

Bill No. HB 1649, 1st Eng.

Barcode 385652

CHAMBER ACTION

Senate

House

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Senator Constantine moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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1 Representatives shall appoint the chair of the committee in
 2 odd-numbered years and the vice chair in even-numbered years,
 3 from among the committee membership. Vacancies shall be filled
 4 in the same manner as the original appointment. Members shall
 5 serve without additional compensation, but shall be reimbursed
 6 for expenses.

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 9 in effect until repealed or amended by concurrent resolution.

10 (3) The committee shall:

11 (a) Recommend to the Governor nominees to fill a
 12 vacancy on the Public Service Commission, as provided by
 13 general law; and

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

16 (4) The committee is authorized to file a complaint
 17 with the Commission on Ethics alleging a violation of chapter
 18 350, Florida Statutes, by a commissioner, former commissioner,
 19 former commission employee, or member of the Public Service
 20 Commission Nominating Council.

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

25 Section 2. Section 350.001, Florida Statutes, is
 26 amended to read:

27 350.001 Legislative intent.--The Florida Public
 28 Service Commission has been and shall continue to be an arm of
 29 the legislative branch of government. The Public Service
 30 Commission shall perform its duties independently. It is the
 31 desire of the Legislature that the Governor participate in the

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1 appointment process of commissioners to the Public Service
 2 Commission. The Legislature accordingly delegates to the
 3 Governor a limited authority with respect to the Public
 4 Service Commission by authorizing him or her to participate in
 5 the selection of members only ~~from the list provided by the~~
 6 ~~Florida Public Service Commission Nominating Council~~ in the
 7 manner prescribed by s. 350.031.

8 Section 3. Section 350.031, Florida Statutes, is
 9 amended to read:

10 350.031 Florida Public Service Commission Nominating
 11 Council.--

12 (1) There is created a Florida Public Service
 13 Commission Nominating Council consisting of nine members. At
 14 least one member of the council must be 60 years of age or
 15 older. Three members, including one member of the House of
 16 Representatives, shall be appointed by and serve at the
 17 pleasure of the Speaker of the House of Representatives; three
 18 members, including one member of the Senate, shall be
 19 appointed by and serve at the pleasure of the President of the
 20 Senate; and three members shall be selected and appointed by a
 21 majority vote of the other six members of the council. All
 22 terms shall be for 4 years except those members of the House
 23 and Senate, who shall serve 2-year terms concurrent with the
 24 2-year elected terms of House members. Vacancies on the
 25 council shall be filled for the unexpired portion of the term
 26 in the same manner as original appointments to the council. A
 27 member may not be reappointed to the council, except for a
 28 member of the House of Representatives or the Senate who may
 29 be appointed to two 2-year terms or a person who is appointed
 30 to fill the remaining portion of an unexpired term.

31 (2)(a) No member or spouse shall be the holder of the

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1 stocks or bonds of any company, other than through ownership
2 of shares in a mutual fund, regulated by the commission, or
3 any affiliated company of any company regulated by the
4 commission, or be an agent or employee of, or have any
5 interest in, any company regulated by the commission or any
6 affiliated company of any company regulated by the commission,
7 or in any firm which represents in any capacity either
8 companies which are regulated by the commission or affiliates
9 of companies regulated by the commission. As a condition of
10 appointment to the council, each appointee shall affirm to the
11 Speaker and the President his or her qualification by the
12 following certification: "I hereby certify that I am not a
13 stockholder, other than through ownership of shares in a
14 mutual fund, in any company regulated by the commission or in
15 any affiliate of a company regulated by the commission, nor in
16 any way, directly or indirectly, in the employment of, or
17 engaged in the management of any company regulated by the
18 commission or any affiliate of a company regulated by the
19 commission, or in any firm which represents in any capacity
20 either companies which are regulated by the commission or
21 affiliates of companies regulated by the commission."

22
23 This certification is made as condition to appointment to the
24 Florida Public Service Commission Nominating Council.

25 (b) A member of the council may be removed by the
26 Speaker of the House of Representatives and the President of
27 the Senate upon a finding by the Speaker and the President
28 that the council member has violated any provision of this
29 subsection or for other good cause.

30 (c) If a member of the council does not meet the
31 requirements of this subsection, the President of the Senate

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1 or the Speaker of the House of Representatives, as
 2 appropriate, shall appoint a legislative replacement.

3 (3) A majority of the membership of the council may
 4 conduct any business before the council. All meetings and
 5 proceedings of the council shall be staffed by the Office of
 6 Legislative Services and shall be subject to the provisions of
 7 ss. 119.07 and 286.011. Members of the council are entitled
 8 to receive per diem and travel expenses as provided in s.
 9 112.061, which shall be funded by the Florida Public Service
 10 Regulatory Trust Fund. Applicants invited for interviews
 11 before the council may, in the discretion of the council,
 12 receive per diem and travel expenses as provided in s.
 13 112.061, which shall be funded by the Florida Public Service
 14 Regulatory Trust Fund. The council shall establish policies
 15 and procedures to govern the process by which applicants are
 16 nominated.

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

21 (5)(4) A person may not be nominated to the Committee
 22 on Public Service Commission Oversight ~~Governor~~ until the
 23 council has determined that the person is competent and
 24 knowledgeable in one or more fields, which shall include, but
 25 not be limited to: public affairs, law, economics,
 26 accounting, engineering, finance, natural resource
 27 conservation, energy, or another field substantially related
 28 to the duties and functions of the commission. The commission
 29 shall fairly represent the above-stated fields.
 30 Recommendations of the council shall be nonpartisan.

31 (6)(5) It is the responsibility of the council to

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1 nominate to the Committee on Public Service Commission
 2 Oversight ~~Governor not fewer than six~~ three persons for each
 3 vacancy occurring on the Public Service Commission. The
 4 council shall submit the recommendations to the committee
 5 ~~Governor~~ by August 1 ~~October 1~~ of those years in which the
 6 terms are to begin the following January, or within 60 days
 7 after a vacancy occurs for any reason other than the
 8 expiration of the term.

9 (7)(6) The Committee on Public Service Commission
 10 Oversight ~~Governor~~ shall select from the list of nominees
 11 provided by the nominating council three nominees for
 12 recommendation to the Governor for appointment to the
 13 commission. The recommendations must be provided to the
 14 Governor within 45 days after receipt of the list of nominees.
 15 The Governor shall fill a vacancy occurring on the Public
 16 Service Commission by appointment of one of the applicants
 17 nominated by the committee ~~council~~ only after a background
 18 investigation of such applicant has been conducted by the
 19 Florida Department of Law Enforcement. If the Governor has not
 20 made an appointment within 30 days after the receipt of the
 21 recommendation by ~~December 1~~ to fill a vacancy for a term to
 22 ~~begin the following January, then the~~ committee ~~council~~, by
 23 majority vote, shall appoint, within 30 days after the
 24 expiration of the Governor's time to make an appointment, by
 25 ~~December 31~~ one person from the applicants previously
 26 nominated to the Governor to fill the vacancy. ~~If the Governor~~
 27 ~~has not made the appointment to fill a vacancy occurring for~~
 28 ~~any reason other than the expiration of the term by the 60th~~
 29 ~~day following receipt of the nominations of the council, the~~
 30 ~~council by majority vote shall appoint within 30 days~~
 31 ~~thereafter one person from the applicants previously nominated~~

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1 ~~to the Governor to fill the vacancy.~~

2 (8)(7) Each appointment to the Public Service
3 Commission shall be subject to confirmation by the Senate
4 during the next regular session after the vacancy occurs. If
5 the Senate refuses to confirm or rejects the Governor's
6 appointment, the council shall initiate, in accordance with
7 this section, the nominating process within 30 days.

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

10 350.041 Commissioners; standards of conduct.--

11 (2) STANDARDS OF CONDUCT.--

12 (a) A commissioner may not accept anything from any
13 business entity which, either directly or indirectly, owns or
14 controls any public utility regulated by the commission, from
15 any public utility regulated by the commission, or from any
16 business entity which, either directly or indirectly, is an
17 affiliate or subsidiary of any public utility regulated by the
18 commission. A commissioner may attend conferences and
19 associated meals and events that are generally available to
20 all conference participants without payment of any fees in
21 addition to the conference fee. Additionally, while attending
22 a conference, a commissioner may attend meetings, meals, or
23 events that are not sponsored, in whole or in part, by any
24 representative of any public utility regulated by the
25 commission and that are limited to commissioners only,
26 committee members, or speakers if the commissioner is a member
27 of a committee of the association of regulatory agencies that
28 organized the conference or is a speaker at the conference. It
29 is not a violation of this paragraph for a commissioner to
30 attend a conference for which conference participants who are
31 employed by a utility regulated by the commission have paid a

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1 higher conference registration fee than the commissioner, or
2 to attend a meal or event that is generally available to all
3 conference participants without payment of any fees in
4 addition to the conference fee and that is sponsored, in whole
5 or in part, by a utility regulated by the commission. If,
6 during the course of an investigation by the Commission on
7 Ethics into an alleged violation of this paragraph,
8 allegations are made as to the identity of the person giving
9 or providing the prohibited gift, that person must be given
10 notice and an opportunity to participate in the investigation
11 and relevant proceedings to present a defense. If the
12 Commission on Ethics determines that the person gave or
13 provided a prohibited gift, the person may not appear before
14 the commission or otherwise represent anyone before the
15 commission for a period of 2 years.

