

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1829 (PCB SA 04-23) Regulation of Telecommunications Companies  
**SPONSOR(S):** State Administration and Benson  
**TIED BILLS:** none **IDEN./SIM. BILLS:** none

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>7 Y, 0 N</u>	<u>Holt</u>	<u>Everhart/Liepshutz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill reinstates the law as it existed prior to the 2003 Tele-Competition Innovation and Infrastructure Enhancement Act (Chapter 2003-32, Laws of Florida), becoming law on May 23, 2003.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1829.sa.doc  
**DATE:** March 26, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

##### Chronology of Access Charge Reduction Petitions and Appellate Challenges to Florida Public Service Commission Order

The 2003 Tele-Competition Innovation and Infrastructure Enhancement Act (The Act) provided a three-phase process to reach full competitive market enhancement. On May 23, 2003, the Act became effective upon signing by the Governor. On August 27, 2003, Verizon, Sprint, and BellSouth filed petitions authorized by the Act seeking the reduction of intra-state long distance access fees and increases in the prices charged for basic service. Between October 1 and December 10, 2003, the Florida Public Service Commission (PSC) held public hearings at 14 locations throughout the state for the purpose of receiving public testimony regarding the petitions filed by the three incumbent local exchange companies (ILECs). Between December 10 and 12, 2003, the PSC held public hearings on the petitions and received public testimony from 26 witnesses on behalf of the ILECs, intervenors, consumer advocates and its own staff.

On December 24, 2003, the PSC rendered its findings and conclusions in a final order granting the companies' petitions as amended by their commitments made on the record at the final hearing. Both the Attorney General and Public Counsel have filed appeals to the Florida Supreme Court. The Attorney General and American Association of Retired Persons (AARP) have filed motions before the PSC for reconsideration of the PSC order. On March 3, 2003, after considering numerous filings of the parties in the appellate proceedings, the Supreme Court issued an order relinquishing jurisdiction back to the PSC for the purpose of ruling on motions for reconsideration on or before May 3, 2004.

##### Main Features of the Initial Phase of the Act

The PSC final order approving the telephone companies' petitions for reductions in access fees and increases in the price of basic service involved only the first phase. In the first phase, the Act allows the ILECs to petition the PSC for reductions in the access fees they charge long distance companies for using the local system and also to petition for increases in the price they can charge for basic residential and single-line business service. The Act provides a mechanism to remove the subsidy that basic local service arguably receives from intrastate access fees by gradually lowering access fees and raising the price of basic service at or above its actual cost in order to attract competitors to enter the local exchange market.

The 2003 Act sets forth four (4) criteria that the PSC must consider when determining whether to grant the petitions; those criteria are whether granting the petition will:

- (a) Remove support for basic local telephone service that prevents the creation of a more competitive local exchange market for the benefit of residential consumers.
- (b) Induce enhanced market entry.
- (c) Require intrastate long distance access rate reductions to reach “parity” with interstate access charges in not less than 2 years or more than 4 years.
- (d) Be revenue neutral for the ILEC [that is, will the company be simultaneously offsetting its reduced revenues from lower access fees with the increased revenues it receives from higher rates charged to its flat-rate residential customers and single-line business customers].

The PSC order approved allowing the telephone companies to simultaneously raise basic service prices, dollar for dollar, to offset the decrease in revenue they would experience from reductions in intrastate access fees. Under the Act, the process of lowering access fees and raising the price for basic service was to occur over a period of not less than two years or more than four years until “parity” was reached. Parity would be reached when intrastate access fees became equal to the access fees charged for interstate long distance. The PSC order allowed the BellSouth and Verizon price increases for basic service to occur over a twenty-four month period, and the Sprint increases to occur over a thirty-six month period.

Briefly, the PSC found the petitions properly linked increases in local monthly phone rates with reductions in intrastate access charges. As a result, the following rates were approved:

- The average BellSouth residential customer will experience a cumulative increase estimated at \$3.50 spread over twenty-four months in increments of \$1.25, \$1.25, and \$1.00.
- The average Sprint residential customer will see an increase of \$6.86 spread over thirty-six months. The first and second increments will be \$2.25. The third increment will be \$1.36 and the fourth increment will be \$1.00.
- The average Verizon residential customer will see an estimated cumulative increase of \$4.73 spread over twenty-four months in increments of \$1.58, \$1.58, and \$1.57.

