

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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. .
.

1 The Commerce Council offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Committee on Public Service Commission
6 Oversight; creation; membership; powers and duties.--

7 (1) There is created a standing joint committee of the
8 Legislature, designated the Committee on Public Service
9 Commission Oversight, and composed of twelve members appointed
10 as follows: six members of the Senate appointed by the President
11 of the Senate, two of whom must be members of the minority
12 party; and six members of the House of Representatives appointed
13 by the Speaker of the House of Representatives, two of whom must
14 be members of the minority party. The terms of members shall be
15 for 2 years and shall run from the organization of one
16 Legislature to the organization of the next Legislature. The
17 President shall appoint the chair of the committee in even-

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18 numbered years and the vice chair in odd-numbered years, and the
19 Speaker of the House of Representatives shall appoint the chair
20 of the committee in odd-numbered years and the vice chair in
21 even-numbered years, from among the committee membership.
22 Vacancies shall be filled in the same manner as the original
23 appointment. Members shall serve without additional
24 compensation, but shall be reimbursed for expenses.

25 (2) The committee shall be governed by joint rules of the
26 Senate and the House of Representatives which shall remain in
27 effect until repealed or amended by concurrent resolution.

28 (3) The committee shall:

29 (a) Recommend to the Governor nominees to fill a vacancy
30 on the Public Service Commission, as provided by general law;
31 and

32 (b) Appoint a Public Counsel as provided by general law.

33 (4) The committee is authorized to file a complaint with
34 the Commission on Ethics alleging a violation of chapter 350,
35 Florida Statutes, by a commissioner, former commissioner, former
36 commission employee, or member of the Public Service Commission
37 Nominating Council.

38 (5) The committee will not have a permanent staff, but the
39 President of the Senate and the Speaker of the House of
40 Representatives shall select staff members from among existing
41 legislative staff, when and as needed.

42 Section 2. Section 350.001, Florida Statutes, is amended
43 to read:

44 350.001 Legislative intent.--The Florida Public Service
45 Commission has been and shall continue to be an arm of the
46 legislative branch of government. The Public Service Commission
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47 shall perform its duties independently. It is the desire of the
48 Legislature that the Governor participate in the appointment
49 process of commissioners to the Public Service Commission. The
50 Legislature accordingly delegates to the Governor a limited
51 authority with respect to the Public Service Commission by
52 authorizing him or her to participate in the selection of
53 members only ~~from the list provided by the Florida Public~~
54 ~~Service Commission Nominating Council~~ in the manner prescribed
55 by s. 350.031.

56 Section 3. Section 350.031, Florida Statutes, is amended
57 to read:

58 350.031 Florida Public Service Commission Nominating
59 Council.--

60 (1) There is created a Florida Public Service Commission
61 Nominating Council consisting of nine members. At least one
62 member of the council must be 60 years of age or older. Three
63 members, including one member of the House of Representatives,
64 shall be appointed by and serve at the pleasure of the Speaker
65 of the House of Representatives; three members, including one
66 member of the Senate, shall be appointed by and serve at the
67 pleasure of the President of the Senate; and three members shall
68 be selected and appointed by a majority vote of the other six
69 members of the council. All terms shall be for 4 years except
70 those members of the House and Senate, who shall serve 2-year
71 terms concurrent with the 2-year elected terms of House members.
72 Vacancies on the council shall be filled for the unexpired
73 portion of the term in the same manner as original appointments
74 to the council. A member may not be reappointed to the council,
75 except for a member of the House of Representatives or the

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76 | Senate who may be appointed to two 2-year terms or a person who
77 | is appointed to fill the remaining portion of an unexpired term.

78 | (2) (a) No member or spouse shall be the holder of the
79 | stocks or bonds of any company, other than through ownership of
80 | shares in a mutual fund, regulated by the commission, or any
81 | affiliated company of any company regulated by the commission,
82 | or be an agent or employee of, or have any interest in, any
83 | company regulated by the commission or any affiliated company of
84 | any company regulated by the commission, or in any firm which
85 | represents in any capacity either companies which are regulated
86 | by the commission or affiliates of companies regulated by the
87 | commission. As a condition of appointment to the council, each
88 | appointee shall affirm to the Speaker and the President his or
89 | her qualification by the following certification: "I hereby
90 | certify that I am not a stockholder, other than through
91 | ownership of shares in a mutual fund, in any company regulated
92 | by the commission or in any affiliate of a company regulated by
93 | the commission, nor in any way, directly or indirectly, in the
94 | employment of, or engaged in the management of any company
95 | regulated by the commission or any affiliate of a company
96 | regulated by the commission, or in any firm which represents in
97 | any capacity either companies which are regulated by the
98 | commission or affiliates of companies regulated by the
99 | commission."

100 |
101 | This certification is made as condition to appointment to the
102 | Florida Public Service Commission Nominating Council.

103 | (b) A member of the council may be removed by the Speaker
104 | of the House of Representatives and the President of the Senate
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105 upon a finding by the Speaker and the President that the council
106 member has violated any provision of this subsection or for
107 other good cause.

108 (c) If a member of the council does not meet the
109 requirements of this subsection, the President of the Senate or
110 the Speaker of the House of Representatives, as appropriate,
111 shall appoint a legislative replacement.

112 (3) A majority of the membership of the council may
113 conduct any business before the council. All meetings and
114 proceedings of the council shall be staffed by the Office of
115 Legislative Services and shall be subject to the provisions of
116 ss. 119.07 and 286.011. Members of the council are entitled to
117 receive per diem and travel expenses as provided in s. 112.061,
118 which shall be funded by the Florida Public Service Regulatory
119 Trust Fund. Applicants invited for interviews before the council
120 may, in the discretion of the council, receive per diem and
121 travel expenses as provided in s. 112.061, which shall be funded
122 by the Florida Public Service Regulatory Trust Fund. The council
123 shall establish policies and procedures to govern the process by
124 which applicants are nominated.

125 (4) The council may spend a nominal amount, not to exceed
126 \$10,000, to advertise a vacancy on the council, which shall be
127 funded by the Florida Public Service Regulatory Trust Fund.

128 (5)~~(4)~~ A person may not be nominated to the Committee on
129 Public Service Commission Oversight ~~Governor~~ until the council
130 has determined that the person is competent and knowledgeable in
131 one or more fields, which shall include, but not be limited to:
132 public affairs, law, economics, accounting, engineering,
133 finance, natural resource conservation, energy, or another field

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134 substantially related to the duties and functions of the
135 commission. The commission shall fairly represent the above-
136 stated fields. Recommendations of the council shall be
137 nonpartisan.

138 ~~(6)~~(5) It is the responsibility of the council to nominate
139 to the Committee on Public Service Commission Oversight ~~Governor~~
140 ~~not fewer than six~~ three persons for each vacancy occurring on
141 the Public Service Commission. The council shall submit the
142 recommendations to the committee ~~Governor~~ by August 1 ~~October 1~~
143 of those years in which the terms are to begin the following
144 January, or within 60 days after a vacancy occurs for any reason
145 other than the expiration of the term.

146 ~~(7)~~(6) The Committee on Public Service Commission
147 Oversight ~~Governor~~ shall select from the list of nominees
148 provided by the nominating council three or more nominees for
149 recommendation to the Governor for appointment to the
150 commission. The recommendations must be provided to the Governor
151 within 45 days after receipt of the list of nominees. The
152 Governor shall fill a vacancy occurring on the Public Service
153 Commission by appointment of one of the applicants nominated by
154 the committee ~~council~~ only after a background investigation of
155 such applicant has been conducted by the Florida Department of
156 Law Enforcement. If the Governor has not made an appointment
157 within 30 days after the receipt of the recommendation ~~by~~
158 ~~December 1 to fill a vacancy for a term to begin the following~~
159 ~~January, then~~ the committee ~~council~~, by majority vote, shall
160 appoint, within 30 days after the expiration of the Governor's
161 time to make an appointment, by ~~December 31~~ one person from the
162 applicants previously nominated to the Governor to fill the

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163 ~~vacancy. If the Governor has not made the appointment to fill a~~
164 ~~vacancy occurring for any reason other than the expiration of~~
165 ~~the term by the 60th day following receipt of the nominations of~~
166 ~~the council, the council by majority vote shall appoint within~~
167 ~~30 days thereafter one person from the applicants previously~~
168 ~~nominated to the Governor to fill the vacancy.~~

169 (8)(7) Each appointment to the Public Service Commission
170 shall be subject to confirmation by the Senate during the next
171 regular session after the vacancy occurs. If the Senate refuses
172 to confirm or rejects the Governor's appointment, the council
173 shall initiate, in accordance with this section, the nominating
174 process within 30 days.