16 (b) A commissioner may not accept any form of
17 employment with or engage in any business activity with any
18 business entity which, either directly or indirectly, owns or
19 controls any public utility regulated by the commission, any
20 public utility regulated by the commission, or any business
21 entity which, either directly or indirectly, is an affiliate
22 or subsidiary of any public utility regulated by the
23 commission.

24 (c) A commissioner may not have any financial
25 interest, other than shares in a mutual fund, in any public
26 utility regulated by the commission, in any business entity
27 which, either directly or indirectly, owns or controls any
28 public utility regulated by the commission, or in any business
29 entity which, either directly or indirectly, is an affiliate
30 or subsidiary of any public utility regulated by the
31 commission. If a commissioner acquires any financial interest

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1 prohibited by this section during his or her term of office as
 2 a result of events or actions beyond the commissioner's
 3 control, he or she shall immediately sell such financial
 4 interest or place such financial interest in a blind trust at
 5 a financial institution. A commissioner may not attempt to
 6 influence, or exercise any control over, decisions regarding
 7 the blind trust.

8 (d) A commissioner may not accept anything from a
 9 party in a proceeding currently pending before the commission.
 10 If, during the course of an investigation by the Commission on
 11 Ethics into an alleged violation of this paragraph,
 12 allegations are made as to the identity of the person giving
 13 or providing the prohibited gift, that person must be given
 14 notice and an opportunity to participate in the investigation
 15 and relevant proceedings to present a defense. If the
 16 Commission on Ethics determines that the person gave or
 17 provided a prohibited gift, the person may not appear before
 18 the commission or otherwise represent anyone before the
 19 commission for a period of 2 years.

20 (e) A commissioner may not serve as the representative
 21 of any political party or on any executive committee or other
 22 governing body of a political party; serve as an executive
 23 officer or employee of any political party, committee,
 24 organization, or association; receive remuneration for
 25 activities on behalf of any candidate for public office;
 26 engage on behalf of any candidate for public office in the
 27 solicitation of votes or other activities on behalf of such
 28 candidacy; or become a candidate for election to any public
 29 office without first resigning from office.

30 (f) A commissioner, during his or her term of office,
 31 may not make any public comment regarding the merits of any

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1 proceeding under ss. 120.569 and 120.57 currently pending
2 before the commission.

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

6 (h) A commissioner must avoid impropriety in all of
7 his or her activities and must act at all times in a manner
8 that promotes public confidence in the integrity and
9 impartiality of the commission.

10 (i) A commissioner may not directly or indirectly,
11 through staff or other means, solicit any thing of value from
12 any public utility regulated by the commission, or from any
13 business entity that, whether directly or indirectly, is an
14 affiliate or subsidiary of any public utility regulated by the
15 commission, or from any party appearing in a proceeding
16 considered by the commission in the last 2 years.

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

19 350.042 Ex parte communications.--

20 (7)(a) It shall be the duty of the Commission on
21 Ethics to receive and investigate sworn complaints of
22 violations of this section pursuant to the procedures
23 contained in ss. 112.322-112.3241.

24 (b) If the Commission on Ethics finds that there has
25 been a violation of this section by a public service
26 commissioner, it shall provide the Governor and the Florida
27 Public Service Commission Nominating Council with a report of
28 its findings and recommendations. The Governor is authorized
29 to enforce the findings and recommendations of the Commission
30 on Ethics, pursuant to part III of chapter 112.

31 (c) If a commissioner fails or refuses to pay the

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1 Commission on Ethics any civil penalties assessed pursuant to
2 the provisions of this section, the Commission on Ethics may
3 bring an action in any circuit court to enforce such penalty.

4 (d) If, during the course of an investigation by the
5 Commission on Ethics into an alleged violation of this
6 section, allegations are made as to the identity of the person
7 who participated in the ex parte communication, that person
8 must be given notice and an opportunity to participate in the
9 investigation and relevant proceedings to present a defense.
10 If the Commission on Ethics determines that the person
11 participated in the ex parte communication, the person may not
12 appear before the commission or otherwise represent anyone
13 before the commission for a period of 2 years.

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

16 350.061 Public Counsel; appointment; oath;
17 restrictions on Public Counsel and his or her employees.--

18 (1) The Committee on Public Service Commission
19 Oversight ~~Joint Legislative Auditing Committee~~ shall appoint a
20 Public Counsel by majority vote of the members of the
21 committee to represent the general public of Florida before
22 the Florida Public Service Commission. The Public Counsel
23 shall be an attorney admitted to practice before the Florida
24 Supreme Court and shall serve at the pleasure of the ~~Joint~~
25 ~~Legislative Auditing~~ Committee on Public Service Commission
26 Oversight, subject to biennial ~~annual~~ reconfirmation by the
27 committee. The Public Counsel shall perform his or her duties
28 independently. Vacancies in the office shall be filled in the
29 same manner as the original appointment.

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

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1 350.0614 Public Counsel; compensation and expenses.--

2 (2) The Legislature ~~hereby~~ declares and determines
3 that the Public Counsel is under the legislative branch of
4 government within the intention of the legislation as
5 expressed in chapter 216, and no power shall be in the
6 Executive Office of the Governor or its successor to release
7 or withhold funds appropriated to it, but the same shall be
8 available for expenditure as provided by law and the rules or
9 decisions of the ~~Joint Auditing~~ Committee on Public Service
10 Commission Oversight.

11 Section 8. Communications services offered by
12 governmental entities.--

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

14 (a) "Advanced service" means
15 high-speed-Internet-access-service capability in excess of 200
16 kilobits per second in the upstream or the downstream
17 direction, including any service application provided over the
18 high-speed-access service or any information service as
19 defined in 47 U.S.C. s. 153(20).

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

22 (c) "Communications services" includes any "advanced
23 service," "cable service," or "telecommunications service" and
24 shall be construed in the broadest sense.

25 (d) "Enterprise fund" means a separate fund to account
26 for the operation of communications services by a local
27 government, established and maintained in accordance with
28 generally accepted accounting principles as prescribed by the
29 Governmental Accounting Standards Board.

30 (e) "Governmental entity" means any political
31 subdivision as defined in section 1.01, Florida Statutes,

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1 including any county, municipality, special district, school
 2 district, utility authority or other authority or any
 3 instrumentality, agency, unit or department thereof. The term
 4 does not include an independent special district created
 5 before 1970 which has been granted express legislative
 6 authority to provide a communications service and which does
 7 not sell a communications service outside its district
 8 boundaries.

9 (f) "Provide," "providing," "provision," or
 10 "provisioning" means offering or supplying a communications
 11 service for a fee or other consideration to a person,
 12 including any portion of the public or private provider, but
 13 does not include service by an entity to itself or to any
 14 other governmental entity.

15 (g) "Subscriber" means a person who receives a
 16 communications service.

17 (h) "Telecommunications services" means the
 18 transmission of signs, signals, writing, images, sounds,
 19 messages, data, or other information of the user's choosing,
 20 by wire, radio, light waves, or other electromagnetic means,
 21 without change in the form or content of the information as
 22 sent and received by the user and regardless of the facilities
 23 used, including, without limitation, wireless facilities.

24 (2)(a) A governmental entity that proposes to provide
 25 a communications service shall hold no less than two public
 26 hearings, which shall be held not less than 30 days apart. At
 27 least 30 days before the first of the two public hearings, the
 28 governmental entity must give notice of the hearing in the
 29 predominant newspaper of general circulation in the area
 30 considered for service. At least 40 days before the first
 31 public hearing, the governmental entity must electronically

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1 provide notice to the Department of Revenue and the Public
2 Service Commission, which shall post the notice on the
3 department's and the commission's website to be available to
4 the public. The Department of Revenue shall also send the
5 notice by United States Postal Service to the known addresses
6 for all dealers of communications services registered with the
7 department under chapter 202, Florida Statutes, or provide an
8 electronic notification, if the means are available, within 10
9 days after receiving the notice. The notice must include the
10 time and place of the hearings and must state that the purpose
11 of the hearings is to consider whether the governmental entity
12 will provide communications services. The notice must include,
13 at a minimum, the geographic areas proposed to be served by
14 the governmental entity and the services, if any, which the
15 governmental entity believes are not currently being
16 adequately provided. The notice must also state that any
17 dealer who wishes to do so may appear and be heard at the
18 public hearings.

