

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill provides that except as specifically delineated in ch. 364, F.S. or specifically authorized by federal law, non-basic telephone services, broadband services, VoIP, and wireless telecommunications services are exempt from PSC jurisdiction.

Ensure Lower Taxes-The bill increases the maximum fee the PSC can charge for applications for certificates and allows the PSC to increase its minimum RAF fee.

Empower Families-The bill increases the income threshold for Lifeline service to 135 percent of the federal poverty guidelines, potentially allowing more residents to keep their telephone service.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 364, F.S., delineates the scope and degree of the jurisdiction of the PSC relating to the regulatory oversight of telecommunication services in the state. Among other things, the chapter addresses the powers of the commission, the types of providers subject to PSC jurisdiction, and the nature and extent of that jurisdiction.

Prior to 1995, the PSC utilized rate base regulation or rate of return regulation as the method for regulating telephone utilities. This method of regulation established the revenues required by a telephone company needed to operate. Once the revenue requirement was determined, the PSC would then approve a rate structure and rates. The rates that the PSC established were designed to afford an opportunity for the telephone company to earn a reasonable rate of return.

In 1995, the Legislature rewrote ch. 364, F.S., in order to open the local telecommunications market to competition.¹ This legislation primarily did two things. First, it found that competition for the provision of local exchange service to be in the public interest. Through the legislative findings outlined in s. 364.01, F.S., the local exchange market was opened to competition effective January 1, 1996. To achieve those ends, the PSC was required to certificate new local exchange service providers and impose the necessary standards to ensure consumer protection without impeding competition. Additionally, it allowed existing local exchange telecommunications companies (LECs) to elect price regulation, rather than rate of return regulation, effective January 1, 1996, or when an alternative local exchange telecommunications company (ALEC)² was certified to provide service in a LEC's territory, whichever was later³.

In 2003, the Legislature passed the Tele-Competition Innovation and Infrastructure Act⁴ (2003 Act) in order to reach full competitive market enhancement. The 2003 Act allowed the large LECs, upon PSC approval to simultaneously raise basic service prices, dollar for dollar, to offset the decrease in revenue they would experience from reductions in intrastate access fees.⁵ The 2003 Act also removed intrastate interexchange telecommunications companies from the definition of "telecommunications company" in ch. 364.02(13), F.S.

¹ Ch. 95-403, L.O.F.

² Alternative Local Exchange Companies (ALECs) were changed to Competitive Local Exchange Companies (CLECs) in 2003. See ch. 2003-32, L.O.F.

³ S. 364.051, F.S.

⁴ Ch. 2003-32, L.O.F.

⁵ The PSC has allowed BellSouth, Sprint, and Verizon to do this, but rates changes are stayed pending appeal to the Florida Supreme Court.

Below is a comparison of what the PSC currently has authority over, and what it will have authority over under this proposed legislation.

Current PSC Authority	PSC Authority Under Proposed Legislation
Certification or Registration of Carriers	Certification or Registration of Carriers
Tariff/Price List Review	Tariff/Price List Review
Numbering Issues (Area Codes, Code Denials, reclamation of unused codes)	Numbering Issues (Area Codes, Code Denials, reclamation of unused codes)
Wholesale Pricing (Unbundled Network Elements, Resale)	Wholesale Pricing (Unbundled Network Elements, Resale)
Arbitration of Interconnection Agreements between LECs and CLECs	Arbitration of Interconnection Agreements between LECs and CLECs
Complaint Resolution	Complaint Resolution
Service Evaluations	Service Evaluations
Enforcement Actions	Enforcement Actions
Review of Wholesale LEC performance measures	Review of Wholesale LEC performance measures
Oversight over Basic Local Telecommunications Service	Oversight over Basic Local Telecommunications Service
Oversight over Non-Basic Service	Oversight over Non-Basic Service
Oversight over emerging markets and anti-competitive behavior.	Due to emerging services being free from regulation, PSC will lose oversight over the practices of the firms engaging in these markets; however, these firms will be subject to the state's general consumer protection laws.
Video Programming offered by local exchange companies	Lose Jurisdiction Over Video Programming offered by local exchange companies

Proposed Changes

Section 1

PSC Commissioner's-Standards of Conduct

The bill amends s. 350.041, F.S., relating to the standards of conduct for PSC commissioners. Section 350.041(h) is created to provide that it is not a violation of this section for a commissioner to attend an educational program or conference organized by an entity other than a public utility or an association of regulatory agencies, to participate in meals and events that are generally available to all conference participants, are available to only state commissioners of if the commissioner is a committee member or speaker at the conference, available only to committee members or speakers. A commissioner who attends such a program or conference will not be deemed to have accepted anything from a public utility as a result in a differential conference fee or because a sponsorship or payment of a public utility of conference costs, including meals or events included as a part of the conference program and generally available to all participants who have paid the conference fee.