175 Section 4. Subsection (2) of section 350.041, Florida
176 Statutes, is amended to read:

177 350.041 Commissioners; standards of conduct.--

178 (2) STANDARDS OF CONDUCT.--

179 (a) A commissioner may not accept anything from any
180 business entity which, either directly or indirectly, owns or
181 controls any public utility regulated by the commission, from
182 any public utility regulated by the commission, or from any
183 business entity which, either directly or indirectly, is an
184 affiliate or subsidiary of any public utility regulated by the
185 commission. A commissioner may attend conferences and associated
186 meals and events that are generally available to all conference
187 participants without payment of any fees in addition to the
188 conference fee. Additionally, while attending a conference, a
189 commissioner may attend meetings, meals, or events that are not
190 sponsored, in whole or in part, by any representative of any
191 public utility regulated by the commission and that are limited

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192 to commissioners only, committee members, or speakers if the
193 commissioner is a member of a committee of the association of
194 regulatory agencies that organized the conference or is a
195 speaker at the conference. It is not a violation of this
196 paragraph for a commissioner to attend a conference for which
197 conference participants who are employed by a utility regulated
198 by the commission have paid a higher conference registration fee
199 than the commissioner, or to attend a meal or event that is
200 generally available to all conference participants without
201 payment of any fees in addition to the conference fee and that
202 is sponsored, in whole or in part, by a utility regulated by the
203 commission. If, during the course of an investigation by the
204 Commission on Ethics into an alleged violation of this
205 paragraph, allegations are made as to the identity of the person
206 giving or providing the prohibited gift, that person must be
207 given notice and an opportunity to participate in the
208 investigation and relevant proceedings to present a defense. If
209 the Commission on Ethics determines that the person gave or
210 provided a prohibited gift, the person may not appear before the
211 commission or otherwise represent anyone before the commission
212 for a period of 2 years.

213 (b) A commissioner may not accept any form of employment
214 with or engage in any business activity with any business entity
215 which, either directly or indirectly, owns or controls any
216 public utility regulated by the commission, any public utility
217 regulated by the commission, or any business entity which,
218 either directly or indirectly, is an affiliate or subsidiary of
219 any public utility regulated by the commission.

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220 (c) A commissioner may not have any financial interest,
221 other than shares in a mutual fund, in any public utility
222 regulated by the commission, in any business entity which,
223 either directly or indirectly, owns or controls any public
224 utility regulated by the commission, or in any business entity
225 which, either directly or indirectly, is an affiliate or
226 subsidiary of any public utility regulated by the commission. If
227 a commissioner acquires any financial interest prohibited by
228 this section during his or her term of office as a result of
229 events or actions beyond the commissioner's control, he or she
230 shall immediately sell such financial interest or place such
231 financial interest in a blind trust at a financial institution.
232 A commissioner may not attempt to influence, or exercise any
233 control over, decisions regarding the blind trust.

234 (d) A commissioner may not accept anything from a party in
235 a proceeding currently pending before the commission. If, during
236 the course of an investigation by the Commission on Ethics into
237 an alleged violation of this paragraph, allegations are made as
238 to the identity of the person giving or providing the prohibited
239 gift, that person must be given notice and an opportunity to
240 participate in the investigation and relevant proceedings to
241 present a defense. If the Commission on Ethics determines that
242 the person gave or provided a prohibited gift, the person may
243 not appear before the commission or otherwise represent anyone
244 before the commission for a period of 2 years.

245 (e) A commissioner may not serve as the representative of
246 any political party or on any executive committee or other
247 governing body of a political party; serve as an executive
248 officer or employee of any political party, committee,

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249 organization, or association; receive remuneration for
250 activities on behalf of any candidate for public office; engage
251 on behalf of any candidate for public office in the solicitation
252 of votes or other activities on behalf of such candidacy; or
253 become a candidate for election to any public office without
254 first resigning from office.

255 (f) A commissioner, during his or her term of office, may
256 not make any public comment regarding the merits of any
257 proceeding under ss. 120.569 and 120.57 currently pending before
258 the commission.

259 (g) A commissioner may not conduct himself or herself in
260 an unprofessional manner at any time during the performance of
261 his or her official duties.

262 (h) A commissioner must avoid impropriety in all of his or
263 her activities and must act at all times in a manner that
264 promotes public confidence in the integrity and impartiality of
265 the commission.

266 (i) A commissioner may not directly or indirectly, through
267 staff or other means, solicit any thing of value from any public
268 utility regulated by the commission, or from any business entity
269 that, whether directly or indirectly, is an affiliate or
270 subsidiary of any public utility regulated by the commission, or
271 from any party appearing in a proceeding considered by the
272 commission in the last 2 years.

273 Section 5. Subsection (7) of section 350.042, Florida
274 Statutes, is amended to read:

275 350.042 Ex parte communications.--

276 (7) (a) It shall be the duty of the Commission on Ethics to
277 receive and investigate sworn complaints of violations of this
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278 section pursuant to the procedures contained in ss. 112.322-
279 112.3241.

280 (b) If the Commission on Ethics finds that there has been
281 a violation of this section by a public service commissioner, it
282 shall provide the Governor and the Florida Public Service
283 Commission Nominating Council with a report of its findings and
284 recommendations. The Governor is authorized to enforce the
285 findings and recommendations of the Commission on Ethics,
286 pursuant to part III of chapter 112.

287 (c) If a commissioner fails or refuses to pay the
288 Commission on Ethics any civil penalties assessed pursuant to
289 the provisions of this section, the Commission on Ethics may
290 bring an action in any circuit court to enforce such penalty.

291 (d) If, during the course of an investigation by the
292 Commission on Ethics into an alleged violation of this section,
293 allegations are made as to the identity of the person who
294 participated in the ex parte communication, that person must be
295 given notice and an opportunity to participate in the
296 investigation and relevant proceedings to present a defense. If
297 the Commission on Ethics determines that the person participated
298 in the ex parte communication, the person may not appear before
299 the commission or otherwise represent anyone before the
300 commission for a period of 2 years.

301 Section 6. Subsection (1) of section 350.061, Florida
302 Statutes, is amended to read:

303 350.061 Public Counsel; appointment; oath; restrictions on
304 Public Counsel and his or her employees.--

305 (1) The Committee on Public Service Commission Oversight
306 ~~Joint Legislative Auditing Committee~~ shall appoint a Public
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307 Counsel by majority vote of the members of the committee to
308 represent the general public of Florida before the Florida
309 Public Service Commission. The Public Counsel shall be an
310 attorney admitted to practice before the Florida Supreme Court
311 and shall serve at the pleasure of the ~~Joint Legislative~~
312 ~~Auditing~~ Committee on Public Service Commission Oversight,
313 subject to biennial ~~annual~~ reconfirmation by the committee. The
314 Public Counsel shall perform his or her duties independently.
315 Vacancies in the office shall be filled in the same manner as
316 the original appointment.

317 Section 7. Subsection (2) of section 350.0614, Florida
318 Statutes, is amended to read:

319 350.0614 Public Counsel; compensation and expenses.--

320 (2) The Legislature ~~hereby~~ declares and determines that
321 the Public Counsel is under the legislative branch of government
322 within the intention of the legislation as expressed in chapter
323 216, and no power shall be in the Executive Office of the
324 Governor or its successor to release or withhold funds
325 appropriated to it, but the same shall be available for
326 expenditure as provided by law and the rules or decisions of the
327 ~~Joint Auditing~~ Committee on Public Service Commission Oversight.

328 Section 8. Communications services offered by governmental
329 entities.--

330 (1) As used in this section, the term:

331 (a) "Advanced service" means high-speed-Internet-access-
332 service capability in excess of 200 kilobits per second in the
333 upstream or the downstream direction, including any service
334 application provided over the high-speed-access service or any
335 information service as defined in 47 U.S.C. s. 153(20).

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336 (b) "Cable service" has the same meaning as in 47 U.S.C.
337 s. 522(6).

338 (c) "Communications services" includes any "advanced
339 service," "cable service," or "telecommunications service" and
340 shall be construed in the broadest sense.

341 (d) "Enterprise fund" means a separate fund to account for
342 the operation of communications services by a local government,
343 established and maintained in accordance with generally accepted
344 accounting principles as prescribed by the Governmental
345 Accounting Standards Board.

346 (e) "Governmental entity" means any political subdivision
347 as defined in section 1.01, Florida Statutes, including any
348 county, municipality, special district, school district, utility
349 authority or other authority or any instrumentality, agency,
350 unit or department thereof. The term does not include an
351 independent special district created before 1970 which has been
352 granted express legislative authority to provide a
353 communications service and which does not sell a communications
354 service outside its district boundaries.

355 (f) "Provide," "providing," "provision," or "provisioning"
356 means offering or supplying a communications service for a fee
357 or other consideration to a person, including any portion of the
358 public or private provider, but does not include service by an
359 entity to itself or to any governmental law enforcement agency
360 or governmental emergency services entity.

361 (g) "Subscriber" means a person who receives a
362 communications service.

363 (h) "Telecommunications services" means the transmission
364 of signs, signals, writing, images, sounds, messages, data, or

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365 other information of the user's choosing, by wire, radio, light
366 waves, or other electromagnetic means, without change in the
367 form or content of the information as sent and received by the
368 user and regardless of the facilities used, including, without
369 limitation, wireless facilities.

370 (2) (a) A governmental entity that proposes to provide a
371 communications service shall hold no less than two public
372 hearings, which shall be held not less than 30 days apart. At
373 least 30 days before the first of the two public hearings, the
374 governmental entity must give notice of the hearing in the
375 predominant newspaper of general circulation in the area
376 considered for service. At least 40 days before the first public
377 hearing, the governmental entity must electronically provide
378 notice to the Department of Revenue and the Public Service
379 Commission, which shall post the notice on the department's and
380 the commission's website to be available to the public. The
381 Department of Revenue shall also send the notice by United
382 States Postal Service to the known addresses for all dealers of
383 communications services registered with the department under
384 chapter 202, Florida Statutes, or provide an electronic
385 notification, if the means are available, within 10 days after
386 receiving the notice. The notice must include the time and place
387 of the hearings and must state that the purpose of the hearings
388 is to consider whether the governmental entity will provide
389 communications services. The notice must include, at a minimum,
390 the geographic areas proposed to be served by the governmental
391 entity and the services, if any, which the governmental entity
392 believes are not currently being adequately provided. The notice

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393 must also state that any dealer who wishes to do so may appear
394 and be heard at the public hearings.