The total price increase in basic service that the PSC approved in the petitions was approximately \$344 million. That \$344 million is to be offset by a \$344 million reduction in access fee revenue for the ILECs. The \$344 million that the long distance companies will no longer have to pay to the ILECs must in turn be passed through by the long distance companies as savings to consumers. However, because the intrastate long distance usage rate of business customers is significantly greater than the usage rate of residential customers, the savings that residential customers will realize will necessarily be less than the total price increase that residential customers will experience. Much of the savings on the long distance side will be passed through to businesses, especially multi-line businesses, although the price increase for basic service will fall primarily on the residential customers.

Thus, the PSC order requires the companies to lower the access fee revenues they now receive from long distance companies in an amount that matches the increased revenue that they will receive from basic service prices. This requirement reflects the “revenue neutrality” feature of the Act; revenue neutrality relates to the companies’ revenues, not the state’s revenues. Additionally, the concept under the Act would not appear to mean “cost neutrality” or “bill neutrality” for each individual residential customer, because the magnitude of the savings that residential customers will realize under the “pass through provision” is limited by their long distance usage.

To protect the economically disadvantaged the Act also contains a Lifeline provision which made those with incomes at or below 125% of the federal poverty level eligible for a subsidy of up to \$13.50 per month for basic service. It protected these individuals against price increases until parity was reached within two to four years. However, the three companies voluntarily committed to expand eligibility for Lifeline to individuals whose incomes are 135% or less of the federal poverty level and to protect Lifeline eligible consumers for four years, even if parity was reached sooner.

### Main Features of Phases Two and Three, and the Voip Trigger

The current case before the PSC and the Supreme Court only concerns phase one of the Act. Phases two and three of the Act could also affect pricing and service quality standards in the future. In addition, another provision involving Voice over Internet Protocol (VoIP) could affect pricing.

#### Phase Two of the Act

Once the ILECs reach parity in the first phase where its intrastate access charge equals its interstate access charge, the second phase begins. In the second phase:

A. The Act allows an ILEC to elect to treat its basic telephone service the same as its non-basic services. That would mean that the ILEC could increase its prices for basic service. The price increase could be up to 6% per year in areas where there is only one local exchange company and up to 20% per year in areas where there is more than one local exchange company.

B. In addition, once an ILEC has made the election, its service quality standards would automatically be reduced to the levels of a competitive local exchange company (CLEC). That would mean that the ILEC will be subject to minimal, if any, service quality standards, unless the PSC intervenes within 120 days to limit the extent of the reductions in service quality standards.

#### Phase Three of the Act

Anytime after the ILEC has made the election in phase two, it can opt to enter phase three by petitioning the PSC to allow it to price all its retail services, including basic service, the same as a CLEC. That would mean that the 6/20% limits on pricing would no longer apply. At the same time, the company would be required to further reduce its intrastate access charge below the parity level, to as little as 1/10th cent per minute. The ILEC would have to show, before the PSC, that it is in the public interest to remove pricing limitations and that the ILEC would also further reduce intrastate access charges to the required level.

#### VoIP Trigger

In general, VoIP is the practice of sending digitized phone calls over the Internet like a piece of e-mail. This technology avoids the necessity for traditional wire connection used for residential phone connection. There is currently pending at the federal level the question as to whether access charges are applicable to a VoIP call.

The Act provides for the acceleration of implementing price increases for basic services and the reduction of access fees in the event of a federal or PSC decision concluding that VoIP is not subject to access charges. The timeframe is reduced to the shortest period allowed by the Act which is two years. In addition, access charges have to be reduced below parity to as little as approximately 1/10th cent, the authorized local reciprocal compensation rate, within that shortened timeframe. And, the lost revenues from access charge reduction could be recouped by the LEC through price increases for basic service within that same shortened timeframe. Under the Act, a petition would not be required for this acceleration to occur.

## PROPOSED CHANGES

The bill reinstates the law as it existed prior to the 2003 Tele-Competition Innovation and Infrastructure Enhancement Act (Chapter 2003-32, Laws of Florida), becoming law on May 23, 2003.

As such, the bill deletes the authority for ILECs to petition the PSC for approval of access fee reductions and to offset those reductions in a revenue neutral manner with increases in the price charged residential and single-line businesses for basic service. It deletes the authority for ILECs to make certain elections after having reached parity which would mean that ILECs could no longer elect to treat basic service the same as non-basic service. Thus, they would be unable to raise prices for basic service from between 6% - 20%, depending upon competition in the local market, after having reached parity in the future. Also, after having reached parity, they would be unable to automatically reduce their service quality standards to those of their competitors in the local market.