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

21 1. Whether the service that is proposed to be provided
22 is currently being offered in the community and, if so,
23 whether the service is generally available throughout the
24 community.

25 2. Whether a similar service is currently being
26 offered in the community and, if so, whether the service is
27 generally available throughout the community.

28 3. If the same or similar service is not currently
29 offered, whether any other service provider proposes to offer
30 the same or a similar service and, if so, what assurances that
31 service provider is willing or able to offer regarding the

1 same or similar service.

2 4. The capital investment required by the government
3 entity to provide the communications service, the estimated
4 realistic cost of operation and maintenance and, using a full
5 cost-accounting method, the estimated realistic revenues and
6 expenses of providing the service and the proposed method of
7 financing.

8 5. The private and public costs and benefits of
9 providing the service by a private entity or a governmental
10 entity, including the affect on existing and future jobs,
11 actual economic development prospects, tax-base growth,
12 education, and public health.

13 (c) At one or more of the public hearings under this
14 subsection, the governmental entity must make available to the
15 public a written business plan for the proposed communications
16 service venture containing, at a minimum:

17 1. The projected number of subscribers to be served by
18 the venture.

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

20 3. The types of communications services to be
21 provided.

22 4. A plan to ensure that revenues exceed operating
23 expenses and payment of principal and interest on debt within
24 4 years.

25 5. Estimated capital and operational costs and
26 revenues for the first 4 years.

27 6. Projected network modernization and technological
28 upgrade plans, including estimated costs.

29 (d) After making specific findings regarding the
30 factors in paragraphs (b) and (c), the governmental entity may
31 authorize providing a communications service by a majority

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1 recorded vote and by resolution, ordinance, or other formal
2 means of adoption.

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

6 1. A governmental entity may only pledge revenues in
7 support of the issuance of any bond to finance providing a
8 communications service:

9 a. Within the county in which the governmental entity
10 is located;

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

15 c. If the governmental entity is a municipality or
16 special district, within its corporate limits or in an area in
17 which the municipality or special district provides water,
18 wastewater, electric, or natural gas service, or within an
19 urban service area designated in a comprehensive plan,
20 whichever is larger, unless the municipality or special
21 district obtains the consent of the governmental entity within
22 the boundaries of which the municipality or special district
23 proposes to provide service. Any governmental entity from
24 which consent is sought shall be the county or shall be
25 located within the county in which the governmental entity is
26 located for consent to be effective.

27 2. Revenue bonds issued in order to finance providing
28 a communications service are not subject to the approval of
29 the electors if the revenue bonds mature within 15 years.
30 Revenue bonds issued to finance providing a communications
31 service that does not mature within 15 years must be approved

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1 by the electors. The election must be conducted as specified
2 in chapter 100, Florida Statutes.

3 (f) A governmental entity providing a communications
4 service may not price any service below the cost of providing
5 the service by subsidizing the communications service with
6 moneys from rates paid by subscribers of a noncommunications
7 services utility or from any other revenues. The cost standard
8 for determining cross-subsidization is whether the total
9 revenue from the service is less than the total long-run
10 incremental cost of the service. Total long-run incremental
11 cost means service-specific volume and nonvolume-sensitive
12 costs.

13 (g) A governmental entity providing a communications
14 service must comply with the requirements of section 218.32,
15 Florida Statutes, and shall keep separate and accurate books
16 and records, maintained in accordance with generally accepted
17 accounting principles, of a governmental entity's
18 communication service, and they shall be made available for
19 any audits of the books and records conducted under applicable
20 law. To facilitate equitable distribution of indirect costs, a
21 local government shall develop and follow a cost-allocation
22 plan, which is a procedure for allocating direct and indirect
23 costs and which is generally developed in accordance with OMB
24 Circular A-87, Cost Principles for State, Local, and Indian
25 Tribal Government, published by the United States Office of
26 Management and Budget.

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

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

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

5 (k) The governmental entity shall conduct an annual
 6 review at a formal public meeting to consider the progress the
 7 governmental entity is making toward reaching its business
 8 plan goals and objectives for providing communication
 9 services. At the public meeting the governmental entity shall
 10 review the related revenues, operating expenses, and payment
 11 of interest on debt.

12 (l) If, after 4 years following the initiation of the
 13 provision of communications services by a governmental entity
 14 or 4 years after the effective date of this act, whichever is
 15 later, revenues do not exceed operating expenses and payment
 16 of principal and interest on the debt for a governmental
 17 entity's provision of communications services, no later than
 18 60 days following the end of the 4-year period a governmental
 19 entity shall hold a public hearing at which the governmental
 20 entity shall do at least one of the following:

21 1. Approve a plan to cease providing communications
 22 services;

23 2. Approve a plan to dispose of the system the
 24 governmental entity is using to provide communications
 25 services and, accordingly, to cease providing communications
 26 services;

27 3. Approve a plan to create a partnership with a
 28 private entity in order to achieve operations in which
 29 revenues exceed operating expenses and payment of principal
 30 and interest on debt; or

31 4. Approve the continuing provision of communications

1 services.

2 (3)(a) A governmental entity that provides a cable
3 service shall comply with the Cable Communications Policy Act
4 of 1984, 47 U.S.C. 521, et seq., the regulations issued by the
5 Federal Communications Commission under the Cable
6 Communications Policy Act of 1984, 47 U.S.C. 521, et seq., and
7 all applicable state and federal rules and regulations,
8 including, but not limited to, section 166.046, Florida
9 Statutes, and those provisions of chapters 202, 212, and 337,
10 Florida Statutes, which apply to a provider of the services.

11 (b) A governmental entity that provides a
12 telecommunications service or advanced service must comply, if
13 applicable, with chapter 364, Florida Statutes, and rules
14 adopted by the Public Service Commission; chapter 166, Florida
15 Statutes; and all applicable state and federal rules and
16 regulations, including, but not limited to, those provisions
17 of chapters 202, 212, and 337, Florida Statutes, which apply
18 to a provider of the services.

19 (c) A governmental entity may not exercise its power
20 or authority in any area, including zoning or land use
21 regulation, to require any person, including residents of a
22 particular development, to use or subscribe to any
23 communication service of a governmental entity.

24 (d) A governmental entity shall apply its ordinances,
25 rules, and policies, and exercise any authority under state or
26 federal laws, including, but not limited to, those relating to
27 the following subjects and without discrimination as to itself
28 when providing a communications service or to any private
29 provider of communications services:

- 30 1. Access to public rights-of-way; and
31 2. Permitting, access to, use of, and payment for use

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1 of governmental entity-owned poles. The governmental entity is
2 subject to the same terms, conditions, and fees, if any, for
3 access to government-owned poles which the governmental entity
4 applies to a private provider for access.

5 (4)(a) If a governmental entity was providing, as of
6 April 1, 2005, advanced services, cable services, or
7 telecommunications services, then it is not required to comply
8 with paragraph (2)(a), paragraph (2)(b), paragraph (2)(c),
9 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
10 (2)(f), paragraph (2)(k), or paragraph (2)(l), in order to
11 continue to provide advanced services, cable services, or
12 telecommunications services, respectively, but it must comply
13 with and be subject to all other provisions of this section.

14 (b) If a governmental entity, as of April 1, 2005, had
15 issued debt pledging revenues from an advanced service, cable
16 service, or telecommunications service, then it is not
17 required to comply with paragraph (2)(a), paragraph (2)(b),
18 paragraph (2)(c), paragraph (2)(d), sub-subparagraph
19 (2)(e)1.c., paragraph (2)(f), paragraph (2)(k), or paragraph
20 (2)(l), in order to provide advanced services, cable services,
21 or telecommunications services, respectively, but it must
22 comply with and be subject to all other provisions of this
23 section.

24 (c) If a governmental entity, as of April 1, 2005, has
25 purchased equipment specifically for the provisioning of
26 advanced service, cable service, or telecommunication service,
27 and, as of May 6, 2005, has authorized the providing of an
28 advanced service, cable service, or telecommunication service,
29 then it is not required to comply with paragraph (2)(a),
30 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d),
31 sub-subparagraph (2)(e)1.c., paragraph (2)(f), paragraph

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1 (2)(k), or paragraph (2)(l) in order to provide advanced
 2 service, cable service, or telecommunication service,
 3 respectively, but it must comply with and be subject to all
 4 other provisions of this section.

