

By the Committee on Communications and Public Utilities; and  
Senator Constantine

579-1917-05

1                                   A bill to be entitled  
2           An act relating to telecommunications; amending  
3           s. 364.01, F.S.; specifying the exclusive  
4           jurisdiction of the Florida Public Service  
5           Commission to regulate telecommunications  
6           companies; providing that state laws governing  
7           business and consumer protection be applied to  
8           communications activities that are not  
9           regulated by the commission; revising  
10          provisions governing the exclusive jurisdiction  
11          of the commission; creating s. 364.011, F.S.;  
12          specifying certain services that are exempt  
13          from oversight by the commission; creating s.  
14          364.012, F.S.; requiring the commission to  
15          coordinate with federal agencies; providing  
16          that ch. 364, F.S., does not limit or modify  
17          certain duties of a local exchange carrier;  
18          creating s. 364.013, F.S.; requiring that  
19          broadband service remain free of state and  
20          local regulation; requiring that  
21          voice-over-Internet protocol remain free of  
22          regulation, except as specifically provided in  
23          ch. 364, F.S., or by federal law; amending s.  
24          364.02, F.S.; defining the terms "broadband  
25          service" and "VoIP"; redefining the term  
26          "service"; amending s. 364.0361, F.S.;  
27          prohibiting a local government from regulating  
28          voice-over-Internet protocol regardless of the  
29          platform or provider; amending s. 364.10, F.S.;  
30          revising the income threshold for eligibility  
31          for Lifeline service; repealing s. 364.502,

1 F.S., relating to video programming services;  
2 amending s. 364.335, F.S.; increasing to \$500  
3 from \$250 the maximum allowable filing fee for  
4 certification of telecommunications carriers;  
5 amending s. 364.336, F.S.; authorizing the  
6 Public Service Commission to establish a  
7 minimum fee of up to \$1,000; authorizing  
8 different fees for different types of services  
9 provided by telecommunications companies;  
10 amending ss. 196.012, 199.183, 212.08, 290.007,  
11 350.0605, 364.602, and 489.103, F.S.;  
12 conforming cross-references; providing an  
13 effective date.  
14

15 Be It Enacted by the Legislature of the State of Florida:  
16

17 Section 1. Section 364.01, Florida Statutes, is  
18 amended to read:

19 364.01 Powers of commission, legislative intent.--

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

23 (2) It is the legislative intent to give exclusive  
24 jurisdiction in all matters set forth in this chapter to the  
25 Florida Public Service Commission in regulating  
26 telecommunications companies, and such preemption shall  
27 supersede any local or special act or municipal charter where  
28 any conflict of authority may exist. However, the provisions  
29 of this chapter shall not affect the authority and powers  
30 granted in s. 166.231(9) or s. 337.401.  
31

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

1 of unnecessary regulation, regardless of the provider, is in  
2 the public interest.

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

5 (a) Protect the public health, safety, and welfare by  
6 ensuring that basic local telecommunications services are  
7 available to all consumers in the state at reasonable and  
8 affordable prices.

9 (b) Encourage competition through flexible regulatory  
10 treatment among providers of telecommunications services in  
11 order to ensure the availability of the widest possible range  
12 of consumer choice in the provision of all telecommunications  
13 services.

14 (c) Protect the public health, safety, and welfare by  
15 ensuring that monopoly services provided by telecommunications  
16 companies continue to be subject to effective price, rate, and  
17 service regulation.

18 (d) Promote competition by encouraging innovation and  
19 investment in ~~new entrants into~~ telecommunications markets and  
20 by allowing a transitional period in which new and emerging  
21 technologies ~~entrants~~ are subject to a reduced ~~lesser~~ level of  
22 regulatory oversight ~~than local exchange telecommunications~~  
23 ~~companies~~.

24 (e) Encourage all providers of telecommunications  
25 services to introduce new or experimental telecommunications  
26 services free of unnecessary regulatory restraints.

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

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

1           (h) Recognize the continuing emergence of a  
2 competitive telecommunications environment through the  
3 flexible regulatory treatment of competitive  
4 telecommunications services, where appropriate, if doing so  
5 does not reduce the availability of adequate basic local  
6 telecommunications service to all citizens of the state at  
7 reasonable and affordable prices, if competitive  
8 telecommunications services are not subsidized by monopoly  
9 telecommunications services, and if all monopoly services are  
10 available to all competitors on a nondiscriminatory basis.

