory assessment fees. The exclusion is further limited by the continuing application of ss. 364.04 (tariffs), 364.10(3)(a) and (d) (Lifeline), 364.015 (injunctive relief), 364.285 (penalties), 364.163 (network access charges), 364.501 (underground excavation damage protection), 364.603 (slamming) and 364.604 (billing practice - primarily cramming), F.S. Further, the IXCs are obligated to pay network access charges or other applicable intercarrier compensation to local exchange telecommunications companies and reduce their long distance toll rates in accordance with s. 364.163(2) (pass through requirement associated with access reductions), F.S. Interexchange telecommunications companies are required to

provide the commission with current information the commission deems necessary to contact and communicate with each company. This approach appears to eliminate the need for certification under s. 364.337, F.S., although it is still required under that section.

The commission states that under this committee substitute, IXCs will no longer be subject to s. 364.19, F.S., relating to regulation by the commission of telecommunications service contracts. This statute is the primary basis for the commission's rules relating to consumer billing issues other than slamming and cramming. Such billing complaints still comprise a significant portion of all IXC related complaints.

**Section 4** of the bill extends the applicable deadlines that appear in s. 364.025, F.S., for Universal Service and carrier of last resort (COLR) to January 1, 2009. In effect, the incumbent local exchange telecommunications companies remain the universal service providers and COLR until that time. Prior to that date, any party may petition the commission to change the existing interim universal service mechanism and the Legislature is to establish a permanent universal service mechanism. After that date, a competitive local exchange telecommunications company may petition the PSC to become the universal service provider and COLR in its designated service territory. Language providing a competitive carrier a mechanism to carry out these duties and obligations is deleted. Throughout the section, the word alternative is changed to competitive as it describes those local exchange telecommunications companies.

The commission is required to make a determination as to its authority to address a universal service support mechanism for small local exchange telecommunications companies different from the interim mechanism. The commission is required to report its finding to the Legislature and, if deemed necessary, recommend legislation.

**Section 5** amends s. 364.0361, F.S., to prohibit any local government from regulating terms and conditions, which include operating systems, qualifications, services, service quality and territory, and prices, applicable to the provision of any broadband or information service. Telecommunications providers are still subject to the provisions of ss. 166.046 (minimum standards for cable television franchises), and 337.401 (use of right-of-way for utilities subject to regulation), F.S.

**Section 6** amends s. 364.051, F.S., to address the transition of regulatory oversight for incumbent local exchange telecommunications companies to that equivalent for competitive local exchange telecommunications companies. In subsection 364.051(3), F.S., the current language provides that ILECs may increase the prices for basic services once in a 12 month period not to exceed the change in inflation less 1 percent. The word "prices" has been changed to "revenues" which gives the ILECs more flexibility for adjustments within the category of basic services. According to the PSC, most ILECs have rate groups for basic local exchange service. Historically, rates have varied across rate groups according to the number of customers in the local calling area. (See chart on page 4.) Those local calling areas with the highest number of customers pay more and those in the smaller local calling areas pay less. For example, the commission states that in one ILEC's territory, the largest rate group pays \$11.04 per month and the smallest rate group pays \$7.57 per month. The ILECs have historically argued that this price relationship is inversely related to the actual cost of providing service. The change from "price" to "revenue" will permit the ILECs to raise rates in the lowest priced area by more than the

inflation rate less 1 percent and higher rate group might be increased less, but overall across the basic category, revenues would not increase beyond the inflation rate less 1 percent.

The bill adds subsection (6) which provides that when ILECs with greater than one million access lines have achieved parity as defined in s. 364.164(5), F.S., the ILEC's basic local telecommunications services may, at the company's election, thereafter be subject to the same regulatory treatment as its non-basic services. The company's retail quality of service requirements will thereafter be no greater than those applicable to competitive local exchange telecommunications companies. However, the PSC may, within 120 days of election by the ILEC, find that such relaxation of service quality standards is not warranted in some or all markets served by the ILEC. The commission is authorized to allow some relaxation of quality standards in some or all markets. The PSC may impose no service quality requirements for competitive local exchange telecommunications companies greater than those in effect as of January 1, 2003.

According to the commission, ss. 364.01(4)(c), 364.337(2) and (5), F.S., provide it with specific statutory authority for service quality standards for CLECs, however, it has not adopted any rules nor a defined regulatory program on service quality for CLECs beyond the requirement to file and follow what is contained in its price list. Service quality standards include the timeliness of providing service when requested, the frequency and duration of service outages, the timely restoration of service following an outage, and the likelihood of successfully completing a call.