5
 6 This subsection does not relieve a governmental entity from
 7 complying with subsection (5).

8 (5) Notwithstanding section 542.235, Florida Statutes,
 9 or any other law, a governmental entity that provides a
 10 communications service is subject to the same prohibitions
 11 applicable to private providers under sections 542.18 and
 12 542.19, Florida Statutes, as it relates to providing a
 13 communications service. In addition, the exemption from
 14 complying with paragraph (2)(f), does not confer state action
 15 immunity, or any other antitrust immunity or exemption, on any
 16 governmental entity providing communications services.

17 (6) To ensure the safe and secure transportation of
 18 passengers and freight through an airport facility, as defined
 19 in section 159.27(17), Florida Statutes, an airport authority
 20 or other governmental entity that provides or is proposing to
 21 provide communications services only within the boundaries of
 22 its airport layout plan, as defined in section 333.01(6),
 23 Florida Statutes, to subscribers which are integral and
 24 essential to the safe and secure transportation of passengers
 25 and freight through the airport facility, is exempt from this
 26 section. An airport authority or other governmental entity
 27 that provides or is proposing to provide shared-tenant service
 28 under section 364.339, Florida Statutes, but not dial tone
 29 enabling subscribers to complete calls outside the airport
 30 layout plan, to one or more subscribers within its airport
 31 layout plan which are not integral and essential to the safe

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1 and secure transportation of passengers and freight through
2 the airport facility is exempt from this section. An airport
3 authority or other governmental entity that provides or is
4 proposing to provide communications services to one or more
5 subscribers within its airport layout plan which are not
6 integral and essential to the safe and secure transportation
7 of passengers and freight through the airport facility, or to
8 one or more subscribers outside its airport layout plan, is
9 not exempt from this section. By way of example and not
10 limitation, the integral, essential subscribers may include
11 airlines and emergency service entities, and the nonintegral,
12 nonessential subscribers may include retail shops,
13 restaurants, hotels, or rental car companies.

14 (7) This section does not alter or affect any
15 provision in the charter, code, or other governing authority
16 of a governmental entity that impose additional or different
17 requirements on provision of communications service by a
18 governmental entity. Any such provisions shall apply in
19 addition to the applicable provisions in this section.

20 Section 9. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 invalidity does not affect other provisions or applications of
23 the act which can be given effect without the invalid
24 provision or application, and to this end the provisions of
25 this act are severable.

26 Section 10. Section 364.01, Florida Statutes, is
27 amended to read:

28 364.01 Powers of commission, legislative intent.--

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

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1 (2) It is the legislative intent to give exclusive
2 jurisdiction in all matters set forth in this chapter to the
3 Florida Public Service Commission in regulating
4 telecommunications companies, and such preemption shall
5 supersede any local or special act or municipal charter where
6 any conflict of authority may exist. However, the provisions
7 of this chapter shall not affect the authority and powers
8 granted in s. 166.231(9) or s. 337.401.

9 (3) Communications activities that are not regulated
10 by the Florida Public Service Commission, including, but not
11 limited to, VoIP, wireless, and broadband, are subject to this
12 state's generally applicable business regulation and deceptive
13 trade practices and consumer protection laws, as enforced by
14 the appropriate state authority or through actions in the
15 judicial system. This chapter does not limit the availability
16 to any party of any remedy or defense under state or federal
17 antitrust laws. The Legislature finds that the competitive
18 provision of telecommunications services, including local
19 exchange telecommunications service, is in the public interest
20 and will provide customers with freedom of choice, encourage
21 the introduction of new telecommunications service, encourage
22 technological innovation, and encourage investment in
23 telecommunications infrastructure. The Legislature further
24 finds that the transition from the monopoly provision of local
25 exchange service to the competitive provision thereof will
26 require appropriate regulatory oversight to protect consumers
27 and provide for the development of fair and effective
28 competition, but nothing in this chapter shall limit the
29 availability to any party of any remedy under state or federal
30 antitrust laws. The Legislature further finds that changes in
31 regulations allowing increased competition in

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1 telecommunications services could provide the occasion for
2 increases in the telecommunications workforce; therefore, it
3 is in the public interest that competition in
4 telecommunications services lead to a situation that enhances
5 the high-technological skills and the economic status of the
6 telecommunications workforce. The Legislature further finds
7 that the provision of voice-over-Internet protocol (VOIP) free
8 of unnecessary regulation, regardless of the provider, is in
9 the public interest.

10 (4) The commission shall exercise its exclusive
11 jurisdiction in order to:

12 (a) Protect the public health, safety, and welfare by
13 ensuring that basic local telecommunications services are
14 available to all consumers in the state at reasonable and
15 affordable prices.

16 (b) Encourage competition through flexible regulatory
17 treatment among providers of telecommunications services in
18 order to ensure the availability of the widest possible range
19 of consumer choice in the provision of all telecommunications
20 services.

21 (c) Protect the public health, safety, and welfare by
22 ensuring that monopoly services provided by telecommunications
23 companies continue to be subject to effective price, rate, and
24 service regulation.

25 (d) Promote competition by encouraging innovation and
26 investment in ~~new entrants into~~ telecommunications markets and
27 by allowing a transitional period in which new and emerging
28 technologies ~~entrants~~ are subject to a reduced ~~lesser~~ level of
29 regulatory oversight ~~than local exchange telecommunications~~
30 ~~companies~~.

31 (e) Encourage all providers of telecommunications

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1 services to introduce new or experimental telecommunications
2 services free of unnecessary regulatory restraints.

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

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

8 (h) Recognize the continuing emergence of a
9 competitive telecommunications environment through the
10 flexible regulatory treatment of competitive
11 telecommunications services, where appropriate, if doing so
12 does not reduce the availability of adequate basic local
13 telecommunications service to all citizens of the state at
14 reasonable and affordable prices, if competitive
15 telecommunications services are not subsidized by monopoly
16 telecommunications services, and if all monopoly services are
17 available to all competitors on a nondiscriminatory basis.

18 (i) Continue its historical role as a surrogate for
19 competition for monopoly services provided by local exchange
20 telecommunications companies.

21 Section 11. Section 364.011, Florida Statutes, is
22 created to read:

23 364.011 Exemptions from commission jurisdiction.--The
24 following services are exempt from oversight by the
25 commission, except to the extent delineated in this chapter or
26 specifically authorized by federal law:

27 (1) Intrastate interexchange telecommunications
28 services.

29 (2) Broadband services, regardless of the provider,
30 platform, or protocol.

31 (3) VoIP.

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1 (4) Wireless telecommunications, including commercial
2 mobile radio service providers.

3 Section 12. Section 364.012, Florida Statutes, is
4 created to read:

5 364.012 Consistency with federal law.--

6 (1) In order to promote commission coordination with
7 federal policymakers and regulatory agencies, the commission
8 shall maintain continuous liaisons with appropriate federal
9 agencies whose policy decisions and rulemaking authority
10 affect those telecommunications companies over which the
11 commission has jurisdiction. The commission is encouraged to
12 participate in the proceedings of federal agencies in cases in
13 which the state's consumers may be affected and to convey the
14 commission's policy positions and information requirements in
15 order to achieve greater efficiency in regulation.

16 (2) This chapter does not limit or modify the duties
17 of a local exchange carrier to provide unbundled access to
18 network elements or the commission's authority to arbitrate
19 and enforce interconnection agreements to the extent that
20 those elements are required under 47 U.S.C. ss. 251 and 252,
21 and under any regulations issued by the Federal Communications
22 Commission at rates determined in accordance with the
23 standards established by the Federal Communications Commission
24 pursuant to 47 C.F.R. ss. 51.503-51.513, inclusive of any
25 successor regulation or successor forbearance of regulation.

26 Section 13. Section 364.013, Florida Statutes, is
27 created to read:

28 364.013 Emerging and advanced services.--Broadband
29 service and the provision of voice-over-Internet-protocol
30 (VoIP) shall be free of state regulation, except as delineated
31 in this chapter or as specifically authorized by federal law,

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1 regardless of the provider, platform, or protocol.

2 Section 14. Section 364.02, Florida Statutes, is
3 amended to read:

4 364.02 Definitions.--As used in this chapter:

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

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

- 21 (a) Is used to provide access to the Internet; or
- 22 (b) Provides computer processing, information storage,
23 information content, or protocol conversion in combination
24 with the service.

