

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Communications and Public Utilities Committee

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BILL: CS/SB 2068

SPONSOR: Communications & Public Utilities and Senator Constantine

SUBJECT: Telecommunications

DATE: April 5, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	<b>Fav/CS</b>
2.	_____	_____	CM	_____
3.	_____	_____	GEA	_____
4.	_____	_____	TA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Bill 2068 amends Chapter 364, Florida Statutes, relating to Florida Public Service Commission's (PSC or commission) regulation of telecommunications services. The bill:

- o specifies the commission's exclusive jurisdiction over regulation of telecommunications companies; clarifies jurisdiction of consumer related matters between regulated and non-regulated entities;
- o specifies intrastate interexchange telecommunications services, broadband services, VoIP, and wireless telecommunications as exempt from commission jurisdiction, except as otherwise delineated in chapter 364, F.S., or federal law;
- o requires the commission to promote consistency with federal law and coordination with federal agencies;
- o requires that broadband service remain free of state and local regulation;
- o requires voice-over-Internet protocol remain free of regulation except as specifically provided for in Chapter 364, F.S., and federal law;
- o defines the terms "broadband" and "VoIP" and modifies the definition of the term "service;"
- o prohibits local government from regulating VoIP or other advanced telecommunications, regardless of the platform or provider;
- o increases the income eligibility threshold for Lifeline; and
- o repeals section 364.502, F.S., relating to video programming services;

There are also conforming changes to other sections and chapters.

This bill substantially amends sections 364.01, 364.02, 364.0361, 364.10, 196.012, 199.183, 212.08, 290.007, 350.0605, 364.602, and 489.103, of the Florida Statutes. It creates sections

364.011, 364.012, and 364.013 of the Florida Statutes. Finally, it repeals section 364.502 of the Florida Statutes.

## II. Present Situation:

Chapter 364, Florida Statutes, sets forth the jurisdiction of the Florida Public Service Commission 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 commission jurisdiction, and the nature and extent of that jurisdiction.

Section 364.01, F.S., relates to the powers of the commission. Subsection (3) contains the legislative finding that competition in the provision of local exchange telecommunications services is in the public interest. This section further provides that changes in regulations allowing increased competition in telecommunications markets could provide improved economic conditions including more highly skilled employment opportunities. Finally, is the legislative finding that the provision of voice-over-Internet protocol (VoIP) free of unnecessary regulation is in the public interest.

Subsection 364.01(4) enumerates the objectives of the commission exercising its exclusive jurisdiction. Subsection (4)(a) charges the PSC with the protection of the public health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable prices.

Subsection 364.01(4)(d), F.S., provides that the commission shall 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 incumbent local exchange companies.

Subsection 364.02(12), F.S., provides the definition of “service.” It states that the definition does not include VoIP for purposes of regulation by the commission 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 voice-over-Internet protocol service.

Subsection 364.02(13), F.S., provides for exemptions to the definition of “telecommunications company” which include commercial mobile radio service providers (wireless), intrastate interexchange telecommunications companies and cable companies, among others.

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. According to the commission, it has not asserted jurisdiction over these services.

Section 364.0361, F.S., relates to nondiscriminatory exercise of local government authority over telecommunications services. This section provides that a local government shall 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.

Subsection 364.10(3), F.S., addresses the provision of Lifeline service and paragraph (3)(a) specifies that each telecommunications company authorized by the commission to reduce switched network access charges pursuant to s. 364.164, F.S., shall offer Lifeline service to any otherwise eligible customer that meets an income eligibility criteria of 125 percent of the federal poverty guideline.

Section 364.502, F.S. relates to video programming and the capacity for public use. The section provides that each local exchange company or competitive local exchange company which provides video programming shall, prior to providing such programming, file with the commission a designation of reserve capacity for public, educational, or governmental use. The commission must review the designation to determine whether it adequately ensures that public education and public information programming 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 by the telecommunications company which provides the video programming. The commission states it has never received or reviewed a video programming designation of public capacity from a telecommunications or competitive telecommunications company.

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

Generally, SB 2068 revises Chapter 364, Florida Statutes, to recognize the evolution of the telecommunications technologies and markets and provide specificity to commission authority, particularly as it relates to new and emerging technologies and services.

**Section 1** provides that communications activities not regulated by the commission, including but not limited to VoIP, wireless, and broadband, 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 any party from seeking remedy under state and federal antitrust law. According to the commission, its Consumer Affairs call center currently 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 commission and consumer advocates.