395 (b) At a public hearing required by this subsection, a
396 governmental entity must, at a minimum, consider:

397 1. Whether the service that is proposed to be provided is
398 currently being offered in the community and, if so, whether the
399 service is generally available throughout the community.

400 2. Whether a similar service is currently being offered in
401 the community and, if so, whether the service is generally
402 available throughout the community.

403 3. If the same or similar service is not currently
404 offered, whether any other service provider proposes to offer
405 the same or a similar service and, if so, what assurances that
406 service provider is willing or able to offer regarding the same
407 or similar service.

408 4. The capital investment required by the government
409 entity to provide the communications service, the estimated
410 realistic cost of operation and maintenance and, using a full
411 cost-accounting method, the estimated realistic revenues and
412 expenses of providing the service and the proposed method of
413 financing.

414 5. The private and public costs and benefits of providing
415 the service by a private entity or a governmental entity,
416 including the affect on existing and future jobs, actual
417 economic development prospects, tax-base growth, education, and
418 public health.

419 (c) At one or more of the public hearings under this
420 subsection, the governmental entity must make available to the

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421 public a written business plan for the proposed communications
422 service venture containing, at a minimum:

423 1. The projected number of subscribers to be served by the
424 venture.

425 2. The geographic area to be served by the venture.

426 3. The types of communications services to be provided.

427 4. A plan to ensure that revenues exceed operating
428 expenses and payment of principal and interest on debt within 4
429 years.

430 5. Estimated capital and operational costs and revenues
431 for the first 4 years.

432 6. Projected network modernization and technological
433 upgrade plans, including estimated costs.

434 (d) After making specific findings regarding the factors
435 in paragraphs (b) and (c), the governmental entity may authorize
436 providing a communications service by a majority recorded vote
437 and by resolution, ordinance, or other formal means of adoption.

438 (e) The governing body of a governmental entity may issue
439 one or more bonds to finance the capital costs for facilities to
440 provide a communications service. However:

441 1. A governmental entity may only pledge revenues in
442 support of the issuance of any bond to finance providing a
443 communications service:

444 a. Within the county in which the governmental entity is
445 located;

446 b. Within an area in which the governmental entity
447 provides electric service outside its home county under an
448 electric service territorial agreement approved by the Public
449 Service Commission before the effective date of this act; or

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450 c. If the governmental entity is a municipality or special
451 district, within its corporate limits or in an area in which the
452 municipality or special district provides water, wastewater,
453 electric, or natural gas service, or within an urban service
454 area designated in a comprehensive plan, whichever is larger,
455 unless the municipality or special district obtains the consent
456 by formal action of the governmental entity within the
457 boundaries of which the municipality or special district
458 proposes to provide service. For consent to be effective, any
459 governmental entity from which consent is sought shall be
460 located within the county in which the governmental entity is
461 located or that county.

462 2. Revenue bonds issued in order to finance providing a
463 communications service are not subject to the approval of the
464 electors if the revenue bonds mature within 15 years. Revenue
465 bonds issued to finance providing a communications service that
466 does not mature within 15 years must be approved by the
467 electors. The election must be conducted as specified in chapter
468 100, Florida Statutes.

469 (f) A governmental entity providing a communications
470 service may not price any service below the cost of providing
471 the service by subsidizing the communications service with
472 moneys from rates paid by subscribers of a noncommunications
473 services utility or from any other revenues. The cost standard
474 for determining cross-subsidization is whether the total revenue
475 from the service is less than the total long-run incremental
476 cost of the service. Total long-run incremental cost means
477 service-specific volume and nonvolume-sensitive costs.

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478 (g) A governmental entity providing a communications
479 service must comply with the requirements of section 218.32,
480 Florida Statutes, and shall keep separate and accurate books and
481 records, maintained in accordance with generally accepted
482 accounting principles, of a governmental entity's communication
483 service, and they shall be made available for any audits of the
484 books and records conducted under applicable law. To facilitate
485 equitable distribution of indirect costs, a local government
486 shall develop and follow a cost-allocation plan, which is a
487 procedure for allocating direct and indirect costs and which is
488 generally developed in accordance with OMB Circular A-87, Cost
489 Principles for State, Local, and Indian Tribal Government,
490 published by the United States Office of Management and Budget.

491 (h) The governmental entity shall establish an enterprise
492 fund to account for its operation of communications services.

493 (i) The governmental entity shall adopt separate operating
494 and capital budgets for its communications services.

495 (j) A governmental entity may not use its powers of
496 eminent domain under chapter 73, Florida Statutes, solely or
497 primarily for the purpose of providing a communications service.

498 (k) The governmental entity shall conduct an annual review
499 at a formal public meeting to consider the progress the
500 governmental entity is making toward reaching its business plan
501 goals and objectives for providing communication services. At
502 the public meeting the governmental entity shall review the
503 related revenues, operating expenses, and payment of interest on
504 debt.

505 (l) If, after 4 years following the initiation of the
506 provision of communications services by a governmental entity or
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507 4 years after the effective date of this act, whichever is
508 later, revenues do not exceed operating expenses and payment of
509 principal and interest on the debt for a governmental entity's
510 provision of communications services, no later than 60 days
511 following the end of the 4-year period a governmental entity
512 shall hold a public hearing at which the governmental entity
513 shall do at least one of the following:

514 1. Approve a plan to cease providing communications
515 services;

516 2. Approve a plan to dispose of the system the
517 governmental entity is using to provide communications services
518 and, accordingly, to cease providing communications services;

519 3. Approve a plan to create a partnership with a private
520 entity in order to achieve operations in which revenues exceed
521 operating expenses and payment of principal and interest on
522 debt; or

523 4. Approve the continuing provision of communications
524 services by a majority vote of the governing body of the
525 governing authority.

526 (3) (a) A governmental entity that provides a cable service
527 shall comply with the Cable Communications Policy Act of 1984,
528 47 U.S.C. 521, et seq., the regulations issued by the Federal
529 Communications Commission under the Cable Communications Policy
530 Act of 1984, 47 U.S.C. 521, et seq., and all applicable state
531 and federal rules and regulations, including, but not limited
532 to, section 166.046, Florida Statutes, and those provisions of
533 chapters 202, 212, and 337, Florida Statutes, which apply to a
534 provider of the services.

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535 (b) A governmental entity that provides a
536 telecommunications service or advanced service must comply, if
537 applicable, with chapter 364, Florida Statutes, and rules
538 adopted by the Public Service Commission; chapter 166, Florida
539 Statutes; and all applicable state and federal rules and
540 regulations, including, but not limited to, those provisions of
541 chapters 202, 212, and 337, Florida Statutes, which apply to a
542 provider of the services.

543 (c) A governmental entity may not exercise its power or
544 authority in any area, including zoning or land use regulation,
545 to require any person, including residents of a particular
546 development, to use or subscribe to any communication service of
547 a governmental entity.

548 (d) A governmental entity shall apply its ordinances,
549 rules, and policies, and exercise any authority under state or
550 federal laws, including, but not limited to, those relating to
551 the following subjects and without discrimination as to itself
552 when providing a communications service or to any private
553 provider of communications services:

554 1. Access to public rights-of-way; and
555 2. Permitting, access to, use of, and payment for use of
556 governmental entity-owned poles. The governmental entity is
557 subject to the same terms, conditions, and fees, if any, for
558 access to government-owned poles which the governmental entity
559 applies to a private provider for access.

560 (4) (a) If a governmental entity was providing, as of April
561 1, 2005, advanced services, cable services, or
562 telecommunications services, then it is not required to comply
563 with paragraph (2) (a), paragraph (2) (b), paragraph (2) (c),

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564 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph (2)(f),
565 or paragraph (2)(k) in order to continue to provide advanced
566 services, cable services, or telecommunications services,
567 respectively, but it must comply with and be subject to all
568 other provisions of this section.

569 (b) If a governmental entity, as of April 1, 2005, had
570 issued debt pledging revenues from an advanced service, cable
571 service, or telecommunications service, then it is not required
572 to comply with paragraph (2)(a), paragraph (2)(b), paragraph
573 (2)(c), paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
574 (2)(f), or paragraph (2)(k) in order to provide advanced
575 services, cable services, or telecommunications services,
576 respectively, but it must comply with and be subject to all
577 other provisions of this section.

578 (c) If a governmental entity, as of April 1, 2005, has
579 purchased equipment specifically for the provisioning of
580 advanced service, cable service, or telecommunication service,
581 and, as of May 6, 2005, has a population of less than 7500, and
582 has authorized by formal action the providing of an advanced
583 service, cable service, or telecommunication service, then it is
584 not required to comply with paragraph (2)(a), paragraph (2)(b),
585 paragraph (2)(c), paragraph (2)(d), sub-subparagraph (2)(e)1.c.,
586 paragraph (2)(f), or paragraph (2)(k) in order to provide
587 advanced service, cable service, or telecommunication service,
588 respectively, but it must comply with and be subject to all
589 other provisions of this section.