25
26 The definition of broadband service does not include any
27 intrastate telecommunications services that have been tariffed
28 with the commission on or before January 1, 2005.

29 (3)~~(2)~~ "Commercial mobile radio service provider"
30 means a commercial mobile radio service provider as defined by
31 and pursuant to 47 U.S.C. ss. 153(n) and 332(d).

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1 ~~(4)(3)~~ "Commission" means the Florida Public Service
2 Commission.

3 ~~(5)(4)~~ "Competitive local exchange telecommunications
4 company" means any company certificated by the commission to
5 provide local exchange telecommunications services in this
6 state on or after July 1, 1995.

7 ~~(6)(5)~~ "Corporation" includes a corporation, company,
8 association, or joint stock association.

9 ~~(7)(6)~~ "Intrastate interexchange telecommunications
10 company" means any entity that provides intrastate
11 interexchange telecommunications services.

12 ~~(8)(7)~~ "Local exchange telecommunications company"
13 means any company certificated by the commission to provide
14 local exchange telecommunications service in this state on or
15 before June 30, 1995.

16 ~~(9)(8)~~ "Monopoly service" means a telecommunications
17 service for which there is no effective competition, either in
18 fact or by operation of law.

19 ~~(10)(9)~~ "Nonbasic service" means any
20 telecommunications service provided by a local exchange
21 telecommunications company other than a basic local
22 telecommunications service, a local interconnection
23 arrangement described in s. 364.16, or a network access
24 service described in s. 364.163.

25 ~~(11)(10)~~ "Operator service" includes, but is not
26 limited to, billing or completion of third-party,
27 person-to-person, collect, or calling card or credit card
28 calls through the use of a live operator or automated
29 equipment.

30 ~~(12)(11)~~ "Operator service provider" means a person
31 who furnishes operator service through a call aggregator.

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1 ~~(13)(12)~~ "Service" is to be construed in its broadest
2 and most inclusive sense. The term "service" does not include
3 broadband service or voice-over-Internet protocol service for
4 purposes of regulation by the commission. Nothing herein shall
5 affect the rights and obligations of any entity related to the
6 payment of switched network access rates or other intercarrier
7 compensation, if any, related to voice-over-Internet protocol
8 service. Notwithstanding s. 364.013, and the exemption of
9 services pursuant to this subsection, the commission may
10 arbitrate, enforce, or approve interconnection agreements, and
11 resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or
12 any other applicable federal law or regulation. With respect
13 to the services exempted in this subsection, regardless of the
14 technology, the duties of a local exchange telecommunications
15 company are only those that the company is obligated to extend
16 or provide under applicable federal law and regulations.

17 ~~(14)(13)~~ "Telecommunications company" includes every
18 corporation, partnership, and person and their lessees,
19 trustees, or receivers appointed by any court whatsoever, and
20 every political subdivision in the state, offering two-way
21 telecommunications service to the public for hire within this
22 state by the use of a telecommunications facility. The term
23 "telecommunications company" does not include:

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

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

31 (c) A commercial mobile radio service provider;

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1 (d) A facsimile transmission service;

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

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

6 (g) An intrastate interexchange telecommunications
7 company.

8
9 However, each commercial mobile radio service provider and
10 each intrastate interexchange telecommunications company shall
11 continue to be liable for any taxes imposed under ~~pursuant to~~
12 chapters 202, 203, and 212 and any fees assessed under
13 ~~pursuant to~~ ss. 364.025 and 364.336. Each intrastate
14 interexchange telecommunications company shall continue to be
15 subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285,
16 364.501, 364.603, and 364.604, shall provide the commission
17 with such current information as the commission deems
18 necessary to contact and communicate with the company, shall
19 continue to pay intrastate switched network access rates or
20 other intercarrier compensation to the local exchange
21 telecommunications company or the competitive local exchange
22 telecommunications company for the origination and termination
23 of interexchange telecommunications service, and shall reduce
24 its intrastate long distance toll rates in accordance with s.
25 364.163(2).

26 ~~(15)(14)~~ "Telecommunications facility" includes real
27 estate, easements, apparatus, property, and routes used and
28 operated to provide two-way telecommunications service to the
29 public for hire within this state.

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

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1 Section 15. Section 364.0361, Florida Statutes, is
2 amended to read:

3 364.0361 Local government authority; nondiscriminatory
4 exercise.--A local government shall treat each
5 telecommunications company in a nondiscriminatory manner when
6 exercising its authority to grant franchises to a
7 telecommunications company or to otherwise establish
8 conditions or compensation for the use of rights-of-way or
9 other public property by a telecommunications company. A local
10 government may not directly or indirectly regulate the terms
11 and conditions, including, but not limited to, the operating
12 systems, qualifications, services, service quality, service
13 territory, and prices, applicable to or in connection with the
14 provision of any voice-over-Internet protocol, regardless of
15 the platform, provider, or protocol, broadband or information
16 service. This section does not relieve a provider from any
17 obligations under s. 166.046 or s. 337.401.

18 Section 16. Section 364.10, Florida Statutes, is
19 amended to read:

20 364.10 Undue advantage to person or locality
21 prohibited; Lifeline service.--

22 (1) A telecommunications company may not make or give
23 any undue or unreasonable preference or advantage to any
24 person or locality or subject any particular person or
25 locality to any undue or unreasonable prejudice or
26 disadvantage in any respect whatsoever.

27 (2)(a) The prohibitions of subsection (1)
28 notwithstanding, an eligible telecommunications carrier ~~a~~
29 ~~telecommunications company serving as carrier of last resort~~
30 shall provide a Lifeline Assistance Plan to qualified
31 residential subscribers, as defined in a commission-approved

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1 tariff or price list, and a preferential rate to eligible
 2 facilities as provided for in part II. For the purposes of
 3 this section, the term "eligible telecommunications carrier"
 4 means a telecommunications company, as defined by s. 364.02,
 5 which is designated as an eligible telecommunications carrier
 6 by the commission pursuant to 47 C.F.R. s. 54.201.

7 (b) An eligible telecommunications carrier shall offer
 8 a consumer who applies for or receives Lifeline service the
 9 option of blocking all toll calls or, if technically capable,
 10 placing a limit on the number of toll calls a consumer can
 11 make. The eligible telecommunications carrier may not charge
 12 the consumer an administrative charge or other additional fee
 13 for blocking the service.

14 (c) An eligible telecommunications carrier may not
 15 collect a service deposit in order to initiate Lifeline
 16 service if the qualifying low-income consumer voluntarily
 17 elects toll blocking or toll limitation. If the qualifying
 18 low-income consumer elects not to place toll blocking on the
 19 line, an eligible telecommunications carrier may charge a
 20 service deposit.

21 (d) An eligible telecommunications carrier may not
 22 charge Lifeline subscribers a monthly number-portability
 23 charge.

24 (e)1. An eligible telecommunications carrier must
 25 notify a Lifeline subscriber of impending termination of
 26 Lifeline service if the company has a reasonable basis for
 27 believing that the subscriber no longer qualifies.
 28 Notification of pending termination must be in the form of a
 29 letter that is separate from the subscriber's bill.

30 2. An eligible telecommunications carrier shall allow
 31 a subscriber 60 days following the date of the pending

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1 termination letter to demonstrate continued eligibility. The
 2 subscriber must present proof of continued eligibility. An
 3 eligible telecommunications carrier may transfer a subscriber
 4 off of Lifeline service, pursuant to its tariff, if the
 5 subscriber fails to demonstrate continued eligibility.

6 3. The commission shall establish procedures for such
 7 notification and termination.

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

13 (3)(a) Effective September 1, 2003, any local exchange
 14 telecommunications company authorized by the commission to
 15 reduce its switched network access rate pursuant to s. 364.164
 16 shall have tariffed and shall provide Lifeline service to any
 17 otherwise eligible customer or potential customer who meets an
 18 income eligibility test at 135 ~~125~~ percent or less of the
 19 federal poverty income guidelines for Lifeline customers. Such
 20 a test for eligibility must augment, rather than replace, the
 21 eligibility standards established by federal law and based on
 22 participation in certain low-income assistance programs. Each
 23 intrastate interexchange telecommunications company shall,
 24 effective September 1, 2003, file a tariff providing at a
 25 minimum the intrastate interexchange telecommunications
 26 carrier's current Lifeline benefits and exemptions to Lifeline
 27 customers who meet the income eligibility test set forth in
 28 this subsection. The Office of Public Counsel shall certify
 29 and maintain claims submitted by a customer for eligibility
 30 under the income test authorized by this subsection.