Subsection 364.01(4)(d), F.S., is amended to include the encouragement of innovation and investment as a means by which the commission may promote competition. In addition, emerging technologies are identified as being allowed a period of reduced regulatory oversight as a means to promote competition. References to encouraging new entrants are deleted.

**Section 2** creates section 364.011, F.S., providing exemptions from commission jurisdiction. The bill specifies that intrastate interexchange telecommunications services; broadband service, regardless of provider, platform, or protocol; VoIP; and wireless telecommunications services including commercial mobile radio service providers are exempt from commission jurisdiction, except to the extent delineated in chapter 364 or specifically authorized by federal law.

**Section 3** creates section 364.012, F.S., relating to consistency with federal law. The bill provides that in order to promote commission coordination with federal policymakers and regulatory agencies, the commission shall maintain continuous liaisons with appropriate federal agencies whose policy decisions and rulemaking authority affect those telecommunication companies over which the commission 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 commission's authority to arbitrate and enforce interconnection agreements to the extent that those elements are required by federal laws and regulations. This provision formalizes duties and responsibilities already performed by the commission. The commission states that there is a concern that duties which may be left to states by federal law or policy could, strictly speaking, also require authorization through state law.

**Section 4** creates section 364.013, F.S., relating to emerging and advanced services. The section provides that broadband service shall remain free of state and local regulation, regardless of platform, provider or protocol. It also provides that VoIP shall be free of regulation, except as delineated in the chapter or as specifically authorized by federal law, regardless of provider, platform or protocol.

According to the commission, 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 chapter 364, depending on the definition of VoIP services.

**Section 5** amends s. 364.02, F.S., relating to definitions. A definition of broadband has been added as subsection 346.02(2), F.S. In the bill, the term "broadband service" means any service that consists of or includes a capability to transmit or receive information at a rate that is not less than 200 kilobits per second and either is used to provide access to the Internet or provides computer processing, information storage, information content, or protocol conversion in combination with the service. The definition of broadband service does not include any intrastate telecommunications services that have been tariffed with the commission on or before January 1, 2005.

The term "service" is amended so as not to include broadband service but allows the commission to still arbitrate, enforce, or approve interconnection agreements, and resolve disputes according to federal law and the duties of a local exchange telecommunications company to provide certain services are those that the company is required to under federal law.

The term "VoIP" is added in subsection 364.02(16), F.S., and is defined to mean voice-over-Internet protocol as defined by federal law. The commission states that 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 commission adds that it is likely that a number of bills addressing the statutory definition of VoIP will be proposed in the current Congressional session.

**Section 6** amends subsection 364.0361, F.S., relating to nondiscriminatory exercise of local government authority. The bill adds VoIP to the prohibition of regulation by local governments of VoIP or other advanced telecommunications service, regardless of platform, provider, or protocol. The prohibition currently extends to operating systems, qualifications, services, service quality, service territory, and price.

**Section 7** amends subsection 364.10(3)(a), F.S., to revise the Lifeline income eligibility threshold from 125 percent to 135 percent of the federal poverty guidelines. This change will increase the number of households eligible for Lifeline benefits under the income criteria. The commission states that based upon the way the current provision is written, it could be construed to imply that the 135 percent guideline would be retroactive to September 1, 2003.

**Section 8** repeals s. 364.502, F.S., relating to video programming and capacity for public use. The commission states that since it has never received a request for designation of capacity for public use by any telecommunications or competitive telecommunications company, the repeal of this provision will have no discernable impact. The commission notes however, that according to trade press accounts, at least two local exchange telecommunications companies serving customers in Florida desire to provide video programming at some future date.

**Section 9** amends s. 364.335, F.S., relating to application for certificate to allow the commission to increase the minimum regulatory assessment fee charged to up to a maximum of \$1,000 from \$50. In addition, the commission has the discretion to set different amounts depending on the type of service provided by a company. This increase will allow the commission to more closely collect the cost of regulating smaller telecommunications companies.

**Section 10** amends s. 364.336, F.S., relating to regulatory assessment fees to allow the commission to increase the minimum application fee up to \$500 from \$250 for obtaining a certificate. This increase will allow the commission to more closely collect the cost of processing the application.

**Sections 11 through 17** make conforming changes to sections 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.602(4), and 489.103(5), F.S.

**Section 18** provides an effective date of July 1, 2005.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Smaller companies will have to pay higher regulatory assessment fees.

B. Private Sector Impact:

Smaller companies will have to pay a higher rate to apply for a certificate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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