Section 350.041(i), F.S., is created to provide that a commissioner may not directly or indirectly solicit anything of value from any public utility regulated by the PSC or from any business entity that is an affiliate or subsidiary of a public utility or any party appearing in a PSC proceeding in the last two years.

Section 2

Powers of the Commission-Legislative Intent

Section 364.01, F.S., relates to legislative intent regarding the powers of the Commission relating to telecommunications service.

The bill adds legislative findings to s. 364.01(3), F.S. Currently, this section contains the legislative finding that competition in the provision of local exchange telecommunications services is in the public interest. The Legislature further finds that changes in regulations allowing increased competition in telecommunications markets could provide improved economic conditions including more highly skilled employment opportunities. Finally, the Legislature finds that the provision of voice-over-Internet protocol (VoIP) free of unnecessary regulation is in the public interest.

The additional language in s. 364.01(3), F.S., provides that communications activities not regulated by the PSC, including but not limited to VoIP, wireless, and broadband, are not subject to PSC jurisdiction, but are subject to generally applicable business regulation and deceptive trade practices and consumer protection laws otherwise covered by state law. The subsection does not limit the availability to any party of any remedy or defense under state and federal antitrust law.

According to the PSC, its Consumer Affairs call center receives a significant number of complaints and inquiries from wireless and some VoIP subscribers. It will continue to be necessary to refer these complaints and inquiries to the appropriate agency or authority and will reinforce the need for consumer education by the PSC and others.

Currently, s. 364.01(4), F.S., enumerates the objectives of the PSC in exercising its exclusive jurisdiction. Subsection 364.01(4)(d), F.S., currently provides that the PSC must promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than existing local exchange companies. This section is amended to encourage innovation and investment as a means by which the PSC may promote competition, and allows for a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight. Additionally, references to new entrants have been deleted from this section.

Section 3

Exemptions from Commission Jurisdiction

The bill creates s. 364.011, F.S., specifying that intrastate interexchange telecommunications service, broadband service, regardless of provider or platform, VoIP, and wireless telecommunications services, including commercial mobile radio service providers are exempt from PSC jurisdiction, except to the extent delineated in ch. 364, F.S., or specifically authorized by federal law. Currently, the PSC has oversight, consumer protection, and assistance authority for intrastate interexchange telecommunications service including: tariffs⁶, network access services⁷, carrier changes⁸, and billing practices⁹.

Section 4

Consistency with Federal Law

The bill creates s. 364.012, F.S., relating to consistency with federal law. This section provides that the PSC will maintain continuous liaisons with appropriate federal agencies whose policy decisions and rulemaking authority affect those telecommunication companies over which the PSC has jurisdiction.

The section further provides that the chapter does not limit or modify the duties of the local exchange carriers to provide unbundled access to network elements or the PSC's authority to arbitrate and enforce interconnection agreements to the extent that those elements are required under federal law or Federal Communications Commission (FCC) rules.

⁶ S. 364.04, F.S.

⁷ S. 364.163, F.S.

⁸ S. 364.603, F.S.

⁹ S. 364.604, F.S.

This provision formalizes duties and responsibilities already performed by the PSC. The PSC regularly arbitrates interconnection agreements between CLECs and LECs as required by federal law, and has held generic proceedings concerning the pricing of wholesale services. The PSC has also been involved in various proceedings at the federal level relating to telecommunications services.

Section 5

Emerging and Advanced Services

The bill creates s. 364.013, F.S., relating to emerging and advanced services. The section provides that broadband service and the provision of VoIP shall be free of state regulation, except as delineated in ch. 364, F.S., or as specifically authorized by federal law, regardless of provider (whom you receive the service from), or platform (how the service is provided), or protocol (convention in forming data).