31 (b) Each eligible telecommunications carrier local

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1 ~~exchange telecommunications company~~ subject to this subsection
 2 shall provide to each state and federal agency providing
 3 benefits to persons eligible for Lifeline service
 4 applications, brochures, pamphlets, or other materials that
 5 inform the ~~such~~ persons of their eligibility for Lifeline, and
 6 each state agency providing the ~~such~~ benefits shall furnish
 7 the materials to affected persons at the time they apply for
 8 benefits.

9 (c) Any local exchange telecommunications company
 10 customer receiving Lifeline benefits shall not be subject to
 11 any residential basic local telecommunications service rate
 12 increases authorized by s. 364.164 until the local exchange
 13 telecommunications company reaches parity as defined in s.
 14 364.164(5) or until the customer no longer qualifies for the
 15 Lifeline benefits established by this section or s. 364.105,
 16 or unless otherwise determined by the commission upon petition
 17 by a local exchange telecommunications company.

18 (d) An eligible telecommunications carrier may not
 19 discontinue basic local exchange telephone service to a
 20 subscriber who receives Lifeline service because of nonpayment
 21 by the subscriber of charges for nonbasic services billed by
 22 the telecommunications company, including long-distance
 23 service. A subscriber who receives Lifeline service shall be
 24 required to pay all applicable basic local exchange service
 25 fees, including the subscriber line charge, E-911, telephone
 26 relay system charges, and applicable state and federal taxes.

27 (e) An eligible telecommunications carrier may not
 28 refuse to connect, reconnect, or provide Lifeline service
 29 because of unpaid toll charges or nonbasic charges other than
 30 basic local exchange service.

31 (f) An eligible telecommunications carrier may require

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1 that payment arrangements be made for outstanding debt
2 associated with basic local exchange service, subscriber line
3 charges, E-911, telephone relay system charges, and applicable
4 state and federal taxes.

5 (g) An eligible telecommunications carrier may block a
6 Lifeline service subscriber's access to all long-distance
7 service, except for toll-free numbers, and may block the
8 ability to accept collect calls when the subscriber owes an
9 outstanding amount for long-distance service or amounts
10 resulting from collect calls. However, the eligible
11 telecommunications carrier may not impose a charge for
12 blocking long-distance service. The eligible
13 telecommunications carrier shall remove the block at the
14 request of the subscriber without additional cost to the
15 subscriber upon payment of the outstanding amount. An eligible
16 telecommunications carrier may charge a service deposit before
17 removing the block.

18 (h)(d) By December 31, 2003, each state agency that
19 provides benefits to persons eligible for Lifeline service
20 shall undertake, in cooperation with the Department of
21 Children and Family Services, the Department of Education, the
22 commission, the Office of Public Counsel, and
23 telecommunications companies providing Lifeline services, the
24 development of procedures to promote Lifeline participation.

25 (i)(e) The commission shall report to the Governor,
26 the President of the Senate, and the Speaker of the House of
27 Representatives by December 31 each year on the number of
28 customers who are subscribing to Lifeline service and the
29 effectiveness of any procedures to promote participation.

30 (j) The commission shall adopt rules to administer
31 this section.

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1 Section 17. Section 364.502, Florida Statutes, is
2 repealed.

3 Section 18. Subsection (1) of section 364.335, Florida
4 Statutes, is amended to read:

5 364.335 Application for certificate.--

6 (1) Each applicant for a certificate shall:

7 (a) Provide all information required by rule or order
8 of the commission, which may include a detailed inquiry into
9 the ability of the applicant to provide service, a detailed
10 inquiry into the territory and facilities involved, and a
11 detailed inquiry into the existence of service from other
12 sources within geographical proximity to the territory applied
13 for.

14 (b) File with the commission schedules showing all
15 rates for service of every kind furnished by it and all rules
16 and contracts relating to such service.

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

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

23 Section 19. Section 364.336, Florida Statutes, is
24 amended to read:

25 364.336 Regulatory assessment fees.--Notwithstanding
26 any provisions of law to the contrary, each telecommunications
27 company licensed or operating under this chapter, for any part
28 of the preceding 6-month period, shall pay to the commission,
29 within 30 days following the end of each 6-month period, a fee
30 that may not exceed 0.25 percent annually of its gross
31 operating revenues derived from intrastate business, except,

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1 for purposes of this section and the fee specified in s.
2 350.113(3), any amount paid to another telecommunications
3 company for the use of any telecommunications network shall be
4 deducted from the gross operating revenue for purposes of
5 computing the fee due. The commission shall by rule assess a
6 minimum fee in an amount up to \$1,000. The minimum amount may
7 vary depending on the type of service provided by the
8 telecommunications company, and shall, to the extent
9 practicable, be related to the cost of regulating such type of
10 company. Differences, if any, between the amount paid in any
11 6-month period and the amount actually determined by the
12 commission to be due shall, upon motion by the commission, be
13 immediately paid or refunded. Fees under this section may not
14 be less than \$50 annually. Such fees shall be deposited in
15 accordance with s. 350.113. The commission may by rule
16 establish criteria for payment of the regulatory assessment
17 fee on an annual basis rather than on a semiannual basis.

18 Section 20. Subsection (6) of section 196.012, Florida
19 Statutes, is amended to read:

20 196.012 Definitions.--For the purpose of this chapter,
21 the following terms are defined as follows, except where the
22 context clearly indicates otherwise:

23 (6) Governmental, municipal, or public purpose or
24 function shall be deemed to be served or performed when the
25 lessee under any leasehold interest created in property of the
26 United States, the state or any of its political subdivisions,
27 or any municipality, agency, special district, authority, or
28 other public body corporate of the state is demonstrated to
29 perform a function or serve a governmental purpose which could
30 properly be performed or served by an appropriate governmental
31 unit or which is demonstrated to perform a function or serve a

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1 purpose which would otherwise be a valid subject for the
2 allocation of public funds. For purposes of the preceding
3 sentence, an activity undertaken by a lessee which is
4 permitted under the terms of its lease of real property
5 designated as an aviation area on an airport layout plan which
6 has been approved by the Federal Aviation Administration and
7 which real property is used for the administration, operation,
8 business offices and activities related specifically thereto
9 in connection with the conduct of an aircraft full service
10 fixed base operation which provides goods and services to the
11 general aviation public in the promotion of air commerce shall
12 be deemed an activity which serves a governmental, municipal,
13 or public purpose or function. Any activity undertaken by a
14 lessee which is permitted under the terms of its lease of real
15 property designated as a public airport as defined in s.
16 332.004(14) by municipalities, agencies, special districts,
17 authorities, or other public bodies corporate and public
18 bodies politic of the state, a spaceport as defined in s.
19 331.303(19), or which is located in a deepwater port
20 identified in s. 403.021(9)(b) and owned by one of the
21 foregoing governmental units, subject to a leasehold or other
22 possessory interest of a nongovernmental lessee that is deemed
23 to perform an aviation, airport, aerospace, maritime, or port
24 purpose or operation shall be deemed an activity that serves a
25 governmental, municipal, or public purpose. The use by a
26 lessee, licensee, or management company of real property or a
27 portion thereof as a convention center, visitor center, sports
28 facility with permanent seating, concert hall, arena, stadium,
29 park, or beach is deemed a use that serves a governmental,
30 municipal, or public purpose or function when access to the
31 property is open to the general public with or without a

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1 charge for admission. If property deeded to a municipality by
2 the United States is subject to a requirement that the Federal
3 Government, through a schedule established by the Secretary of
4 the Interior, determine that the property is being maintained
5 for public historic preservation, park, or recreational
6 purposes and if those conditions are not met the property will
7 revert back to the Federal Government, then such property
8 shall be deemed to serve a municipal or public purpose. The
9 term "governmental purpose" also includes a direct use of
10 property on federal lands in connection with the Federal
11 Government's Space Exploration Program or spaceport activities
12 as defined in s. 212.02(22). Real property and tangible
13 personal property owned by the Federal Government or the
14 Florida Space Authority and used for defense and space
15 exploration purposes or which is put to a use in support
16 thereof shall be deemed to perform an essential national
17 governmental purpose and shall be exempt. "Owned by the
18 lessee" as used in this chapter does not include personal
19 property, buildings, or other real property improvements used
20 for the administration, operation, business offices and
21 activities related specifically thereto in connection with the
22 conduct of an aircraft full service fixed based operation
23 which provides goods and services to the general aviation
24 public in the promotion of air commerce provided that the real
25 property is designated as an aviation area on an airport
26 layout plan approved by the Federal Aviation Administration.
27 For purposes of determination of "ownership," buildings and
28 other real property improvements which will revert to the
29 airport authority or other governmental unit upon expiration
30 of the term of the lease shall be deemed "owned" by the
31 governmental unit and not the lessee. Providing two-way

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1 telecommunications services to the public for hire by the use
 2 of a telecommunications facility, as defined in s. 364.02(15)
 3 ~~s.364.02(14)~~, and for which a certificate is required under
 4 chapter 364 does not constitute an exempt use for purposes of
 5 s. 196.199, unless the telecommunications services are
 6 provided by the operator of a public-use airport, as defined
 7 in s. 332.004, for the operator's provision of
 8 telecommunications services for the airport or its tenants,
 9 concessionaires, or licensees, or unless the
 10 telecommunications services are provided by a public hospital.
 11 However, property that is being used to provide such
 12 telecommunications services on or before October 1, 1997,
 13 shall remain exempt, but such exemption expires October 1,
 14 2004.