11           (i) Continue its historical role as a surrogate for  
12 competition for monopoly services provided by local exchange  
13 telecommunications companies.

14           Section 2. Section 364.011, Florida Statutes, is  
15 created to read:

16           364.011 Exemptions from commission jurisdiction.--The  
17 following services are exempt from oversight by the  
18 commission, except to the extent delineated in this chapter or  
19 specifically authorized by federal law:

20           (1) Intrastate interexchange telecommunications  
21 services.

22           (2) Broadband services, regardless of the provider,  
23 platform, or protocol.

24           (3) VoIP.

25           (4) Wireless telecommunications, including commercial  
26 mobile radio service providers.

27           Section 3. Section 364.012, Florida Statutes, is  
28 created to read:

29           364.012 Consistency with federal law.--

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

1 shall maintain continuous liaisons with appropriate federal  
2 agencies whose policy decisions and rulemaking authority  
3 affect those telecommunications companies over which the  
4 commission has jurisdiction. The commission is encouraged to  
5 participate in the proceedings of federal agencies in cases in  
6 which the state's consumers may be affected and to convey the  
7 commission's policy positions and information requirements in  
8 order to achieve greater efficiency in regulation.

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

19       Section 4. Section 364.013, Florida Statutes, is  
20 created to read:

21       364.013 Emerging and advanced services.--Broadband  
22 service shall remain free of state and local regulation,  
23 regardless of the provider, platform, or protocol. In  
24 addition, the provision of voice-over-Internet protocol (VoIP)  
25 shall be free of regulation, except as delineated in this  
26 chapter or as specifically authorized by federal law,  
27 regardless of the provider, platform, or protocol.

28       Section 5. Section 364.02, Florida Statutes, is  
29 amended to read:

30       364.02 Definitions.--As used in this chapter:  
31

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

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

17           (a) Is used to provide access to the Internet; or  
18           (b) Provides computer processing, information storage,  
19 information content, or protocol conversion in combination  
20 with the service.

21  
22 The definition of broadband service does not include any  
23 intrastate telecommunications services that have been tariffed  
24 with the commission on or before January 1, 2005.

25           ~~(3)-(2)~~ "Commercial mobile radio service provider"  
26 means a commercial mobile radio service provider as defined by  
27 and pursuant to 47 U.S.C. ss. 153(n) and 332(d).

28           ~~(4)-(3)~~ "Commission" means the Florida Public Service  
29 Commission.

30           ~~(5)-(4)~~ "Competitive local exchange telecommunications  
31 company" means any company certificated by the commission to

1 provide local exchange telecommunications services in this  
2 state on or after July 1, 1995.

3 ~~(6)(5)~~ "Corporation" includes a corporation, company,  
4 association, or joint stock association.

5 ~~(7)(6)~~ "Intrastate interexchange telecommunications  
6 company" means any entity that provides intrastate  
7 interexchange telecommunications services.

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

12 ~~(9)(8)~~ "Monopoly service" means a telecommunications  
13 service for which there is no effective competition, either in  
14 fact or by operation of law.

15 ~~(10)(9)~~ "Nonbasic service" means any  
16 telecommunications service provided by a local exchange  
17 telecommunications company other than a basic local  
18 telecommunications service, a local interconnection  
19 arrangement described in s. 364.16, or a network access  
20 service described in s. 364.163.

21 ~~(11)(10)~~ "Operator service" includes, but is not  
22 limited to, billing or completion of third-party,  
23 person-to-person, collect, or calling card or credit card  
24 calls through the use of a live operator or automated  
25 equipment.

26 ~~(12)(11)~~ "Operator service provider" means a person  
27 who furnishes operator service through a call aggregator.