The commission states that they have not imposed any service standards on CLECs prior to January 1, 2003, because they have taken the approach of minimizing any barriers to entry for the competing companies and because many CLECs have no facilities of their own and rely on the underlying service quality of larger ILECs. The commission explains that most CLECs are small start-up companies for which additional requirements may have imposed unnecessary costs. The commission states that it has worked to complete performance metrics and standards for the ILECs wholesale operations before considering imposing service standards on CLECs. The commission continues that the CLECs do not have control over the installation and repair of resale and leased network facilities, for the most part. The ILEC usually performs both the installation and repair under the interconnection agreement with the CLEC. The commission states that they have effectively set standards for the performance of the CLECs to some degree by requiring the ILECs to provide the service in a timely manner to the CLECs. It adds that the ILEC's wholesale performance is required to be at parity with its retail standards. The commission concludes that if they have service requirements on the retail portion, the performance on the wholesale is driven accordingly.

The bill adds subsection (7) that provides when an ILEC has met the condition of parity and has elected to have its basic services treated as non-basic, it may, at that time or thereafter, petition the commission for regulatory treatment of its retail services at a level no greater than that currently imposed on CLECs. The ILEC is required to show that granting the petition is in the public interest and it must further reduce its switched network access charges to a level equal to that of its intercarrier compensation rates. The commission must act on the petition within nine months and in its consideration of the petition must determine the extent to which the level of competition faced by the ILEC permits, and will continue to permit, the regulatory treatment of ILEC retail service regulated on the same basis as those of CLECs. The commission is

prohibited from increasing the level of regulation on CLEC retail services beyond that which is in effect on the date of the ILEC petition. These provisions also apply to small ILECs (less than one million access lines) that have reduced their intrastate switched network access rates to a level equal to the company's interstate switched network access rate in effect on January 1, 2003.

**Section 7** amends s. 364.052, F.S., to make conforming changes to use the term competitive local exchange telecommunications company rather than alternative local exchange telecommunications company.

**Section 8** amends s. 364.058, F.S., to add subsection (3) which creates an expedited process before the commission to facilitate quick resolution for dealing with intercarrier disputes by minimizing the time necessary to reach decisions. The commission is to render its decision within 120 days. The commission may limit use of the process based on the number of parties and the complexity of the issues. The commission is required to adopt rules to implement this process.

**Section 9** creates a new s. 364.059, F.S., relating to procedures for seeking a stay and providing for benchmarks and criteria. The commission is designated as arbiter of allegations relating to anti-competitive practices by an ILEC against another ILEC or CLEC. The commission may grant a stay of the effective date of a price reduction for a basic local telecommunications service. The commission is authorized to address allegations pursuant to the sections relating to cross-subsidization, below cost, and rate caps; free or reduced rates; rebates or special considerations; undue advantage to individual or locality; or cross-subsidization. The petitioner must make the same showing as required by law for a temporary injunction and the ILEC is given seven days to respond. The commission may not grant a stay unless it has voted on the petition after an opportunity for oral argument. If granted, the stay can not exceed 45 days and the commission must make its decision on the merits within 45 days from when the petition is filed unless relevant cost information and supporting documentation cannot be provided in that time period. The commission may grant an extension, not to exceed 15 days, to permit parties to provide relevant cost and supporting documentation. The commission has access to the ILECs' relevant cost studies and supporting documentation pursuant to s. 364.183, F.S.

In carrying out the above described procedures, the commission is required to establish objective benchmarks, such as a price or cost floor, by which it can determine whether a requested stay is warranted. The benchmarks are to be based on generally accepted economic costing and pricing principles and judicial or regulatory costing and pricing precedent. The commission is to establish the criteria for determining whether the basic local telecommunications service price reduction is anti-competitive. The commission must initiate rulemaking to establish the benchmarks no sooner than January 1, 2005, and issue a final order no later than 120 days after commencement. It should be noted that some contested rulemakings can take longer than 120 days to complete.

The commission states that this section is designed to provide more timely relief to CLEC market participants, in cases where anti-competitive behavior is alleged, than is currently available through other legal avenues. The commission notes that since the new language refers to allegations against a "local exchange telecommunications company," the relief appears to be

available only to CLECs, but not to ILECs should they believe anti-competitive activity is occurring against them.

If, however, the FCC or commission determines that neither access charges or intercarrier compensation apply to VOIP, the commission must immediately commence the establishment of the benchmarks and criteria required under this section and the ILEC may make and implement its plan for rebalancing its rates and access charges as described in s. 364.051(6), F.S.