15 Section 21. Paragraph (b) of subsection (1) of section
 16 199.183, Florida Statutes, is amended to read:

17 199.183 Taxpayers exempt from annual and nonrecurring
 18 taxes.--

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

23 (b) Property related to the provision of two-way
 24 telecommunications services to the public for hire by the use
 25 of a telecommunications facility, as defined in s. 364.02(15)
 26 ~~s. 364.02(14)~~, and for which a certificate is required under
 27 chapter 364, when the ~~such~~ service is provided by any county,
 28 municipality, or other political subdivision of the state. Any
 29 immunity of any political subdivision of the state or other
 30 entity of local government from taxation of the property used
 31 to provide telecommunication services that is taxed as a

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1 result of this paragraph is hereby waived. However, intangible
 2 personal property related to the provision of ~~such~~
 3 telecommunications services provided by the operator of a
 4 public-use airport, as defined in s. 332.004, for the
 5 operator's provision of telecommunications services for the
 6 airport or its tenants, concessionaires, or licensees, and
 7 intangible personal property related to the provision of ~~such~~
 8 telecommunications services provided by a public hospital, are
 9 exempt from taxation under this chapter.

10 Section 22. Subsection (6) of section 212.08, Florida
 11 Statutes, is amended to read:

12 212.08 Sales, rental, use, consumption, distribution,
 13 and storage tax; specified exemptions.--The sale at retail,
 14 the rental, the use, the consumption, the distribution, and
 15 the storage to be used or consumed in this state of the
 16 following are hereby specifically exempt from the tax imposed
 17 by this chapter.

18 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
 19 also exempt from the tax imposed by this chapter sales made to
 20 the United States Government, a state, or any county,
 21 municipality, or political subdivision of a state when payment
 22 is made directly to the dealer by the governmental entity.
 23 This exemption shall not inure to any transaction otherwise
 24 taxable under this chapter when payment is made by a
 25 government employee by any means, including, but not limited
 26 to, cash, check, or credit card when that employee is
 27 subsequently reimbursed by the governmental entity. This
 28 exemption does not include sales of tangible personal property
 29 made to contractors employed either directly or as agents of
 30 any such government or political subdivision thereof when such
 31 tangible personal property goes into or becomes a part of

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1 public works owned by such government or political
2 subdivision. A determination whether a particular transaction
3 is properly characterized as an exempt sale to a government
4 entity or a taxable sale to a contractor shall be based on the
5 substance of the transaction rather than the form in which the
6 transaction is cast. The department shall adopt rules that
7 give special consideration to factors that govern the status
8 of the tangible personal property before its affixation to
9 real property. In developing these rules, assumption of the
10 risk of damage or loss is of paramount consideration in the
11 determination. This exemption does not include sales, rental,
12 use, consumption, or storage for use in any political
13 subdivision or municipality in this state of machines and
14 equipment and parts and accessories therefor used in the
15 generation, transmission, or distribution of electrical energy
16 by systems owned and operated by a political subdivision in
17 this state for transmission or distribution expansion.
18 Likewise exempt are charges for services rendered by radio and
19 television stations, including line charges, talent fees, or
20 license fees and charges for films, videotapes, and
21 transcriptions used in producing radio or television
22 broadcasts. The exemption provided in this subsection does not
23 include sales, rental, use, consumption, or storage for use in
24 any political subdivision or municipality in this state of
25 machines and equipment and parts and accessories therefor used
26 in providing two-way telecommunications services to the public
27 for hire by the use of a telecommunications facility, as
28 defined in s. 364.02(15) ~~s. 364.02(14)~~, and for which a
29 certificate is required under chapter 364, which facility is
30 owned and operated by any county, municipality, or other
31 political subdivision of the state. Any immunity of any

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1 political subdivision of the state or other entity of local
 2 government from taxation of the property used to provide
 3 telecommunication services that is taxed as a result of this
 4 section is hereby waived. However, the exemption provided in
 5 this subsection includes transactions taxable under this
 6 chapter which are for use by the operator of a public-use
 7 airport, as defined in s. 332.004, in providing such
 8 telecommunications services for the airport or its tenants,
 9 concessionaires, or licensees, or which are for use by a
 10 public hospital for the provision of such telecommunications
 11 services.

12 Section 23. Subsection (8) of section 290.007, Florida
 13 Statutes, is amended to read:

14 290.007 State incentives available in enterprise
 15 zones.--The following incentives are provided by the state to
 16 encourage the revitalization of enterprise zones:

17 (8) Notwithstanding any law to the contrary, the
 18 Public Service Commission may allow public utilities and
 19 telecommunications companies to grant discounts of up to 50
 20 percent on tariffed rates for services to small businesses
 21 located in an enterprise zone designated pursuant to s.
 22 290.0065. Such discounts may be granted for a period not to
 23 exceed 5 years. For purposes of this subsection, the term
 24 "public utility" has the same meaning as in s. 366.02(1) and
 25 the term "telecommunications company" has the same meaning as
 26 in s. 364.02(14) ~~s. 364.02(13)~~.

27 Section 24. Subsection (3) of section 350.0605,
 28 Florida Statutes, is amended to read:

29 350.0605 Former commissioners and employees;
 30 representation of clients before commission.--

31 (3) For a period of 2 years following termination of

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

17 Section 25. Subsection (4) of section 364.602, Florida
 18 Statutes, is amended to read:

19 364.602 Definitions.--For purposes of this part:

20 (4) "Originating party" means any person, firm,
 21 corporation, or other entity, including a telecommunications
 22 company or a billing clearinghouse, that provides any
 23 telecommunications service or information service to a
 24 customer or bills a customer through a billing party, except
 25 the term "originating party" does not include any entity
 26 specifically exempted from the definition of
 27 "telecommunications company" as provided in s. 364.02(14) ~~s.~~
 28 ~~364.02(13)~~.

29 Section 26. Subsection (5) of section 489.103, Florida
 30 Statutes, is amended to read:

31 489.103 Exemptions.--This part does not apply to:

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1 (5) Public utilities, including special gas districts
 2 as defined in chapter 189, telecommunications companies as
 3 defined in s. 364.02(14) ~~s. 364.02(13)~~ and natural gas
 4 transmission companies as defined in s. 368.103(4), on
 5 construction, maintenance, and development work performed by
 6 their employees, which work, including, but not limited to,
 7 work on bridges, roads, streets, highways, or railroads, is
 8 incidental to their business. The board shall define, by rule,
 9 the term "incidental to their business" for purposes of this
 10 subsection.

11 Section 27. This act may not be construed to limit the
 12 rights of local government or the duties of providers of cable
 13 service to comply with any and all requirements of federal,
 14 state, or local law, including, but not limited to, 47 U.S.C.
 15 s.541, s. 166.046, and s. 337.401.

16 Section 28. Subsection (4) of section 364.051, Florida
 17 Statutes, is amended to read:

18 364.051 Price regulation.--

19 (4)(a) Notwithstanding ~~the provisions of~~ subsection
 20 (2), any local exchange telecommunications company that
 21 believes circumstances have changed substantially to justify
 22 any increase in the rates for basic local telecommunications
 23 services may petition the commission for a rate increase, but
 24 the commission shall grant the ~~such~~ petition only after an
 25 opportunity for a hearing and a compelling showing of changed
 26 circumstances. The costs and expenses of any government
 27 program or project required in part II may ~~shall~~ not be
 28 recovered under this subsection unless the ~~such~~ costs and
 29 expenses are incurred in the absence of a bid and subject to
 30 carrier-of-last-resort obligations as provided for in part II.
 31 The commission shall act upon the ~~any such~~ petition within 120

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1 days after ~~of~~ its filing.

2 (b) For purposes of this section, evidence of damage
3 occurring to the lines, plants, or facilities of a local
4 exchange telecommunications company that is subject to the
5 carrier-of-last-resort obligations, which damage is the result
6 of a tropical system occurring after June 1, 2005, and named
7 by the National Hurricane Center, constitutes a compelling
8 showing of changed circumstances.