28 ~~(13)(12)~~ "Service" is to be construed in its broadest  
29 and most inclusive sense. The term "service" does not include  
30 broadband service or voice-over-Internet protocol service for  
31 purposes of regulation by the commission. Nothing herein shall



1 affect the rights and obligations of any entity related to the  
2 payment of switched network access rates or other intercarrier  
3 compensation, if any, related to voice-over-Internet protocol  
4 service. Notwithstanding the provisions of this subsection,  
5 the commission may arbitrate, enforce, or approve  
6 interconnection agreements, and resolve disputes, as provided  
7 by 47 U.S.C. ss. 251 and 252, or any other applicable federal  
8 law or regulation. The duties of a local exchange  
9 telecommunications company to provide unbundled network  
10 elements, interconnection, collocation arrangements, or any  
11 other service, right, or benefit to any party, regardless of  
12 the technology, are those that the company is obligated to  
13 extend or provide under applicable federal law and  
14 regulations.

15       ~~(14)~~(13) "Telecommunications company" includes every  
16 corporation, partnership, and person and their lessees,  
17 trustees, or receivers appointed by any court whatsoever, and  
18 every political subdivision in the state, offering two-way  
19 telecommunications service to the public for hire within this  
20 state by the use of a telecommunications facility. The term  
21 "telecommunications company" does not include:

22           (a) An entity which provides a telecommunications  
23 facility exclusively to a certificated telecommunications  
24 company;

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

29           (c) A commercial mobile radio service provider;

30           (d) A facsimile transmission service;

31

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

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

5 (g) An intrastate interexchange telecommunications  
6 company.

7  
8 However, each commercial mobile radio service provider and  
9 each intrastate interexchange telecommunications company shall  
10 continue to be liable for any taxes imposed under ~~pursuant to~~  
11 chapters 202, 203, and 212 and any fees assessed under  
12 ~~pursuant to~~ ss. 364.025 and 364.336. Each intrastate  
13 interexchange telecommunications company shall continue to be  
14 subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285,  
15 364.501, 364.603, and 364.604, shall provide the commission  
16 with such current information as the commission deems  
17 necessary to contact and communicate with the company, shall  
18 continue to pay intrastate switched network access rates or  
19 other intercarrier compensation to the local exchange  
20 telecommunications company or the competitive local exchange  
21 telecommunications company for the origination and termination  
22 of interexchange telecommunications service, and shall reduce  
23 its intrastate long distance toll rates in accordance with s.  
24 364.163(2).

25 ~~(15)(14)~~ "Telecommunications facility" includes real  
26 estate, easements, apparatus, property, and routes used and  
27 operated to provide two-way telecommunications service to the  
28 public for hire within this state.

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

31

1           Section 6. 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, broadband or  
15 information service, regardless of the platform, provider, or  
16 protocol. This section does not relieve a provider from any  
17 obligations under s. 166.046 or s. 337.401.

18           Section 7. Paragraph (a) of subsection (3) of section  
19 364.10, Florida Statutes, is amended to read:

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

22           (3)(a) Effective September 1, 2003, any local exchange  
23 telecommunications company authorized by the commission to  
24 reduce its switched network access rate under ~~pursuant to~~ s.  
25 364.164 shall have tariffed and shall provide Lifeline service  
26 to any otherwise eligible customer or potential customer who  
27 meets an income eligibility test at 135 ~~125~~ percent or less of  
28 the federal poverty income guidelines for Lifeline customers.  
29 ~~The Such a~~ test for eligibility must augment, rather than  
30 replace, the eligibility standards established by federal law  
31 and based on participation in certain low-income assistance

1 | programs. Each intrastate interexchange telecommunications  
2 | company shall, effective September 1, 2003, file a tariff  
3 | providing at a minimum the intrastate interexchange  
4 | telecommunications carrier's current Lifeline benefits and  
5 | exemptions to Lifeline customers who meet the income  
6 | eligibility test set forth in this subsection. The Office of  
7 | Public Counsel shall certify and maintain claims submitted by  
8 | a customer for eligibility under the income test authorized by  
9 | this subsection.

10 |       Section 8. Section 364.502, Florida Statutes, is  
11 | repealed.

12 |       Section 9. Subsection (1) of section 364.335, Florida  
13 | Statutes, is amended to read:

14 |       364.335 Application for certificate.--

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

16 |       (a) Provide all information required by rule or order  
17 | of the commission, which may include a detailed inquiry into  
18 | the ability of the applicant to provide service, a detailed  
19 | inquiry into the territory and facilities involved, and a  
20 | detailed inquiry into the existence of service from other  
21 | sources within geographical proximity to the territory applied  
22 | for.