According to the PSC, networks of incumbent local exchange telecommunication companies currently combine elements of traditional wireline technology with VoIP technology in the public switched network to provide voice services. Thus, a particular voice transmission on the public switched network may, in part, be transmitted in a fashion identical to that used in the provision of VoIP services. As network technology evolves, the public switched network may well transition to a primarily VoIP-based network providing VoIP service. When that occurs, a local exchange company providing VoIP service using components of the public switched network may no longer be subject to the provisions of ch. 364, F.S., depending on the definition of VoIP services.

Section 6

Definitions

Section 364.02, F.S. provides the definitions for ch. 364, F.S. The bill amends this section in order to provide definitions for "broadband service" and "VoIP." At this time the definition of "service" contained in s. 364.02(12), F.S., states that the definition does not include VoIP for purposes of regulation by the PSC but preserves the rights of other entities related to the payment of switched network access charges or other forms of intercarrier compensation, if any, related to VoIP service.

The bill defines "VoIP" as a voice-over-Internet protocol as defined by federal law. According to the PSC, it is not clear whether a definition of VoIP currently exists in federal law, although several proposed bills from the 2004 Congressional session contained various definitions. The PSC adds that it is likely that a number of bills addressing the statutory definition of VoIP will be proposed during the current Congressional session.

Currently, broadband service is not defined in chapter 364, F.S., and services such as cable modem service, digital subscriber line (DSL), or wireless and satellite broadband service are not referenced in chapter 364, F.S., except as noted in s. 364.0361, F.S. While the PSC has not asserted jurisdiction over broadband services, it has required BellSouth to provide retail DSL service to customers who have chosen a different voice provider. The FCC recently determined "that a state commission may not require an incumbent local exchange carrier (LEC) to provide digital subscriber line (DSL) service to an end user customer over the same unbundled network element (UNE) loop facility that a competitive LEC uses to provide voice service to that end user."¹⁰

The bill adds a definition for "broadband service" to s. 364.02, F.S. Broadband service is defined as any service that consists of or includes the offering of the capability to transmit or receive information at a rate of no fewer than 200 kilobits per second and either (a) is used to provide access to the Internet or (b) provides computer processing, information, storage, information content, or protocol conversion

¹⁰ FCC Order No. FCC 05-78

in combination with such service. This definition does not include any intrastate telecommunications services tariffed with the Commission on or before January 1, 2005.

Additionally, the definition of “service” is amended to read that the term “service” does not include broadband service or VoIP service for purposes of regulation by the PSC. Additional language is added to provide that the PSC has the authority to arbitrate, enforce or approve interconnection agreements, and resolve disputes, as provided by federal law. The duties of a LEC to provide unbundled network elements, interconnection, collocation arrangements or any other service, right or benefit to any party regardless of the technology, will be those the company is obligated to provide under federal law and regulations.

Section 7

Local Government Authority-Nondiscriminatory Exercise

Section 364.0361, F.S., relates to nondiscriminatory exercise of local government authority over telecommunications services. The section provides that a local government must treat telecommunications companies in a nondiscriminatory manner in granting franchises or in otherwise establishing conditions or compensation for use of rights-of-way or other public property by a telecommunications company. It also prohibits a local government from regulating terms and conditions, including but not limited to, services, service quality, service territory or price in connection with the provision of broadband or information services.

The bill amends s. 364.0361, F.S., prohibiting regulation by local governments of VoIP, regardless of platform, provider, or protocol, broadband or other advanced telecommunications service.

Section 8

Price Regulation

Section 364.051, F.S. relates to the price regulation of local exchange telecommunications companies. For companies electing price regulation, effective January 1, 1996, rates for basic local telecommunications services were capped at July 1, 1995, levels and could not be increased until January 1, 2000, except that BellSouth could not increase its rates until January 1, 2001. Since that time, incumbent local exchange telephone companies were allowed to increase their rates for basic local services by the change in inflation less one percent once in any 12-month period.

Section 364.051(4), F.S., allows LECs to petition for an increase in rates for basic service based on a compelling showing of changed circumstances. The PSC may only grant the petition only after an opportunity for a hearing and a compelling showing of changes circumstances. The costs and expenses of any government program or project in part II¹¹ may not be recovered unless such costs and expenses are incurred in the absence of a bid and subject to the carrier-of-last-resort obligation as provided in part II. The PSC must act upon any petition with 120 days. According to the PSC, no local exchange company has ever used this provision.