590
591 This subsection does not relieve a governmental entity from
592 complying with subsection (5).

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593 (5) Notwithstanding section 542.235, Florida Statutes, or
594 any other law, a governmental entity that provides a
595 communications service is subject to the same prohibitions
596 applicable to private providers under sections 542.18 and
597 542.19, Florida Statutes, as it relates to providing a
598 communications service. Nothing in this section confers state
599 action immunity, or any other antitrust immunity or exemption,
600 on any governmental entity providing communications services.

601 (6) To ensure the safe and secure transportation of
602 passengers and freight through an airport facility, as defined
603 in section 159.27(17), Florida Statutes, an airport authority or
604 other governmental entity that provides or is proposing to
605 provide communications services only within the boundaries of
606 its airport layout plan, as defined in section 333.01(6),
607 Florida Statutes, to subscribers which are integral and
608 essential to the safe and secure transportation of passengers
609 and freight through the airport facility, is exempt from this
610 section. An airport authority or other governmental entity that
611 provides or is proposing to provide shared-tenant service under
612 section 364.339, Florida Statutes, but not dial tone enabling
613 subscribers to complete calls outside the airport layout plan,
614 to one or more subscribers within its airport layout plan which
615 are not integral and essential to the safe and secure
616 transportation of passengers and freight through the airport
617 facility is exempt from this section. An airport authority or
618 other governmental entity that provides or is proposing to
619 provide communications services to one or more subscribers
620 within its airport layout plan which are not integral and
621 essential to the safe and secure transportation of passengers

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622 and freight through the airport facility, or to one or more
623 subscribers outside its airport layout plan, is not exempt from
624 this section. By way of example and not limitation, the
625 integral, essential subscribers may include airlines and
626 emergency service entities, and the nonintegral, nonessential
627 subscribers may include retail shops, restaurants, hotels, or
628 rental car companies.

629 (7) This section does not alter or affect any provision in
630 the charter, code, or other governing authority of a
631 governmental entity that impose additional or different
632 requirements on provision of communications service by a
633 governmental entity. Any such provisions shall apply in addition
634 to the applicable provisions in this section.

635 Section 9. Section 364.01, Florida Statutes, is amended to
636 read:

637 364.01 Powers of commission, legislative intent.--

638 (1) The Florida Public Service Commission shall exercise
639 over and in relation to telecommunications companies the powers
640 conferred by this chapter.

641 (2) It is the legislative intent to give exclusive
642 jurisdiction in all matters set forth in this chapter to the
643 Florida Public Service Commission in regulating
644 telecommunications companies, and such preemption shall
645 supersede any local or special act or municipal charter where
646 any conflict of authority may exist. However, the provisions of
647 this chapter shall not affect the authority and powers granted
648 in s. 166.231(9) or s. 337.401.

649 (3) Communications activities that are not regulated by
650 the Florida Public Service Commission, including, but not

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651 limited to, VoIP, wireless, and broadband, are subject to this
652 state's generally applicable business regulation and deceptive
653 trade practices and consumer protection laws, as enforced by the
654 appropriate state authority or through actions in the judicial
655 system. This chapter does not limit the availability to any
656 party of any remedy or defense under state or federal antitrust
657 laws. The Legislature finds that the competitive provision of
658 telecommunications services, including local exchange
659 telecommunications service, is in the public interest and will
660 provide customers with freedom of choice, encourage the
661 introduction of new telecommunications service, encourage
662 technological innovation, and encourage investment in
663 telecommunications infrastructure. The Legislature further finds
664 that the transition from the monopoly provision of local
665 exchange service to the competitive provision thereof will
666 require appropriate regulatory oversight to protect consumers
667 and provide for the development of fair and effective
668 competition, but nothing in this chapter shall limit the
669 availability to any party of any remedy under state or federal
670 antitrust laws. The Legislature further finds that changes in
671 regulations allowing increased competition in telecommunications
672 services could provide the occasion for increases in the
673 telecommunications workforce; therefore, it is in the public
674 interest that competition in telecommunications services lead to
675 a situation that enhances the high-technological skills and the
676 economic status of the telecommunications workforce. The
677 Legislature further finds that the provision of voice-over-
678 Internet protocol (VOIP) free of unnecessary regulation,
679 regardless of the provider, is in the public interest.

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680 (4) The commission shall exercise its exclusive
681 jurisdiction in order to:

682 (a) Protect the public health, safety, and welfare by
683 ensuring that basic local telecommunications services are
684 available to all consumers in the state at reasonable and
685 affordable prices.

686 (b) Encourage competition through flexible regulatory
687 treatment among providers of telecommunications services in
688 order to ensure the availability of the widest possible range of
689 consumer choice in the provision of all telecommunications
690 services.

691 (c) Protect the public health, safety, and welfare by
692 ensuring that monopoly services provided by telecommunications
693 companies continue to be subject to effective price, rate, and
694 service regulation.

695 (d) Promote competition by encouraging innovation and
696 investment in ~~new entrants into~~ telecommunications markets and
697 by allowing a transitional period in which new and emerging
698 technologies ~~entrants~~ are subject to a reduced ~~lesser~~ level of
699 regulatory oversight ~~than local exchange telecommunications~~
700 ~~companies~~.

701 (e) Encourage all providers of telecommunications services
702 to introduce new or experimental telecommunications services
703 free of unnecessary regulatory restraints.

704 (f) Eliminate any rules or ~~and/or~~ regulations which will
705 delay or impair the transition to competition.

706 (g) Ensure that all providers of telecommunications
707 services are treated fairly, by preventing anticompetitive
708 behavior and eliminating unnecessary regulatory restraint.

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709 (h) Recognize the continuing emergence of a competitive
710 telecommunications environment through the flexible regulatory
711 treatment of competitive telecommunications services, where
712 appropriate, if doing so does not reduce the availability of
713 adequate basic local telecommunications service to all citizens
714 of the state at reasonable and affordable prices, if competitive
715 telecommunications services are not subsidized by monopoly
716 telecommunications services, and if all monopoly services are
717 available to all competitors on a nondiscriminatory basis.

718 (i) Continue its historical role as a surrogate for
719 competition for monopoly services provided by local exchange
720 telecommunications companies.

721 Section 10. Section 364.011, Florida Statutes, is created
722 to read:

723 364.011 Exemptions from commission jurisdiction.--The
724 following services are exempt from oversight by the commission,
725 except to the extent delineated in this chapter or specifically
726 authorized by federal law:

727 (1) Intrastate interexchange telecommunications services.

728 (2) Broadband services, regardless of the provider,
729 platform, or protocol.

730 (3) VoIP.

731 (4) Wireless telecommunications, including commercial
732 mobile radio service providers.

733 Section 11. Section 364.012, Florida Statutes, is created
734 to read:

735 364.012 Consistency with federal law.--

736 (1) In order to promote commission coordination with
737 federal policymakers and regulatory agencies, the commission

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738 shall maintain continuous liaisons with appropriate federal
739 agencies whose policy decisions and rulemaking authority affect
740 those telecommunications companies over which the commission has
741 jurisdiction. The commission is encouraged to participate in the
742 proceedings of federal agencies in cases in which the state's
743 consumers may be affected and to convey the commission's policy
744 positions and information requirements in order to achieve
745 greater efficiency in regulation.

746 (2) This chapter does not limit or modify the duties of a
747 local exchange carrier to provide unbundled access to network
748 elements or the commission's authority to arbitrate and enforce
749 interconnection agreements to the extent that those elements are
750 required under 47 U.S.C. ss. 251 and 252, and under any
751 regulations issued by the Federal Communications Commission at
752 rates determined in accordance with the standards established by
753 the Federal Communications Commission pursuant to 47 C.F.R. ss.
754 51.503-51.513, inclusive of any successor regulation or
755 successor forbearance of regulation.

756 Section 12. Section 364.013, Florida Statutes, is created
757 to read:

758 364.013 Emerging and advanced services.--Broadband service
759 and the provision of voice-over-Internet-protocol (VoIP) shall
760 be free of state regulation, except as delineated in this
761 chapter or as specifically authorized by federal law, regardless
762 of the provider, platform, or protocol.

763 Section 13. Section 364.02, Florida Statutes, is amended
764 to read:

765 364.02 Definitions.--As used in this chapter:

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766 (1) "Basic local telecommunications service" means voice-
767 grade, flat-rate residential, and flat-rate single-line business
768 local exchange services which provide dial tone, local usage
769 necessary to place unlimited calls within a local exchange area,
770 dual tone multifrequency dialing, and access to the following:
771 emergency services such as "911," all locally available
772 interexchange companies, directory assistance, operator
773 services, relay services, and an alphabetical directory listing.
774 For a local exchange telecommunications company, the such term
775 shall include any extended area service routes, and extended
776 calling service in existence or ordered by the commission on or
777 before July 1, 1995.

778 (2) "Broadband service" means any service that consists of
779 or includes the offering of the capability to transmit or
780 receive information at a rate that is not less than 200 kilobits
781 per second and either:

782 (a) Is used to provide access to the Internet; or

783 (b) Provides computer processing, information storage,
784 information content, or protocol conversion in combination with
785 the service.

786
787 The definition of broadband service does not include any
788 intrastate telecommunications services that have been tariffed
789 with the commission on or before January 1, 2005.