**Section 10** amends s. 364.10, F.S. to add subsection (3)(a) which requires that any LEC authorized to reduce its switched network access rate, effective September 1, 2003, to have tariffed and provide Lifeline service to any currently eligible customer and expands the eligibility criteria to include those persons meeting an income test of 125% of the federal poverty guideline. All IXC's must file a tariff by September 1, 2003, providing, at a minimum, any Lifeline benefits currently provided and those benefits also must be provided to those newly eligible under the new income test. The Office of Public Counsel will be responsible for certifying and maintaining claims submitted by a customer for eligibility.

New paragraph (3)(b) provides that each affected ILEC must supply each state and federal agency that provides benefits to persons eligible for Lifeline services with applications, brochures, pamphlets, or other materials to inform such persons of their eligibility. Each state agency providing benefits must furnish the materials to affected persons at the time of application for benefits.

Paragraph (3)(c) exempts Lifeline subscribers from basic local service rate increases associated with the reduction of access charges until the access charges of the ILEC providing service reach parity, or until the subscriber is no longer eligible for Lifeline benefits.

Paragraph (3)(d) provides that each agency providing benefits to persons eligible for Lifeline service must, by December 31, 2003, undertake with the Department of Children and Families, the PSC, and telecommunications companies, to develop processes for promoting Lifeline participation.

Paragraph (3)(e) requires the commission to report by December 31 of each year to the Governor, the Speaker of the House, and the President of the Senate, on the number of customers to subscribing to Lifeline service and the effectiveness of any promotional programs.

**Sections 11, 12, 13, 18, and 19** amend ss. 364.16, 364.161, 364.162, 364.502, and 365.172 F.S., respectively, to make conforming changes to use the term competitive local exchange telecommunications company rather than alternative local exchange telecommunications company.

**Section 14** amends s. 364.163, F.S., by deleting subsections (1), (3), (4), and (5) which relate to current caps on intrastate switched access rates, already executed reductions, and long distance flow through reductions. Subsections (7) and (8) are also deleted. Amended subsection (2) becomes (1) and provides that after an ILEC's access rates are reduced to parity, they become capped for a period of three years thereafter.

Former subsection (6) becomes (2) and is amended to provide long distance rate reduction flow-throughs tied to switched network access charge reductions pursuant to s. 364.164, F.S. It further provides that these reductions must benefit both business and residential consumers. It provides for the elimination of any in-state connection, or similarly named fee, to be eliminated by July 1, 2006, provided that the reductions can be done in a revenue neutral manner. Tariff changes made pursuant to this section are effective on one-day's notice.

Subsection (3), formerly subsection (9), maintains the commission's regulatory authority over switched network access and customer long distance rates for the purpose of determining the correctness of any rate decrease resulting from the applications of the access reduction provision.

**Section 15** creates s. 364.164, F.S., to provide for the switched network access rate reductions. After July 1, 2003, a LEC may petition the commission to reduce its intrastate access charges in a revenue neutral manner. The final order on the petition must be issued within 90 days. In reaching its decision, the commission must consider whether granting the petition will (1) remove current support for basic local telecommunications services that is preventing the development of more competitive options for the benefit of residential customers, (2) enhance market entry, (3) require access rates to reach parity in two to four years, and (4) be revenue neutral.

If the commission grants the petition, the LEC is authorized to create a revenue category that consists of basic local exchange service and switched network access service, in which any reduction to switched access rates shall be revenue neutral within the category. On 45 days notice, thereafter the LEC may, once in a 12 month period and in a revenue neutral manner, adjust the various prices and rates within this revenue category to the amount previously established by the commission. The revenue effect on the category is then calculated by multiplying the new switched network access rate by the number of switched network access minutes of use for the most recent 12 months. The number of switched network access minutes of use will most likely vary each year. Any shortfall in the revenue category is made up by increasing the revenues from basic local telecommunications service. In no event shall any reductions in switched network access charges be entirely offset by increases in the company's monthly recurring rates for basic local telecommunications service. Presumably nonrecurring charges associated with basic local exchange service would comprise the difference. This is accomplished by dividing the revenue shortfall by the number of most recent units of basic local telecommunications service, which most likely will vary each year.