Effective upon becoming law, the bill amends s. 364.051(4), F.S. by finding that evidence of damage to the “lines, plant, and facilities” of a LEC with carrier-of-last-resort¹² obligations due to named tropical systems occurring after June 1, 2005, constitutes a compelling showing of a changed circumstance. In the event of a named tropical system, the LEC would be permitted to seek recovery of its intrastate costs and expenses related to “repairing, restoring, and replacing” damaged equipment. The PSC would be responsible for verifying the intrastate costs and expenses submitted by the company to determine that they were reasonable under the circumstances. Traditionally, for rate-base regulated

¹¹ Part II of ch. 364, F.S. relates to Educational Facilities Infrastructure Improvement.

¹² A carrier-of-last-resort has the requirement to provide basic local service, including B1 service, at reasonable rates in a reasonable time period to any customer in its territory requesting service. This obligation ends on January 1, 2009. See s. 364.025(1), F.S.

industries, the Commission would apply a “prudent and reasonable” test to ensure, for example, that costs are not double recovered, are booked to the appropriate costs accounts, and are necessary for the restoration process. The proposed language proposes a similar type of review.

A company having a storm-reserve fund may recover tropical-system-related costs and expenses only in excess of the amount available in the storm-reserve fund. The PSC may determine the amount of any increase that the company may charge its customers, but the per line charge may not exceed 50 cents per line for a period of not more than 12 months. According to the PSC, there are approximately 11 million subscriber lines in Florida. For illustration purposes, a \$.50 per month charge over twelve months would produce between \$60 - \$70 million per year depending on the extent of customer migration to alternative providers.

The PSC may order the company to add an equal line-item charge per access line to the bills of the company’s local retail basic local and nonbasic telecommunications service customers, and, to the extent the PSC determines appropriate, its wholesale loop unbundled network element customers. At the end of the collection period, the PSC shall verify that the collected amount does not exceed the amount authorized by the order. If the collections do exceed the ordered amount, the PSC shall order the company to refund the excess.

The bill provides, based on the number of access lines, a minimum dollar amount of costs and expenses that must be incurred to qualify to file a petition. Companies with one million or more access lines must have costs and expenses exceeding \$1.5 million. Companies with three million or more access lines must have costs and expenses of \$5 million or more. Companies with fewer than one million access lines are not required to meet a minimum damage threshold in order to file a petition.

A company is limited to file only one storm-recovery petition in any 12-month period for the previous storm season, but the application may cover damages from one or more tropical system. This legislation is not intended to adversely affect the PSC’s consideration of any petition for an increase in basic rates to recover cost related to storm damage filed prior to the effective date of this act.

In addition, all local exchange telecommunications companies provide both interstate and intrastate services, but none of the natural disaster recovery expenses are recovered from interstate ratepayers. As currently proposed, the bill does not allow for the recovery of the interstate portion of these expenses. The interstate portion of these expenses is the cost of the “lines, plant, and facilities” allocated to interstate services.

Section 9

Lifeline Service

Section 364.10(3), F.S., addresses the provision of Lifeline service and subsection (3)(a) specifies that effective September 1, 2003, each telecommunications company authorized by the PSC to reduce switched network access charges pursuant to s. 364.164, F.S., must offer Lifeline service to any otherwise eligible customer that meets an income eligibility criteria of 125 percent of the federal poverty guideline.

Section 364.10(3)(a), F.S., is amended to revise the Lifeline income eligibility threshold from 125 percent to 135 percent of the federal poverty guidelines. This is consistent with a 2004 FCC order that added an income eligibility criterion for Lifeline of 135 percent of the federal poverty guideline.¹³ This change will increase the number of households eligible for Lifeline benefits under the income criteria.

According to the PSC, since the bill changes the income level for Lifeline eligibility, but does not change the effective date, this section could be construed to imply that the 135 percent guideline would be retroactive to September 1, 2003.

¹³ FCC Order No. FCC 04-87.