790 (3)-(2) "Commercial mobile radio service provider" means a
791 commercial mobile radio service provider as defined by and
792 pursuant to 47 U.S.C. ss. 153(n) and 332(d).

793 (4)-(3) "Commission" means the Florida Public Service
794 Commission.

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795 ~~(5)-(4)~~ "Competitive local exchange telecommunications
796 company" means any company certificated by the commission to
797 provide local exchange telecommunications services in this state
798 on or after July 1, 1995.

799 ~~(6)-(5)~~ "Corporation" includes a corporation, company,
800 association, or joint stock association.

801 ~~(7)-(6)~~ "Intrastate interexchange telecommunications
802 company" means any entity that provides intrastate interexchange
803 telecommunications services.

804 ~~(8)-(7)~~ "Local exchange telecommunications company" means
805 any company certificated by the commission to provide local
806 exchange telecommunications service in this state on or before
807 June 30, 1995.

808 ~~(9)-(8)~~ "Monopoly service" means a telecommunications
809 service for which there is no effective competition, either in
810 fact or by operation of law.

811 ~~(10)-(9)~~ "Nonbasic service" means any telecommunications
812 service provided by a local exchange telecommunications company
813 other than a basic local telecommunications service, a local
814 interconnection arrangement described in s. 364.16, or a network
815 access service described in s. 364.163.

816 ~~(11)-(10)~~ "Operator service" includes, but is not limited
817 to, billing or completion of third-party, person-to-person,
818 collect, or calling card or credit card calls through the use of
819 a live operator or automated equipment.

820 ~~(12)-(11)~~ "Operator service provider" means a person who
821 furnishes operator service through a call aggregator.

822 ~~(13)-(12)~~ "Service" is to be construed in its broadest and
823 most inclusive sense. The term "service" does not include

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824 broadband service or voice-over-Internet protocol service for
825 purposes of regulation by the commission. Nothing herein shall
826 affect the rights and obligations of any entity related to the
827 payment of switched network access rates or other intercarrier
828 compensation, if any, related to voice-over-Internet protocol
829 service. Notwithstanding s. 364.013, and the exemption of
830 services pursuant to this subsection, the commission may
831 arbitrate, enforce, or approve interconnection agreements, and
832 resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or
833 any other applicable federal law or regulation. With respect to
834 the services exempted in this subsection, regardless of the
835 technology, the duties of a local exchange telecommunications
836 company are only those that the company is obligated to extend
837 or provide under applicable federal law and regulations.

838 ~~(14)~~(13) "Telecommunications company" includes every
839 corporation, partnership, and person and their lessees,
840 trustees, or receivers appointed by any court whatsoever, and
841 every political subdivision in the state, offering two-way
842 telecommunications service to the public for hire within this
843 state by the use of a telecommunications facility. The term
844 "telecommunications company" does not include:

845 (a) An entity which provides a telecommunications facility
846 exclusively to a certificated telecommunications company;

847 (b) An entity which provides a telecommunications facility
848 exclusively to a company which is excluded from the definition
849 of a telecommunications company under this subsection;

850 (c) A commercial mobile radio service provider;

851 (d) A facsimile transmission service;

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852 (e) A private computer data network company not offering
853 service to the public for hire;

854 (f) A cable television company providing cable service as
855 defined in 47 U.S.C. s. 522; or

856 (g) An intrastate interexchange telecommunications
857 company.

858

859 However, each commercial mobile radio service provider and each
860 intrastate interexchange telecommunications company shall
861 continue to be liable for any taxes imposed under ~~pursuant to~~
862 chapters 202, 203, and 212 and any fees assessed under ~~pursuant~~
863 ~~to~~ ss. 364.025 and 364.336. Each intrastate interexchange
864 telecommunications company shall continue to be subject to ss.
865 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.501,
866 364.603, and 364.604, shall provide the commission with such
867 current information as the commission deems necessary to contact
868 and communicate with the company, shall continue to pay
869 intrastate switched network access rates or other intercarrier
870 compensation to the local exchange telecommunications company or
871 the competitive local exchange telecommunications company for
872 the origination and termination of interexchange
873 telecommunications service, and shall reduce its intrastate long
874 distance toll rates in accordance with s. 364.163(2).

875 ~~(15)-(14)~~ "Telecommunications facility" includes real
876 estate, easements, apparatus, property, and routes used and
877 operated to provide two-way telecommunications service to the
878 public for hire within this state.

879 (16) "VoIP" means the voice-over-Internet protocol as that
880 term is defined in federal law.

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881 Section 14. Section 364.0361, Florida Statutes, is amended
882 to read:

883 364.0361 Local government authority; nondiscriminatory
884 exercise.--A local government shall treat each
885 telecommunications company in a nondiscriminatory manner when
886 exercising its authority to grant franchises to a
887 telecommunications company or to otherwise establish conditions
888 or compensation for the use of rights-of-way or other public
889 property by a telecommunications company. A local government may
890 not directly or indirectly regulate the terms and conditions,
891 including, but not limited to, the operating systems,
892 qualifications, services, service quality, service territory,
893 and prices, applicable to or in connection with the provision of
894 any voice-over-Internet protocol, regardless of the platform,
895 provider, or protocol, broadband or information service. This
896 section does not relieve a provider from any obligations under
897 s. 166.046 or s. 337.401.

898 Section 15. Section 364.10, Florida Statutes, is amended
899 to read:

900 364.10 Undue advantage to person or locality prohibited;
901 Lifeline service.--

902 (1) A telecommunications company may not make or give any
903 undue or unreasonable preference or advantage to any person or
904 locality or subject any particular person or locality to any
905 undue or unreasonable prejudice or disadvantage in any respect
906 whatsoever.

907 (2) (a) The prohibitions of subsection (1) notwithstanding,
908 an eligible telecommunications carrier ~~a telecommunications~~
909 ~~company serving as carrier of last resort~~ shall provide a
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910 Lifeline Assistance Plan to qualified residential subscribers,
911 as defined in a commission-approved tariff or price list, and a
912 preferential rate to eligible facilities as provided for in part
913 II. For the purposes of this section, the term "eligible
914 telecommunications carrier" means a telecommunications company,
915 as defined by s. 364.02, which is designated as an eligible
916 telecommunications carrier by the commission pursuant to 47
917 C.F.R. s. 54.201.

918 (b) An eligible telecommunications carrier shall offer a
919 consumer who applies for or receives Lifeline service the option
920 of blocking all toll calls or, if technically capable, placing a
921 limit on the number of toll calls a consumer can make. The
922 eligible telecommunications carrier may not charge the consumer
923 an administrative charge or other additional fee for blocking
924 the service.

925 (c) An eligible telecommunications carrier may not collect
926 a service deposit in order to initiate Lifeline service if the
927 qualifying low-income consumer voluntarily elects toll blocking
928 or toll limitation. If the qualifying low-income consumer elects
929 not to place toll blocking on the line, an eligible
930 telecommunications carrier may charge a service deposit.

931 (d) An eligible telecommunications carrier may not charge
932 Lifeline subscribers a monthly number-portability charge.

933 (e)1. An eligible telecommunications carrier must notify a
934 Lifeline subscriber of impending termination of Lifeline service
935 if the company has a reasonable basis for believing that the
936 subscriber no longer qualifies. Notification of pending
937 termination must be in the form of a letter that is separate
938 from the subscriber's bill.

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939 2. An eligible telecommunications carrier shall allow a
940 subscriber 60 days following the date of the pending termination
941 letter to demonstrate continued eligibility. The subscriber must
942 present proof of continued eligibility. An eligible
943 telecommunications carrier may transfer a subscriber off of
944 Lifeline service, pursuant to its tariff, if the subscriber
945 fails to demonstrate continued eligibility.

946 3. The commission shall establish procedures for such
947 notification and termination.

948 (f) An eligible telecommunications carrier shall timely
949 credit a consumer's bill with the Lifeline Assistance credit as
950 soon as practicable, but no later than 60 days following receipt
951 of notice of eligibility from the Office of Public Counsel or
952 proof of eligibility from the consumer.

953 (3) (a) Effective September 1, 2003, any local exchange
954 telecommunications company authorized by the commission to
955 reduce its switched network access rate pursuant to s. 364.164
956 shall have tariffed and shall provide Lifeline service to any
957 otherwise eligible customer or potential customer who meets an
958 income eligibility test at 135 ~~125~~ percent or less of the
959 federal poverty income guidelines for Lifeline customers. Such a
960 test for eligibility must augment, rather than replace, the
961 eligibility standards established by federal law and based on
962 participation in certain low-income assistance programs. Each
963 intrastate interexchange telecommunications company shall,
964 effective September 1, 2003, file a tariff providing at a
965 minimum the intrastate interexchange telecommunications
966 carrier's current Lifeline benefits and exemptions to Lifeline
967 customers who meet the income eligibility test set forth in this
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968 subsection. The Office of Public Counsel shall certify and
969 maintain claims submitted by a customer for eligibility under
970 the income test authorized by this subsection.

971 (b) Each eligible telecommunications carrier ~~local~~
972 ~~exchange telecommunications company~~ subject to this subsection
973 shall provide to each state and federal agency providing
974 benefits to persons eligible for Lifeline service applications,
975 brochures, pamphlets, or other materials that inform the ~~such~~
976 persons of their eligibility for Lifeline, and each state agency
977 providing the ~~such~~ benefits shall furnish the materials to
978 affected persons at the time they apply for benefits.