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

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

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

1           Section 10. Section 364.336, Florida Statutes, is  
2 amended to read:

3           364.336 Regulatory assessment fees.--Notwithstanding  
4 any provisions of law to the contrary, each telecommunications  
5 company licensed or operating under this chapter, for any part  
6 of the preceding 6-month period, shall pay to the commission,  
7 within 30 days following the end of each 6-month period, a fee  
8 that may not exceed 0.25 percent annually of its gross  
9 operating revenues derived from intrastate business, except,  
10 for purposes of this section and the fee specified in s.  
11 350.113(3), any amount paid to another telecommunications  
12 company for the use of any telecommunications network shall be  
13 deducted from the gross operating revenue for purposes of  
14 computing the fee due. The commission shall by rule assess a  
15 minimum fee in an amount up to \$1,000. The minimum amount may  
16 vary depending on the type of service provided by the  
17 telecommunications company, and shall, to the extent  
18 practicable, be related to the cost of regulating such type of  
19 company. Differences, if any, between the amount paid in any  
20 6-month period and the amount actually determined by the  
21 commission to be due shall, upon motion by the commission, be  
22 immediately paid or refunded. Fees under this section may not  
23 be less than \$50 annually. Such fees shall be deposited in  
24 accordance with s. 350.113. The commission may by rule  
25 establish criteria for payment of the regulatory assessment  
26 fee on an annual basis rather than on a semiannual basis.

27           Section 11. Subsection (6) of section 196.012, Florida  
28 Statutes, is amended to read:

29           196.012 Definitions.--For the purpose of this chapter,  
30 the following terms are defined as follows, except where the  
31 context clearly indicates otherwise:

1           (6) Governmental, municipal, or public purpose or  
2 function shall be deemed to be served or performed when the  
3 lessee under any leasehold interest created in property of the  
4 United States, the state or any of its political subdivisions,  
5 or any municipality, agency, special district, authority, or  
6 other public body corporate of the state is demonstrated to  
7 perform a function or serve a governmental purpose which could  
8 properly be performed or served by an appropriate governmental  
9 unit or which is demonstrated to perform a function or serve a  
10 purpose which would otherwise be a valid subject for the  
11 allocation of public funds. For purposes of the preceding  
12 sentence, an activity undertaken by a lessee which is  
13 permitted under the terms of its lease of real property  
14 designated as an aviation area on an airport layout plan which  
15 has been approved by the Federal Aviation Administration and  
16 which real property is used for the administration, operation,  
17 business offices and activities related specifically thereto  
18 in connection with the conduct of an aircraft full service  
19 fixed base operation which provides goods and services to the  
20 general aviation public in the promotion of air commerce shall  
21 be deemed an activity which serves a governmental, municipal,  
22 or public purpose or function. Any activity undertaken by a  
23 lessee which is permitted under the terms of its lease of real  
24 property designated as a public airport as defined in s.  
25 332.004(14) by municipalities, agencies, special districts,  
26 authorities, or other public bodies corporate and public  
27 bodies politic of the state, a spaceport as defined in s.  
28 331.303(19), or which is located in a deepwater port  
29 identified in s. 403.021(9)(b) and owned by one of the  
30 foregoing governmental units, subject to a leasehold or other  
31 possessory interest of a nongovernmental lessee that is deemed