Background for Sections 10 and 11

PSC Fees

Section 350.113, F.S., creates the “Florida Public Service Regulatory Trust Fund”, and requires all fees, licenses, and other charges collected by the Commission to be deposited into this fund; however, penalties and interest collected by the Commission must be deposited in the General Revenue Fund. This trust fund is subject to the service charge imposed by ch. 215, F.S. Section 364.113(3), F.S., requires each regulated company under the jurisdiction of the Commission to pay a fee based upon its gross operating revenues. To the extent practicable, the fees must be related to the cost of regulating such type of regulated company. According to the PSC, both internal and external factors have contributed to there being a short-fall in the fees from telecommunications companies not covering the cost of regulation, primarily: 1) statutory factors, 2) decreased RAF collections, and 3) increased regulatory costs assigned to telecommunications.

Statutory Factors

According to the PSC, changes in Florida Statutes in 1995 and federal law in 1996 made in order to open the local telecommunications market to competition, changed the structure of the telecommunications industry and dramatically changed the PSC’s workload. Based on the statutory changes, the PSC eliminated all of its rules and regulations dealing with earnings regulation for the price-capped companies and no longer required earnings surveillance, depreciation studies, or other rate of return reports. However, with the new statutory requirements came new responsibilities related to facilitating the development of competition in the local exchange market.

While continuing its traditional retail regulatory responsibilities such as tariff reviews, consumer complaints, and quality of service, the PSC has been charged with wholesale responsibilities as well. On the wholesale side, it is responsible for interconnection agreements; petitions requesting arbitrations; adoption of agreements; and complaints about rates, terms, and conditions in current agreements. As market participants become more sophisticated and proficient, issues are becoming more complex, technical and specific, and thus more time consuming. The Commission also deals with the complex issues involved with setting unbundled network rates, collocation terms and conditions, and barriers to competition. Numbering issues also arise as area code relief and number portability are needed due to increased demand for telephone numbers and to enhance competition.

Over the next several years, the PSC envisions the continued evolution of the telecommunications market and the exertion of continued pressures on wireline carriers from other technologies such as wireless, VoIP, and cable. The PSC will still have responsibility for areas such as arbitrations, area code/numbering relief, consumer education, resolving customer complaints, setting wholesale rates and terms, and preventing anticompetitive pricing. However, it anticipates that in the future (three to five years), it could experience a reduction in telecommunications workload. State law establishing a timetable for intrastate access charge reductions also includes triggers for certain reductions in regulatory requirements relating to tariffs and service quality.

RAF Collection

According to the PSC, during the five-year period from Fiscal Year 2000-2001 through 2005-2006, telecommunications RAF revenue is expected to decline by over \$2.5 million. This decline has two primary causes. First, in February 2002, the Florida Supreme Court ruled that directory advertising revenue billed and collected by the local exchange companies, but booked by the companies’ directory affiliates, could not be imputed to the LECs for RAF purposes.¹⁴ This decision resulted in a loss of \$1.5 million in annual RAF revenues--revenues that prior to that decision allowed this Commission to cover the cost of continuing regulatory functions and workload associated with the transition to a competitive

¹⁴ *Verizon Florida, Inc. v. Jacobs*, 810 So. 2d 906 (Fla. 2002).

market. Second, the revenues of the companies have declined due to changes in the telecommunications industry, including a loss of business to other providers such as cellular companies that do not currently pay RAFs. Annual RAF revenues have declined by over \$1 million due to this decline in the companies' revenues.

In addition, in recent years, legislation has resulted in the liquidation of the PSC's trust fund reserves and loss of interest earned on the trust fund balance have made it more difficult for the PSC to absorb fluctuations in RAF collections. In the past, the PSC was able to delay increases in the RAF because of the trust fund reserve.

Calculation of Regulatory Costs

The PSC also changed its cost allocations beginning July 1, 2003, to more accurately reflect the amount of time being spent by PSC employees in the regulation of each industry. This change was in response to a finding by the Auditor General.¹⁵ The report noted that the Division of Consumer Affairs was significantly under-allocating its time to telecommunications. The PSC has made changes to time reporting by consumer affairs to more accurately capture time worked. As a result, the total amount of time and PSC costs being allocated to telecommunications increased from 39.9 percent in Fiscal Year 2002-2003 to a projected 43.11 percent in Fiscal Year 2005-2006.