979 (c) Any local exchange telecommunications company customer
980 receiving Lifeline benefits shall not be subject to any
981 residential basic local telecommunications service rate
982 increases authorized by s. 364.164 until the local exchange
983 telecommunications company reaches parity as defined in s.
984 364.164(5) or until the customer no longer qualifies for the
985 Lifeline benefits established by this section or s. 364.105, or
986 unless otherwise determined by the commission upon petition by a
987 local exchange telecommunications company.

988 (d) An eligible telecommunications carrier may not
989 discontinue basic local exchange telephone service to a
990 subscriber who receives Lifeline service because of nonpayment
991 by the subscriber of charges for nonbasic services billed by the
992 telecommunications company, including long-distance service. A
993 subscriber who receives Lifeline service shall be required to
994 pay all applicable basic local exchange service fees, including
995 the subscriber line charge, E-911, telephone relay system
996 charges, and applicable state and federal taxes.

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997 (e) An eligible telecommunications carrier may not refuse
998 to connect, reconnect, or provide Lifeline service because of
999 unpaid toll charges or nonbasic charges other than basic local
1000 exchange service.

1001 (f) An eligible telecommunications carrier may require
1002 that payment arrangements be made for outstanding debt
1003 associated with basic local exchange service, subscriber line
1004 charges, E-911, telephone relay system charges, and applicable
1005 state and federal taxes.

1006 (g) An eligible telecommunications carrier may block a
1007 Lifeline service subscriber's access to all long-distance
1008 service, except for toll-free numbers, and may block the ability
1009 to accept collect calls when the subscriber owes an outstanding
1010 amount for long-distance service or amounts resulting from
1011 collect calls. However, the eligible telecommunications carrier
1012 may not impose a charge for blocking long-distance service. The
1013 eligible telecommunications carrier shall remove the block at
1014 the request of the subscriber without additional cost to the
1015 subscriber upon payment of the outstanding amount. An eligible
1016 telecommunications carrier may charge a service deposit before
1017 removing the block.

1018 (h) ~~(d)~~ By December 31, 2003, each state agency that
1019 provides benefits to persons eligible for Lifeline service shall
1020 undertake, in cooperation with the Department of Children and
1021 Family Services, the Department of Education, the commission,
1022 the Office of Public Counsel, and telecommunications companies
1023 providing Lifeline services, the development of procedures to
1024 promote Lifeline participation.

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1025 | (i)~~(e)~~ The commission shall report to the Governor, the
1026 | President of the Senate, and the Speaker of the House of
1027 | Representatives by December 31 each year on the number of
1028 | customers who are subscribing to Lifeline service and the
1029 | effectiveness of any procedures to promote participation.

1030 | (j) The commission shall adopt rules to administer this
1031 | section.

1032 | Section 16. Section 364.502, Florida Statutes, is
1033 | repealed.

1034 | Section 17. Subsection (1) of section 364.335, Florida
1035 | Statutes, is amended to read:

1036 | 364.335 Application for certificate.--

1037 | (1) Each applicant for a certificate shall:

1038 | (a) Provide all information required by rule or order of
1039 | the commission, which may include a detailed inquiry into the
1040 | ability of the applicant to provide service, a detailed inquiry
1041 | into the territory and facilities involved, and a detailed
1042 | inquiry into the existence of service from other sources within
1043 | geographical proximity to the territory applied for.

1044 | (b) File with the commission schedules showing all rates
1045 | for service of every kind furnished by it and all rules and
1046 | contracts relating to such service.

1047 | (c) File the application fee required by the commission in
1048 | an amount not to exceed \$500 ~~\$250~~. Such fees shall be deposited
1049 | in accordance with s. 350.113.

1050 | (d) Submit an affidavit that the applicant has caused
1051 | notice of its application to be given to such persons and in
1052 | such manner as may be prescribed by commission rule.

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1053 Section 18. Section 364.336, Florida Statutes, is amended
1054 to read:

1055 364.336 Regulatory assessment fees.--Notwithstanding any
1056 provisions of law to the contrary, each telecommunications
1057 company licensed or operating under this chapter, for any part
1058 of the preceding 6-month period, shall pay to the commission,
1059 within 30 days following the end of each 6-month period, a fee
1060 that may not exceed 0.25 percent annually of its gross operating
1061 revenues derived from intrastate business, except, for purposes
1062 of this section and the fee specified in s. 350.113(3), any
1063 amount paid to another telecommunications company for the use of
1064 any telecommunications network shall be deducted from the gross
1065 operating revenue for purposes of computing the fee due. The
1066 commission shall by rule assess a minimum fee in an amount up to
1067 \$1,000. The minimum amount may vary depending on the type of
1068 service provided by the telecommunications company, and shall,
1069 to the extent practicable, be related to the cost of regulating
1070 such type of company. Differences, if any, between the amount
1071 paid in any 6-month period and the amount actually determined by
1072 the commission to be due shall, upon motion by the commission,
1073 be immediately paid or refunded. Fees under this section may not
1074 be less than \$50 annually. Such fees shall be deposited in
1075 accordance with s. 350.113. The commission may by rule establish
1076 criteria for payment of the regulatory assessment fee on an
1077 annual basis rather than on a semiannual basis.

1078 Section 19. Subsection (6) of section 196.012, Florida
1079 Statutes, is amended to read:

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1080 196.012 Definitions.--For the purpose of this chapter, the
1081 following terms are defined as follows, except where the context
1082 clearly indicates otherwise:

1083 (6) Governmental, municipal, or public purpose or function
1084 shall be deemed to be served or performed when the lessee under
1085 any leasehold interest created in property of the United States,
1086 the state or any of its political subdivisions, or any
1087 municipality, agency, special district, authority, or other
1088 public body corporate of the state is demonstrated to perform a
1089 function or serve a governmental purpose which could properly be
1090 performed or served by an appropriate governmental unit or which
1091 is demonstrated to perform a function or serve a purpose which
1092 would otherwise be a valid subject for the allocation of public
1093 funds. For purposes of the preceding sentence, an activity
1094 undertaken by a lessee which is permitted under the terms of its
1095 lease of real property designated as an aviation area on an
1096 airport layout plan which has been approved by the Federal
1097 Aviation Administration and which real property is used for the
1098 administration, operation, business offices and activities
1099 related specifically thereto in connection with the conduct of
1100 an aircraft full service fixed base operation which provides
1101 goods and services to the general aviation public in the
1102 promotion of air commerce shall be deemed an activity which
1103 serves a governmental, municipal, or public purpose or function.
1104 Any activity undertaken by a lessee which is permitted under the
1105 terms of its lease of real property designated as a public
1106 airport as defined in s. 332.004(14) by municipalities,
1107 agencies, special districts, authorities, or other public bodies
1108 corporate and public bodies politic of the state, a spaceport as
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1109 defined in s. 331.303(19), or which is located in a deepwater
1110 port identified in s. 403.021(9)(b) and owned by one of the
1111 foregoing governmental units, subject to a leasehold or other
1112 possessory interest of a nongovernmental lessee that is deemed
1113 to perform an aviation, airport, aerospace, maritime, or port
1114 purpose or operation shall be deemed an activity that serves a
1115 governmental, municipal, or public purpose. The use by a lessee,
1116 licensee, or management company of real property or a portion
1117 thereof as a convention center, visitor center, sports facility
1118 with permanent seating, concert hall, arena, stadium, park, or
1119 beach is deemed a use that serves a governmental, municipal, or
1120 public purpose or function when access to the property is open
1121 to the general public with or without a charge for admission. If
1122 property deeded to a municipality by the United States is
1123 subject to a requirement that the Federal Government, through a
1124 schedule established by the Secretary of the Interior, determine
1125 that the property is being maintained for public historic
1126 preservation, park, or recreational purposes and if those
1127 conditions are not met the property will revert back to the
1128 Federal Government, then such property shall be deemed to serve
1129 a municipal or public purpose. The term "governmental purpose"
1130 also includes a direct use of property on federal lands in
1131 connection with the Federal Government's Space Exploration
1132 Program or spaceport activities as defined in s. 212.02(22).
1133 Real property and tangible personal property owned by the
1134 Federal Government or the Florida Space Authority and used for
1135 defense and space exploration purposes or which is put to a use
1136 in support thereof shall be deemed to perform an essential
1137 national governmental purpose and shall be exempt. "Owned by the
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1138 lessee" as used in this chapter does not include personal
1139 property, buildings, or other real property improvements used
1140 for the administration, operation, business offices and
1141 activities related specifically thereto in connection with the
1142 conduct of an aircraft full service fixed based operation which
1143 provides goods and services to the general aviation public in
1144 the promotion of air commerce provided that the real property is
1145 designated as an aviation area on an airport layout plan
1146 approved by the Federal Aviation Administration. For purposes of
1147 determination of "ownership," buildings and other real property
1148 improvements which will revert to the airport authority or other
1149 governmental unit upon expiration of the term of the lease shall
1150 be deemed "owned" by the governmental unit and not the lessee.
1151 Providing two-way telecommunications services to the public for
1152 hire by the use of a telecommunications facility, as defined in
1153 s. 364.02(15) ~~s.364.02(14)~~, and for which a certificate is
1154 required under chapter 364 does not constitute an exempt use for
1155 purposes of s. 196.199, unless the telecommunications services
1156 are provided by the operator of a public-use airport, as defined
1157 in s. 332.004, for the operator's provision of
1158 telecommunications services for the airport or its tenants,
1159 concessionaires, or licensees, or unless the telecommunications
1160 services are provided by a public hospital. However, property
1161 that is being used to provide such telecommunications services
1162 on or before October 1, 1997, shall remain exempt, but such
1163 exemption expires October 1, 2004.