9 1. A company may file a petition to recover its
10 intrastate costs and expenses relating to repairing,
11 restoring, or replacing the lines, plants, or facilities
12 damaged by a named tropical system.

13 2. The commission shall verify the intrastate costs
14 and expenses submitted by the company in support of its
15 petition.

16 3. The company must show and the commission shall
17 determine whether the intrastate costs and expenses are
18 reasonable under the circumstances for the named tropical
19 system.

20 4. A company having a storm-reserve fund may recover
21 tropical-system-related costs and expenses from its customers
22 only in excess of any amount available in the storm-reserve
23 fund.

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

28 6. The commission may order the company to add an
29 equal line-item charge per access line to the billing
30 statement of the company's retail basic local
31 telecommunications service customers, its retail nonbasic

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1 telecommunications service customers, and, to the extent the
 2 commission determines appropriate, its wholesale loop
 3 unbundled network element customers. At the end of the
 4 collection period, the commission shall verify that the
 5 collected amount does not exceed the amount authorized by the
 6 order. If collections exceed the ordered amount, the
 7 commission shall order the company to refund the excess.

8 7. In order to qualify for filing a petition under
 9 this paragraph, a company with one million or more access
 10 lines, but fewer than three million access lines, must have
 11 tropical-system-related costs and expenses exceeding \$1.5
 12 million, and a company with three million or more access lines
 13 must have tropical-system-related costs and expenses of \$5
 14 million or more. A company with fewer than one million access
 15 lines is not required to meet a minimum damage threshold in
 16 order to qualify to file a petition under this paragraph.

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

21
 22 This paragraph is not intended to adversely affect the
 23 commission's consideration of any petition for an increase in
 24 basic rates to recover costs related to storm damage which was
 25 filed before the effective date of this act.

26 Section 29. This act shall take effect upon becoming a
 27 law except that the provisions that create new standards of
 28 conduct for Public Service Commission members and that create
 29 new penalties for violations involving such members shall
 30 apply only to actions occurring after that date.

31

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 An act relating to regulation of
7 communications; creating the Committee on
8 Public Service Commission Oversight as a
9 standing joint committee of the Legislature;
10 providing for its membership, powers, and
11 duties; amending s. 350.001, F.S.; requiring
12 that the commission perform its duties
13 independently; amending s. 350.031, F.S.;

14 authorizing the Florida Public Service
15 Commission Nominating Council to make
16 expenditures to advertise a vacancy on the
17 council or the commission; requiring that the
18 Committee on Public Service Commission
19 Oversight provide nominees for recommendation
20 to the Governor for appointment to the Public
21 Service Commission; providing procedures;
22 amending s. 350.041, F.S.; clarifying the
23 prohibition against accepting gifts with
24 respect to its application to commissioners
25 attending conferences; requiring that a penalty
26 be imposed against a person who gives a
27 commissioner a prohibited gift; requiring that
28 commissioners avoid impropriety and act in a
29 manner that promotes confidence in the
30 commission; prohibiting a commissioner from
31 soliciting any thing of value, either directly

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1 or indirectly, from any public utility, its
2 affiliate, or any party; amending s. 350.042,
3 F.S.; requiring that a penalty be imposed
4 against a person involved in a prohibited ex
5 parte communication with a commissioner;
6 amending s. 350.061, F.S.; requiring that the
7 Committee on Public Service Commission
8 Oversight rather than the Joint Legislative
9 Auditing Committee appoint the Public Counsel;
10 providing for biennial reconfirmation rather
11 than annual; requiring that the Public Counsel
12 perform his or her duties independently;
13 amending s. 350.0614, F.S.; requiring that the
14 Committee on Public Service Commission
15 Oversight rather than the Joint Legislative
16 Auditing Committee oversee expenditures of the
17 Public Counsel; providing definitions;
18 providing for notice of public hearings to
19 consider whether the local government will
20 provide a communications service; requiring a
21 governmental entity to take certain action
22 before a communications service is provided;
23 providing certain restrictions on revenue bonds
24 to finance provisioning of communications
25 services; requiring a local government to make
26 available a written business plan; providing
27 criteria for the business plan; setting pricing
28 standards; providing for accounting and books
29 and records; requiring the governmental entity
30 to establish an enterprise fund; requiring the
31 governmental entity to maintain separate

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1 operating and capital budgets; limiting the use
2 of eminent-domain powers; requiring a
3 governmental entity to hold a public hearing to
4 consider certain factors if the business plan
5 goals are not met; requiring compliance with
6 certain federal and state laws; requiring local
7 government to treat itself the same as it
8 treats other providers of similar
9 communications services; exempting certain
10 governmental entities from specified provisions
11 of the act; requiring a local government
12 provider of communications services to follow
13 the same prohibitions as other providers of the
14 same services; providing an exemption for
15 airports under certain conditions; recognizing
16 preemption of a charter, code, or other
17 governmental authority; providing for
18 severability; repealing s. 364.502, F.S., which
19 provides for regulation of video programming;
20 amending s. 364.01, F.S.; specifying the
21 exclusive jurisdiction of the Florida Public
22 Service Commission to regulate
23 telecommunications companies; providing that
24 state laws governing business and consumer
25 protection be applied to communications
26 activities that are not regulated by the
27 commission; revising provisions governing the
28 exclusive jurisdiction of the commission;
29 creating s. 364.011, F.S.; specifying certain
30 services that are exempt from oversight by the
31 commission; creating s. 364.012, F.S.;

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1 requiring the commission to coordinate with
 2 federal agencies; providing that ch. 364, F.S.,
 3 does not limit or modify certain duties of a
 4 local exchange carrier; creating s. 364.013,
 5 F.S.; requiring that broadband service remain
 6 free of state and local regulation; requiring
 7 that voice-over-Internet protocol remain free
 8 of regulation, except as specifically provided
 9 in ch. 364, F.S., or by federal law; amending
 10 s. 364.02, F.S.; defining the terms "broadband
 11 service" and "VoIP"; redefining the term
 12 "service"; amending s. 364.0361, F.S.;
 13 prohibiting a local government from regulating
 14 voice-over-Internet protocol regardless of the
 15 platform or provider; amending s. 364.10, F.S.;
 16 transferring applicability from
 17 telecommunications companies serving as
 18 carriers of last resort to eligible
 19 telecommunications carriers; defining the term
 20 "eligible telecommunications carrier";
 21 providing requirements for eligible
 22 telecommunications carriers; requiring the
 23 Public Service Commission to establish
 24 procedures for notification and termination of
 25 the Lifeline Assistance credit; providing
 26 criteria for connection, reconnection, and
 27 discontinuation of basic local
 28 telecommunications service for Lifeline
 29 Assistance subscribers; providing criteria for
 30 blocking access to long-distance service;
 31 adding the Department of Education and the

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1 Office of Public Counsel to those agencies that
2 are directed to cooperate in developing
3 procedures for promoting Lifeline
4 participation; requiring the commission to
5 adopt rules; repealing s. 364.502, F.S.,
6 relating to video programming services;
7 amending s. 364.335, F.S.; increasing to \$500
8 from \$250 the maximum allowable filing fee for
9 certification of telecommunications carriers;
10 amending s. 364.336, F.S.; authorizing the
11 Public Service Commission to establish a
12 minimum fee of up to \$1,000; authorizing
13 different fees for different types of services
14 provided by telecommunications companies;
15 amending ss. 196.012, 199.183, 212.08, 290.007,
16 350.0605, 364.602, and 489.103, F.S.;
17 conforming cross-references; providing
18 clarification of rights of local governments
19 and duties of cable service providers to comply
20 with certain laws and regulations; amending s.
21 364.051, F.S.; providing that damage to the
22 equipment and facilities of a local exchange
23 telecommunications as a result of a named
24 tropical system constitutes a compelling
25 showing of changed circumstances to justify a
26 rate increase; allowing such companies to
27 petition for recovery of such costs and
28 expenses; requiring the Public Service
29 Commission to verify the intrastate costs and
30 expenses for repairing, restoring, or replacing
31 damaged lines, plants, or facilities; requiring

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1 the commission to determine whether the
2 intrastate costs and expenses are reasonable;
3 requiring a company to exhaust any
4 storm-reserve funds prior to recovery from
5 customers; providing that the commission may
6 authorize adding an equal line-item charge per
7 access line for certain customers; providing
8 for a rate cap and providing the maximum number
9 of months the rate may be imposed; providing a
10 12-month limit for the application; allowing
11 recovery for more than one storm within the
12 limit; providing an effective date.

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