The bill also repeals phase three of the Act. Therefore, ILECs would not be able to petition the PSC to allow them to set prices for all their retail services without limitation and to reduce their access fee charges below parity. It would also prevent them from being able to offset revenue losses from a further reduction in access fees through an increase in the price for basic service. The bill also deletes a legislative finding that VoIP should be free of unnecessary regulation. In addition, this bill repeals the VoIP trigger provision that could accelerate price increases and result in further reductions in access fees if the PSC or the FCC issues a final order concluding that VoIP is not subject to access fees.

The bill also deletes changes to the definition of "telecommunications company" which had removed intrastate interexchange telecommunications companies from regulatory coverage by the PSC in certain instances.

In addition, the bill deletes language that specified that information and broadband services should be free of local regulations.

To conform with the repeal of phases two and three, the bill repeals procedures related to legal challenges that could arise from a company's election to treat its basic services the same as its non-basic services. The bill also deletes provisions for an expedited hearing process before the PSC for resolution of disputes between telecommunications companies.

The bill deletes provisions that increased consumer eligibility for Lifeline subsidies to 125% of the federal poverty level, resulting in a return to the Lifeline qualification standard of 100% of the federal poverty level. The bill also deletes the extension of the expiration of the mandatory universal service requirement to 2009, returning the law to the previous expiration date of 2004.

The bill deletes provisions requiring long distance companies to flow-through savings to long distance customers that result from a lowering of access fees, since the bill no longer provides a mechanism for ILECs to reduce access fees and raise the price of basic service.

The Act takes effect upon becoming law.

### C. SECTION DIRECTORY:

Section 1 amends s. 364.01, F.S., to remove statutory intent regarding voice over internet communications.

Section 2 amends s. 364.02, F.S., regarding definitions applicable to ch. 364, F.S.

Section 3 amends s. 364.025, F.S., regarding the universal service requirement, to change the requirement to provide universal service through 2009 to a requirement to provide universal service through 2004.

Section 4 amends s. 364.0361, F.S., to remove the limitation prohibiting local governments from regulating broadband or information services.

Section 5 amends s. 364.051, F.S., to repeal subsections (6) through (8) on parity and local rate competition.

Section 6 amends s. 364.052, F.S., to change the term "competitive local exchange telecommunications company" to "alternative local exchange telecommunications company".

Section 7 amends s. 364.058, F.S., to delete the requirement that the Public Service Commission implement a facilitated process for dispute resolution regarding disputes between telecommunication companies.

Section 8 deletes s. 364.059, F.S., regarding resolution of disputes alleging an anticompetitive price reduction by a telecommunications company.

Section 9 amends s. 364.10, F.S., to remove certain provisions regarding Lifeline services.

Section 10 amends s. 364.16, F.S., section 11 amends s. 364.161, F.S., and section 12 amends s. 364.162, F.S., to change the term "competitive local exchange telecommunications company" to "alternative local exchange telecommunications company".

Section 13 amends s. 364.163, F.S., to reinstate a cap for switched network access services through January 1, 2001, to limit rate increases thereafter based on certain criteria.

Section 14 repeals s. 364.164, F.S., which section provides for competitive market enhancement to telecommunication rates.

Section 15 amends s. 364.337, F.S., section 16 amends s. 364.3376, F.S., section 17 amends s. 364.502, F.S., and section 18 amends s. 365.172, F.S., to change the term "competitive local exchange telecommunications company" to "alternative local exchange telecommunications company", and make editorial changes.

Section 19 amends s. 196.012, F.S., section 20 amends s. 199.183, F.S., section 21 amends s. 212.08, F.S., section 22 amends s. 290.007, F.S., section 23 amends s. s. 350.0605, F.S., section 24 amends s. 364.602, F.S., and section 25 amends s. 489.103, F.S., to change cross-references to conform to changes made by this bill.

Section 26 repeals Section 1 of ch. 2003-32, L.O.F., which section provides a short title to ch. 2003-32, L.O.F.

Section 27 provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers (residential and single-line businesses) will not be subject to the approximately \$344 million increase in the price of basic telephone service. Consumers (residential, single-line, and multi-line businesses) will also not experience a \$344 million "pass through" of savings in intrastate long distance tolls or the elimination of any in-state connection fee.

ILECs may not reduce intrastate long distance access fees and will be precluded from raising the price of basic service to off-set any revenue lost from reductions in access fees.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.