1164 Section 20. Paragraph (b) of subsection (1) of section
1165 199.183, Florida Statutes, is amended to read:

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1166 199.183 Taxpayers exempt from annual and nonrecurring
1167 taxes.--

1168 (1) Intangible personal property owned by this state or
1169 any of its political subdivisions or municipalities shall be
1170 exempt from taxation under this chapter. This exemption does not
1171 apply to:

1172 (b) Property related to the provision of two-way
1173 telecommunications services to the public for hire by the use of
1174 a telecommunications facility, as defined in s. 364.02(15) ~~s.~~
1175 ~~364.02(14)~~, and for which a certificate is required under
1176 chapter 364, when the ~~such~~ service is provided by any county,
1177 municipality, or other political subdivision of the state. Any
1178 immunity of any political subdivision of the state or other
1179 entity of local government from taxation of the property used to
1180 provide telecommunication services that is taxed as a result of
1181 this paragraph is hereby waived. However, intangible personal
1182 property related to the provision of ~~such~~ telecommunications
1183 services provided by the operator of a public-use airport, as
1184 defined in s. 332.004, for the operator's provision of
1185 telecommunications services for the airport or its tenants,
1186 concessionaires, or licensees, and intangible personal property
1187 related to the provision of ~~such~~ telecommunications services
1188 provided by a public hospital, are exempt from taxation under
1189 this chapter.

1190 Section 21. Subsection (6) of section 212.08, Florida
1191 Statutes, is amended to read:

1192 212.08 Sales, rental, use, consumption, distribution, and
1193 storage tax; specified exemptions.--The sale at retail, the
1194 rental, the use, the consumption, the distribution, and the
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1195 storage to be used or consumed in this state of the following
1196 are hereby specifically exempt from the tax imposed by this
1197 chapter.

1198 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also
1199 exempt from the tax imposed by this chapter sales made to the
1200 United States Government, a state, or any county, municipality,
1201 or political subdivision of a state when payment is made
1202 directly to the dealer by the governmental entity. This
1203 exemption shall not inure to any transaction otherwise taxable
1204 under this chapter when payment is made by a government employee
1205 by any means, including, but not limited to, cash, check, or
1206 credit card when that employee is subsequently reimbursed by the
1207 governmental entity. This exemption does not include sales of
1208 tangible personal property made to contractors employed either
1209 directly or as agents of any such government or political
1210 subdivision thereof when such tangible personal property goes
1211 into or becomes a part of public works owned by such government
1212 or political subdivision. A determination whether a particular
1213 transaction is properly characterized as an exempt sale to a
1214 government entity or a taxable sale to a contractor shall be
1215 based on the substance of the transaction rather than the form
1216 in which the transaction is cast. The department shall adopt
1217 rules that give special consideration to factors that govern the
1218 status of the tangible personal property before its affixation
1219 to real property. In developing these rules, assumption of the
1220 risk of damage or loss is of paramount consideration in the
1221 determination. This exemption does not include sales, rental,
1222 use, consumption, or storage for use in any political
1223 subdivision or municipality in this state of machines and

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1224 equipment and parts and accessories therefor used in the
1225 generation, transmission, or distribution of electrical energy
1226 by systems owned and operated by a political subdivision in this
1227 state for transmission or distribution expansion. Likewise
1228 exempt are charges for services rendered by radio and television
1229 stations, including line charges, talent fees, or license fees
1230 and charges for films, videotapes, and transcriptions used in
1231 producing radio or television broadcasts. The exemption provided
1232 in this subsection does not include sales, rental, use,
1233 consumption, or storage for use in any political subdivision or
1234 municipality in this state of machines and equipment and parts
1235 and accessories therefor used in providing two-way
1236 telecommunications services to the public for hire by the use of
1237 a telecommunications facility, as defined in s. 364.02(15) ~~s.~~
1238 ~~364.02(14)~~, and for which a certificate is required under
1239 chapter 364, which facility is owned and operated by any county,
1240 municipality, or other political subdivision of the state. Any
1241 immunity of any political subdivision of the state or other
1242 entity of local government from taxation of the property used to
1243 provide telecommunication services that is taxed as a result of
1244 this section is hereby waived. However, the exemption provided
1245 in this subsection includes transactions taxable under this
1246 chapter which are for use by the operator of a public-use
1247 airport, as defined in s. 332.004, in providing such
1248 telecommunications services for the airport or its tenants,
1249 concessionaires, or licensees, or which are for use by a public
1250 hospital for the provision of such telecommunications services.

1251 Section 22. Subsection (8) of section 290.007, Florida
1252 Statutes, is amended to read:

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1253 290.007 State incentives available in enterprise zones.--
1254 The following incentives are provided by the state to encourage
1255 the revitalization of enterprise zones:

1256 (8) Notwithstanding any law to the contrary, the Public
1257 Service Commission may allow public utilities and
1258 telecommunications companies to grant discounts of up to 50
1259 percent on tariffed rates for services to small businesses
1260 located in an enterprise zone designated pursuant to s.
1261 290.0065. Such discounts may be granted for a period not to
1262 exceed 5 years. For purposes of this subsection, the term
1263 "public utility" has the same meaning as in s. 366.02(1) and the
1264 term "telecommunications company" has the same meaning as in s.
1265 364.02(14) ~~s. 364.02(13)~~.

1266 Section 23. Subsection (3) of section 350.0605, Florida
1267 Statutes, is amended to read:

1268 350.0605 Former commissioners and employees;
1269 representation of clients before commission.--

1270 (3) For a period of 2 years following termination of
1271 service on the commission, a former member may not accept
1272 employment by or compensation from a business entity which,
1273 directly or indirectly, owns or controls a public utility
1274 regulated by the commission, from a public utility regulated by
1275 the commission, from a business entity which, directly or
1276 indirectly, is an affiliate or subsidiary of a public utility
1277 regulated by the commission or is an actual business competitor
1278 of a local exchange company or public utility regulated by the
1279 commission and is otherwise exempt from regulation by the
1280 commission under ss. 364.02(14) ~~364.02(13)~~ and 366.02(1), or
1281 from a business entity or trade association that has been a
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1282 party to a commission proceeding within the 2 years preceding
1283 the member's termination of service on the commission. This
1284 subsection applies only to members of the Florida Public Service
1285 Commission who are appointed or reappointed after May 10, 1993.

1286 Section 24. Subsection (4) of section 364.602, Florida
1287 Statutes, is amended to read:

1288 364.602 Definitions.--For purposes of this part:

1289 (4) "Originating party" means any person, firm,
1290 corporation, or other entity, including a telecommunications
1291 company or a billing clearinghouse, that provides any
1292 telecommunications service or information service to a customer
1293 or bills a customer through a billing party, except the term
1294 "originating party" does not include any entity specifically
1295 exempted from the definition of "telecommunications company" as
1296 provided in s. 364.02(14) ~~s. 364.02(13)~~.

1297 Section 25. Subsection (5) of section 489.103, Florida
1298 Statutes, is amended to read:

1299 489.103 Exemptions.--This part does not apply to:

1300 (5) Public utilities, including special gas districts as
1301 defined in chapter 189, telecommunications companies as defined
1302 in s. 364.02(14) ~~s. 364.02(13)~~, and natural gas transmission
1303 companies as defined in s. 368.103(4), on construction,
1304 maintenance, and development work performed by their employees,
1305 which work, including, but not limited to, work on bridges,
1306 roads, streets, highways, or railroads, is incidental to their
1307 business. The board shall define, by rule, the term "incidental
1308 to their business" for purposes of this subsection.

1309 Section 26. This act may not be construed to limit the
1310 rights of local government or the duties of providers of cable

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1311 service to comply with any and all requirements of federal,
1312 state, or local law, including, but not limited to, 47 U.S.C.
1313 s.541, s. 166.046, and s. 337.401.

1314 Section 27. Subsection (4) of section 364.051, Florida
1315 Statutes, is amended to read:

1316 364.051 Price regulation.--

1317 (4) (a) ~~Notwithstanding the provisions of~~ subsection (2),
1318 any local exchange telecommunications company that believes
1319 circumstances have changed substantially to justify any increase
1320 in the rates for basic local telecommunications services may
1321 petition the commission for a rate increase, but the commission
1322 shall grant the ~~such~~ petition only after an opportunity for a
1323 hearing and a compelling showing of changed circumstances. The
1324 costs and expenses of any government program or project required
1325 in part II may ~~shall~~ not be recovered under this subsection
1326 unless the ~~such~~ costs and expenses are incurred in the absence
1327 of a bid and subject to carrier-of-last-resort obligations as
1328 provided for in part II. The commission shall act upon the ~~any~~
1329 ~~such~~ petition within 120 days after ~~of~~ its filing.

1330 (b) For purposes of this section, evidence of damage
1331 occurring to the lines, plants, or facilities of a local
1332 exchange telecommunications company that is subject to the
1333 carrier-of-last-resort obligations, which damage is the result
1334 of a tropical system occurring after June 1, 2005, and named by
1335 the National Hurricane Center, constitutes a compelling showing
1336 of changed circumstances.