According to the PSC, it expends a minimum level of costs related to each certificated company including updating contact and other information for Commission data bases, postage and handling for mailings related to generic dockets and rulemaking dockets, postage and handling for mailings related to the annual RAF, and the handling of customer complaints.

Proposed Changes in Section 10

Application for Certificate

Section 364.335, F.S., addresses application process to obtain a certificate to provide telecommunications service in Florida. The PSC, by rule, has established the application procedure for each type of certificate.

Chapter 90-220, L.O.F. amended ch. 364.335, F.S., to authorize the PSC to assess an application fee of up to \$250 for companies seeking certification. Pursuant to PSC rules, the current application fees are \$100 for pay telephone service¹⁶ and shared tenant service¹⁷ and \$250 for competitive local exchange service¹⁸ and alternative access vendors.¹⁹ The PSC does not require interexchange companies to pay a registration fee, since it does not have express statutory authority to do so. Pursuant to s. 350.113, F.S., these fees are deposited into the Florida Public Service Regulatory Trust Fund. Below is a table showing the work and estimated cost of processing applications for each company type:

Company Type	Application	Registration	Tariff	Price List	Work Time (Hrs) Note 1	Current Fee	Estimated Cost	Agenda
Competitive Local Exchange Company (CLEC)	√			√	18	\$250	\$389.15	√

¹⁵ Auditor General Report No. 2004-031: Public Service Commission Regulatory Assessment Fee and Other Matters – Operational Audit, August 2003.

¹⁶ 25-24.511(2), F.A.C.

¹⁷ 25-24.567(1), F.A.C.

¹⁸ 25-24.810(1), F.A.C.

¹⁹ 25-24.720(1), F.A.C.

Interexchange Company (IXC)		√	√		17	\$0	\$348.64	Note 2
Alternative Access Vendor (AAV)	√				9	\$250	\$216.57	√
Shared Tenant Services Provider (STS)	√				9	\$100	\$216.57	√
Pay Telephone Company (PATS)	√				9	\$100	\$216.57	√

Note 1: Work time is distributed among several PSC staff members including clerical, technical, and legal staff.

Note 2: IXV registrations go to Agenda only if staff is recommending denial of registration.

The bill modifies s. 364.335, F. S., to authorize the Commission to assess an application fee up to \$500 for companies seeking certification as telecommunication providers in Florida. According to the PSC, this change would allow the Commission to increase the fee charged for issuing a certificate to more closely reflect the costs associated with the certification process.

Proposed Changes in Section 11

Regulatory Assessment Fees

Chapter 90-244, L.O.F., created s. 364.336, F.S., which authorizes the PSC to assess each telecommunications company licensed or operating under ch. 364, F.S, regulatory assessment fees of up to 0.25 percent of its gross operating revenues derived from intrastate business. This section was subsequently amended to allow companies to deduct any amount paid to another telecommunications company for use of any telecommunications network for the purposes of calculating the fee.²⁰

Pursuant to s. 350.113, F.S., these fees are deposited into the Florida Public Service Regulatory Trust Fund.

The PSC recently amended rule 25-24.0461, F.A.C., relating to RAF. Effective with revenues received by the telecommunications companies on January 1, 2005, the RAF will be 0.20 percent of gross operating revenues derived from intrastate business. Prior to January 1, 2005, the fee was 0.15 percent of gross operating revenues derived from intrastate business.²¹ Based on the PSC's Notice of Adoption of Rule, this change in fees is expected to increase the amount of RAF collected from telecommunications companies from \$8.8 million to \$11.7 million.²²

The bill modifies s. 364.336, F.S., to authorize the Commission to assess minimum regulatory assessment fees up to \$1,000. The minimum fees may be different depending on the type of service provided and shall, to the extent practicable, be related to the cost of regulating such type of company. For example, for CLECs the PSC must arbitrate and/or approve interconnection agreements between the CLEC and LEC and process CLEC price lists, the minimum CLEC fee may be higher than that of a pay telephone provider where the PSC does not have those responsibilities.

Section 12

Video Programming

The bill repeals s. 364.502, F.S. relating to video programming and the capacity for public use. This section was created in 1995²³, following a 1991 FCC decision that determined that LECs providing

²⁰ Ch. 95-403, L.O.F.

²¹ PSC-04-1175-FOF-TP, Notice of Rule Adoption for 25-4.0161, F.A.C.