Because the switched network access minutes of use, as well as the basic local service units, will vary year to year, it is not possible to predict with any certainty the size of any annual rate adjustments or the cumulative resulting rate adjustment. All changes within the category are to be implemented simultaneously and the commission must issue a final order, which will be final for all within 45 days after the rate adjustment filing. While the commission will make the ultimate determination, the large ILECs expect the following reductions in intrastate switched network access rates and potential increase in basic local service increase:

Company	Reduction in Switched Network Access Rates*	Increase in Basic Local Service*	Basic Local Service Rate Increase
BellSouth	\$135,000,000	\$.045/min to \$.01/min.	\$3.00 to \$3.50 over 3 years
Sprint-Florida	\$147,000,000	\$.10/min to \$.02-.01/min.	\$6.50 to \$7.25 over 4 years
Verizon	\$80,000,000	\$.09/min to \$.02-.01/min.	\$4.50 to \$5.00 over 4 years

\* These figures are estimates and are subject to commission verification and approval.

Subsection (3) provides that the filing will be based on the company’s most recent 12 months’ pricing units. The commission has the authority only to verify the accuracy of the pricing units for the purpose of ensuring the revenue neutrality of the filing. Discovery or information requests must be limited to verification of pricing units to ensure that rate adjustments are revenue neutral within the revenue category.

Subsection (4) exempts pay telephone providers from increases under this section, which exemption appears to be permanent.

Subsection (5) defines parity for ILECs with greater than one million access lines as equal to interstate access charge rates in effect as of January 1, 2003. For ILECs with one million or less access lines parity is defined as equal to 8 cents per minute. Access reductions below parity in a revenue neutral manner are allowed.

Subsection (6) defines the intrastate switched network access rate as a composite of originating and terminating access rates for carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching.

Subsection (7) defines revenue neutrality within the service category and exempts pay telephone units and Lifeline units from the calculation of revenue neutrality.

Subsection (8) provides that if the FCC or commission determines that VOIP services, or its functional equivalent, are not subject to the payment of switched network access rates, the timetable for reducing switched network access rates in a revenue neutral manner will be accelerated to the shortest time frame. It appears that if the FCC or the commission make this determination prior to the ILEC’s petition, the rate adjustments could be come effective whether or not the commission granted the petition. However, according to the commission, it does not have any such docket before it and, while the FCC has petitions pending before it that would address these issues, it has not scheduled these for resolution. If, at a later date and after the commission has granted petitions, a decision on VOIP were made, then the ILEC may accelerate the reduction of its switched network access rates in a revenue neutral manner to the level of its intercarrier compensation rates within 2 years.

**Section 16** amends s. 364.337, F.S., to substitute the word “competitive” for the word “alternative” and to include s. 364.33, F.S., relating to certificate required for construction or

operation of a telecommunications facility, in the list of statutes under which competitive local telecommunications companies will continue to be governed. Subsection (3) appears to continue to require IXC certification and may be inconsistent with 364.02(1)(g).

**Section 17** amends subsection (1)(a) of s. 364.3376, F.S., relating to operator services to remove “interexchange telecommunications company” from the list of entities that must seek certification to provide operator services. Subsection (1)(b) is amended to include interexchange carriers as those exempt from certification requirements to provide operator services. These changes reflect that interexchange telecommunications companies would be exempt from the certification requirement if the bill is passed.

**Sections 20, 21, and 22** amend ss. 196.102, 119.183, and 212.08, F.S., respectively, to make conforming changes regarding references to the term telecommunications facilities by changing subsection (13) to (14).

**Sections 23, 24, 25, and 26** amend ss. 290.007, 350.0605, 364.602, and 489.103, F.S., respectively, to make conforming changes regarding references to the term telecommunications company by changing subsection (12) to (13).

**Section 27** provides that this act shall take effect upon becoming a 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:

BellSouth has estimated that the total reduction in revenue to reduce the intrastate switched network access rates to parity is approximately \$135 million. BellSouth estimated that their adjustment would be in three increments of \$1.00 to \$1.17 per year for a total of \$3.00 to \$3.50.

Sprint estimates that the total reduction in revenue to reduce the intrastate switched network access rates to parity is approximately \$147 million. Sprint estimated that their adjustments would be in four increments of \$1.63 to \$1.81 per year for a total of \$6.50 to \$7.25.

Verizon estimates that the total reduction in revenue to reduce the intrastate switched network access rates to parity is approximately \$80 million. Verizon estimated that their adjustments would be in four increments of \$1.13 to \$1.25 per year for a total of \$4.50 to \$5.00.

It should be noted that these figures are only estimates and will be subject to commission verification and approval.

These adjustments would be added to the customers' basic rates. The long distance companies are required to flow through any reductions in access rates for the benefit of both the residential and business customers. The in-state connection charge, or other charges similarly named, will be eliminated under the committee substitute.

**C. Government Sector Impact:**

The PSC states that it will not realize a fiscal impact under this committee substitute. It states that the net increase in workload can be absorbed by existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.