1337 1. A company may file a petition to recover its intrastate
1338 costs and expenses relating to repairing, restoring, or

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1339 replacing the lines, plants, or facilities damaged by a named
1340 tropical system.

1341 2. The commission shall verify the intrastate costs and
1342 expenses submitted by the company in support of its petition.

1343 3. The company must show and the commission shall
1344 determine whether the intrastate costs and expenses are
1345 reasonable under the circumstances for the named tropical
1346 system.

1347 4. A company having a storm-reserve fund may recover
1348 tropical-system-related costs and expenses from its customers
1349 only in excess of any amount available in the storm-reserve
1350 fund.

1351 5. The commission may determine the amount of any increase
1352 that the company may charge its customers, but the charge per
1353 line item may not exceed 50 cents per month per customer line
1354 for a period of not more than 12 months.

1355 6. The commission may order the company to add an equal
1356 line-item charge per access line to the billing statement of the
1357 company's retail basic local telecommunications service
1358 customers, its retail nonbasic telecommunications service
1359 customers, and, to the extent the commission determines
1360 appropriate, its wholesale loop unbundled network element
1361 customers. At the end of the collection period, the commission
1362 shall verify that the collected amount does not exceed the
1363 amount authorized by the order. If collections exceed the
1364 ordered amount, the commission shall order the company to refund
1365 the excess.

1366 7. In order to qualify for filing a petition under this
1367 paragraph, a company with one million or more access lines, but
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1368 fewer than three million access lines, must have tropical-
1369 system-related costs and expenses exceeding \$1.5 million, and a
1370 company with three million or more access lines must have
1371 tropical-system-related costs and expenses of \$5 million or
1372 more. A company with fewer than one million access lines is not
1373 required to meet a minimum damage threshold in order to qualify
1374 to file a petition under this paragraph.

1375 8. A company may file only one petition for storm recovery
1376 in any 12-month period for the previous storm season, but the
1377 application may cover damages from more than one named tropical
1378 system.

1379
1380 This paragraph is not intended to adversely affect the
1381 commission's consideration of any petition for an increase in
1382 basic rates to recover costs related to storm damage which was
1383 filed before the effective date of this act.

1384 Section 28. If any provision of this act or its
1385 application to any person or circumstance is held invalid, the
1386 invalidity does not affect other provisions or applications of
1387 the act which can be given effect without the invalid provision
1388 or application, and to this end the provisions of this act are
1389 severable.

1390 Section 29. This act shall take effect upon becoming a
1391 law.

1392
1393 ===== T I T L E A M E N D M E N T =====

1394 Remove the entire title and insert:

1395 A bill to be entitled

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1396 An act relating to regulation of communications; creating
1397 the Committee on Public Service Commission Oversight as a
1398 standing joint committee of the Legislature; providing for
1399 its membership, powers, and duties; amending s. 350.001,
1400 F.S.; requiring that the commission perform its duties
1401 independently; amending s. 350.031, F.S.; authorizing the
1402 Florida Public Service Commission Nominating Council to
1403 make expenditures to advertise a vacancy on the council or
1404 the commission; requiring that the Committee on Public
1405 Service Commission Oversight provide nominees for
1406 recommendation to the Governor for appointment to the
1407 Public Service Commission; providing procedures; amending
1408 s. 350.041, F.S.; clarifying the prohibition against
1409 accepting gifts with respect to its application to
1410 commissioners attending conferences; requiring that a
1411 penalty be imposed against a person who gives a
1412 commissioner a prohibited gift; requiring that
1413 commissioners avoid impropriety and act in a manner that
1414 promotes confidence in the commission; prohibiting a
1415 commissioner from soliciting any thing of value, either
1416 directly or indirectly, from any public utility, its
1417 affiliate, or any party; amending s. 350.042, F.S.;
1418 requiring that a penalty be imposed against a person
1419 involved in a prohibited ex parte communication with a
1420 commissioner; amending s. 350.061, F.S.; requiring that
1421 the Committee on Public Service Commission Oversight
1422 rather than the Joint Legislative Auditing Committee
1423 appoint the Public Counsel; providing for biennial
1424 reconfirmation rather than annual; requiring that the

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1425 Public Counsel perform his or her duties independently;
1426 amending s. 350.0614, F.S.; requiring that the Committee
1427 on Public Service Commission Oversight rather than the
1428 Joint Legislative Auditing Committee oversee expenditures
1429 of the Public Counsel; providing definitions; providing
1430 for notice of public hearings to consider whether the
1431 local government will provide a communications service;
1432 requiring a governmental entity to take certain action
1433 before a communications service is provided; providing
1434 certain restrictions on revenue bonds to finance
1435 provisioning of communications services; requiring a local
1436 government to make available a written business plan;
1437 providing criteria for the business plan; setting pricing
1438 standards; providing for accounting and books and records;
1439 requiring the governmental entity to establish an
1440 enterprise fund; requiring the governmental entity to
1441 maintain separate operating and capital budgets; limiting
1442 the use of eminent-domain powers; requiring a governmental
1443 entity to hold a public hearing to consider certain
1444 factors if the business plan goals are not met; requiring
1445 compliance with certain federal and state laws; requiring
1446 local government to treat itself the same as it treats
1447 other providers of similar communications services;
1448 exempting certain governmental entities from specified
1449 provisions of the act; requiring a local government
1450 provider of communications services to follow the same
1451 prohibitions as other providers of the same services;
1452 providing an exemption for airports under certain
1453 conditions; recognizing preemption of a charter, code, or

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1454 other governmental authority; providing for severability;
1455 repealing s. 364.502, F.S., which provides for regulation
1456 of video programming; amending s. 364.01, F.S.; specifying
1457 the exclusive jurisdiction of the Florida Public Service
1458 Commission to regulate telecommunications companies;
1459 providing that state laws governing business and consumer
1460 protection be applied to communications activities that
1461 are not regulated by the commission; revising provisions
1462 governing the exclusive jurisdiction of the commission;
1463 creating s. 364.011, F.S.; specifying certain services
1464 that are exempt from oversight by the commission; creating
1465 s. 364.012, F.S.; requiring the commission to coordinate
1466 with federal agencies; providing that ch. 364, F.S., does
1467 not limit or modify certain duties of a local exchange
1468 carrier; creating s. 364.013, F.S.; requiring that
1469 broadband service remain free of state and local
1470 regulation; requiring that voice-over-Internet protocol
1471 remain free of regulation, except as specifically provided
1472 in ch. 364, F.S., or by federal law; amending s. 364.02,
1473 F.S.; defining the terms "broadband service" and "VoIP";
1474 redefining the term "service"; amending s. 364.0361, F.S.;
1475 prohibiting a local government from regulating voice-over-
1476 Internet protocol regardless of the platform or provider;
1477 amending s. 364.10, F.S.; transferring applicability from
1478 telecommunications companies serving as carriers of last
1479 resort to eligible telecommunications carriers; defining
1480 the term "eligible telecommunications carrier"; providing
1481 requirements for eligible telecommunications carriers;
1482 requiring the Public Service Commission to establish

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1483 | procedures for notification and termination of the
1484 | Lifeline Assistance credit; providing criteria for
1485 | connection, reconnection, and discontinuation of basic
1486 | local telecommunications service for Lifeline Assistance
1487 | subscribers; providing criteria for blocking access to
1488 | long-distance service; adding the Department of Education
1489 | and the Office of Public Counsel to those agencies that
1490 | are directed to cooperate in developing procedures for
1491 | promoting Lifeline participation; requiring the commission
1492 | to adopt rules; repealing s. 364.502, F.S., relating to
1493 | video programming services; amending s. 364.335, F.S.;
1494 | increasing to \$500 from \$250 the maximum allowable filing
1495 | fee for certification of telecommunications carriers;
1496 | amending s. 364.336, F.S.; authorizing the Public Service
1497 | Commission to establish a minimum fee of up to \$1,000;
1498 | authorizing different fees for different types of services
1499 | provided by telecommunications companies; amending ss.
1500 | 196.012, 199.183, 212.08, 290.007, 350.0605, 364.602, and
1501 | 489.103, F.S.; conforming cross-references; providing
1502 | clarification of rights of local governments and duties of
1503 | cable service providers to comply with certain laws and
1504 | regulations; amending s. 364.051, F.S.; providing that
1505 | damage to the equipment and facilities of a local exchange
1506 | telecommunications as a result of a named tropical system
1507 | constitutes a compelling showing of changed circumstances
1508 | to justify a rate increase; allowing such companies to
1509 | petition for recovery of such costs and expenses;
1510 | requiring the Public Service Commission to verify the
1511 | intrastate costs and expenses for repairing, restoring, or

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1512 replacing damaged lines, plants, or facilities; requiring
1513 the commission to determine whether the intrastate costs
1514 and expenses are reasonable; requiring a company to
1515 exhaust any storm-reserve funds prior to recovery from
1516 customers; providing that the commission may authorize
1517 adding an equal line-item charge per access line for
1518 certain customers; providing for a rate cap and providing
1519 the maximum number of months the rate may be imposed;
1520 providing a 12-month limit for the application; allowing
1521 recovery for more than one storm within the limit;
1522 providing for severability; providing an effective date.