²² PSC Order No. PSC-04-1175-FOF-TP

²³ Ch. 95-403, L.O.F.

video dialtone service would not be required to obtain cable franchises in order to offer the service.²⁴ The statute provides that each local exchange company or competitive local exchange company that provides video programming must, prior to providing such programming, file with the PSC a designation of reserve capacity for public, educational, or governmental use. The PSC is required to review the designation to determine whether it adequately ensures that public education and public information programming (i.e. government access channels) are available to the customers of such a telecommunications company. Capacity pursuant to the section must not be sold, resold or otherwise transferred for money, and capacity shall be of the best quality available of the telecommunications company which provides the video programming.

According to the PSC, this statute was originally enacted in 1995, and it has never received or reviewed a video programming designation of public capacity from a telecommunications or competitive telecommunications company.

Sections 13-19

Cross-references

The following sections of Florida Statutes are amended to conform cross-references:

- S. 196.012(6), F.S.
- S. 199.183(1)(b), F.S.
- S. 212.08, (6), F.S.
- S. 290.007(8), F.S.
- S. 360.0605(3), F.S.
- S. 364.602(4), F.S.
- S. 489.103(5), F.S.

Section 20

Nothing in the act shall be construed to limit the rights of local government or the duties of providers of cable service to comply with any and all requirements of federal, state, or local law.

Section 21

Effective Date

Except as otherwise provided, this act shall take effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 350.041, F.S., relating to the standards of conduct for PSC commissioners.

Section 2. Amends s. 364.01, F.S., relating to the powers of the PSC and legislative intent.

Section 3. Creates s. 364.011, F.S., to exempt certain telecommunications services from the oversight of the PSC.

Section 4. Creates s. 364.012, F.S., regarding consistency with federal law.

Section 5. Creates s. 364.013, F.S., relating to emerging and advanced services.

Section 6. Amends s. 364.02, F.S., to add and amend definitions.

²⁴ 7 FCC Rcd, 300

Section 7. Amends s. 364.0361, F.S., relating to nondiscriminatory exercise of local government authority over telecommunications service.

Section 8. Amends s. 364.051(4), F.S., relating to changed circumstances under price regulation.

Section 9. Amends s. 365.10(3), F.S., to increase the income eligibility threshold for Lifeline service to 135 percent of the federal poverty guideline.

Section 10. Amends s. 364.335, F.S. to increase the maximum application fee for a certificate to \$500.

Section 11. Amends s. 364.336, F.S., to allow PSC to raise minimum RAF fee up to \$1,000 and to have different minimum fees depending on the service provided.

Section 12. Repeals s. 364.502, F.S., relating to video programming.

Sections 13 through 19 amend ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.02(14), and 489.103(5), F.S., to conform cross-references.

Section 20. Provides that nothing in this act shall be construed to limit the rights of local government or the duties of providers of cable service.

Section 21. Except as otherwise provided, this act shall take effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

While the exact revenue impact cannot be determined at this time, the PSC has estimated that the change in s. 364.335, F.S., to allow the PSC to charge an application fee of up to \$500, instead of the current maximum of \$250, could result in an additional \$5,000 to \$10,000 in annual revenues. Since the PSC probably will not have the new rules in place prior to January 1, 2006, the estimated revenues for fiscal year 2005-2006 will probably be between \$2,500 and \$5,000.

The PSC has estimated that the change to s. 364.336, F.S., to allow the PSC to increase its minimum regulatory assessment fees up to \$1,000 and have different minimum fees for different types of service, could result in an additional \$850,000 in annual revenues. This estimate is based on increasing the minimum fee to \$100 for pay telephone, shared tenant, and alternative access vendor certificates and to \$1,000 for CLECs and IXC's. The exact fiscal impact is indeterminate at this time, since the exact minimum fees for the various service types has yet to be decided. Since the PSC probably will not have the new rules in place prior to January 1, 2006, this change will probably be only for revenues received as of that date. Therefore, there should not be a fiscal impact until fiscal year 2006-2007.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

With the increase in the application fees for certificates from the PSC and the minimum regulatory assessment fees, telecommunications companies may have to pay more to receive a certificate to provide telecommunications services and more to retain those certificates.

Additionally, the bill increases the income eligibility test for Lifeline service from 125 percent to 135 percent of the federal poverty income guidelines for Lifeline customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill does not give the PSC any additional rule-making authority, the PSC will have to revise its rules to increase the fees required for an application for a certificate and to raise the minimum Regulatory Assessment Fees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

Lines 322 through 374 address damage due to a natural disaster being considered changed circumstances under s. 364.051(4), F.S. It should be noted that in 1994, BellSouth and the Office of Public Council entered into a stipulation as a means to resolve a pending rate case. The stipulation was the resolution of the last rate case filed by BellSouth prior to electing price cap regulation in 1997. The stipulation was approved by the PSC in Order No. PSC-94-0172-FOF-TL. In addition to setting rates for BellSouth, the stipulation required that the company accrue \$10 million per year, beginning in January 1994, to establish a reserve for catastrophic losses from hurricanes and similar occurrences. The company had \$10 million per year in its rates to cover storm damage since 1994.

In 1995, the Legislature enacted law that permitted LECs such as BellSouth, to elect price cap regulation. In 1997, BellSouth elected price cap regulation. Since that time, the PSC has not had jurisdiction for earnings oversight over the company and the company is no longer required to record revenues according to past regulatory convention. The company has not reduced its rates since that time and therefore continues to collect revenues that in 1994 were designated for storm damage recovery. Arguably, circumstances have changed dramatically since 1994 in many areas of the telecommunications environment and it is not unreasonable to conclude that revenues tagged for storm damage protection in 1994 through 1997 are no longer available for that purpose.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2005, the Utilities & Telecommunications Committee adopted a strike-all amendment. The strike-all did the following.

- Removed the exemption of non-basic telephone service from the PSC jurisdiction and replaced it with intrastate interexchange telecommunications service.
- Amended the definition of “broadband service” to provide that the definition does not apply to any intrastate telecommunications services tariffed with the Commission as of January 1, 2005.
- Limited the recovery of natural disaster related damage to damage resulting from a named tropical storm system.
- Limited the recovery of damage from tropical storm systems to those that occur after June 1, 2005.
- Allows the PSC to verify that the company’s tropical storm system related costs were reasonably incurred.
- Provides that if a company has a storm reserve, the company may only recover tropical system related costs in excess of the reserve.

In addition, two amendments to the amendment were adopted. The first amendment requires the PSC, in determining the recovery from damage related to tropical systems, to order an equal line charge per access line instead of the company determining the class of customer and amount to be charged.

The second amendment to the amendment adds to the definition of “service” that the PSC has the authority to arbitrate, enforce or approve interconnection agreements, and resolve disputes, as provided by federal law. The duties of a LEC to provide unbundled network elements, interconnection, collocation arrangements or any other service, right or benefit to any party regardless of the technology, shall be those the company is obligated to provide under federal law.

On April 21, 2005, the Commerce Council adopted the following eight amendments to this bill:

1. Added a new section to amend s. 350.041 relating to the standards of conduct for PSC commissioners.
2. Amended the section relating to emerging and advanced services to simplify and clarify the bill’s language by making the same provisions are applicable, in the same manner, to both broadband service and the provision of VoIP, and to clarify that the freedom from regulation expresses is limited to state regulation.
3. Clarified the bill’s new language concerning the definition of “service” and provided that those items exempted from the definition are still subject to the PSC’s authority under federal law and inter-provider obligations under federal law.
4. Conforms the storm-recovery provision to the Senate’s version. It provides that the PSC must verify the amounts collected is equal to the dollar amount ordered and requires the PSC to order the refund of amounts collected in excess. It limits a company to filing one petition per storm season, and provides a threshold, based on company size, the amount of storm damage before a company can file a petition for storm recovery. It allows the PSC to determine whether a company’s wholesale rates already include an amount for storm recovery.
5. Makes it clear that nothing in this bill can be construed to affect a local government’s authority over cable service, or the duties of cable service providers to comply with federal, state, or local law pertaining to cable service.
6. Revised legislative intent to remove the reference to ch. 501. F.S., and reinstates current legislative intent relating to the competitive provision of telecommunications service.
7. Conformed the definition of “broadband service” to the language contained in the Senate’s bill.
8. This was a technical amendment to provide that certain modifiers relate to VoIP.