1 | to perform an aviation, airport, aerospace, maritime, or port  
2 | purpose or operation shall be deemed an activity that serves a  
3 | governmental, municipal, or public purpose. The use by a  
4 | lessee, licensee, or management company of real property or a  
5 | portion thereof as a convention center, visitor center, sports  
6 | facility with permanent seating, concert hall, arena, stadium,  
7 | park, or beach is deemed a use that serves a governmental,  
8 | municipal, or public purpose or function when access to the  
9 | property is open to the general public with or without a  
10 | charge for admission. If property deeded to a municipality by  
11 | the United States is subject to a requirement that the Federal  
12 | Government, through a schedule established by the Secretary of  
13 | the Interior, determine that the property is being maintained  
14 | for public historic preservation, park, or recreational  
15 | purposes and if those conditions are not met the property will  
16 | revert back to the Federal Government, then such property  
17 | shall be deemed to serve a municipal or public purpose. The  
18 | term "governmental purpose" also includes a direct use of  
19 | property on federal lands in connection with the Federal  
20 | Government's Space Exploration Program or spaceport activities  
21 | as defined in s. 212.02(22). Real property and tangible  
22 | personal property owned by the Federal Government or the  
23 | Florida Space Authority and used for defense and space  
24 | exploration purposes or which is put to a use in support  
25 | thereof shall be deemed to perform an essential national  
26 | governmental purpose and shall be exempt. "Owned by the  
27 | lessee" as used in this chapter does not include personal  
28 | property, buildings, or other real property improvements used  
29 | for the administration, operation, business offices and  
30 | activities related specifically thereto in connection with the  
31 | conduct of an aircraft full service fixed based operation

1 | which provides goods and services to the general aviation  
2 | public in the promotion of air commerce provided that the real  
3 | property is designated as an aviation area on an airport  
4 | layout plan approved by the Federal Aviation Administration.  
5 | For purposes of determination of "ownership," buildings and  
6 | other real property improvements which will revert to the  
7 | airport authority or other governmental unit upon expiration  
8 | of the term of the lease shall be deemed "owned" by the  
9 | governmental unit and not the lessee. Providing two-way  
10 | telecommunications services to the public for hire by the use  
11 | of a telecommunications facility, as defined in s. 364.02(15)  
12 | ~~s. 364.02(14)~~, and for which a certificate is required under  
13 | chapter 364 does not constitute an exempt use for purposes of  
14 | s. 196.199, unless the telecommunications services are  
15 | provided by the operator of a public-use airport, as defined  
16 | in s. 332.004, for the operator's provision of  
17 | telecommunications services for the airport or its tenants,  
18 | concessionaires, or licensees, or unless the  
19 | telecommunications services are provided by a public hospital.  
20 | However, property that is being used to provide such  
21 | telecommunications services on or before October 1, 1997,  
22 | shall remain exempt, but such exemption expires October 1,  
23 | 2004.

24 |       Section 12. Paragraph (b) of subsection (1) of section  
25 | 199.183, Florida Statutes, is amended to read:

26 |       199.183 Taxpayers exempt from annual and nonrecurring  
27 | taxes.--

28 |       (1) Intangible personal property owned by this state  
29 | or any of its political subdivisions or municipalities shall  
30 | be exempt from taxation under this chapter. This exemption  
31 | does not apply to:



1           (b) Property related to the provision of two-way  
2 telecommunications services to the public for hire by the use  
3 of a telecommunications facility, as defined in s. 364.02(15)  
4 ~~s. 364.02(14)~~, and for which a certificate is required under  
5 chapter 364, when the ~~such~~ service is provided by any county,  
6 municipality, or other political subdivision of the state. Any  
7 immunity of any political subdivision of the state or other  
8 entity of local government from taxation of the property used  
9 to provide telecommunication services that is taxed as a  
10 result of this paragraph is hereby waived. However, intangible  
11 personal property related to the provision of ~~such~~  
12 telecommunications services provided by the operator of a  
13 public-use airport, as defined in s. 332.004, for the  
14 operator's provision of telecommunications services for the  
15 airport or its tenants, concessionaires, or licensees, and  
16 intangible personal property related to the provision of ~~such~~  
17 telecommunications services provided by a public hospital, are  
18 exempt from taxation under this chapter.

19           Section 13. Subsection (6) of section 212.08, Florida  
20 Statutes, is amended to read:

21           212.08 Sales, rental, use, consumption, distribution,  
22 and storage tax; specified exemptions.--The sale at retail,  
23 the rental, the use, the consumption, the distribution, and  
24 the storage to be used or consumed in this state of the  
25 following are hereby specifically exempt from the tax imposed  
26 by this chapter.

27           (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are  
28 also exempt from the tax imposed by this chapter sales made to  
29 the United States Government, a state, or any county,  
30 municipality, or political subdivision of a state when payment  
31 is made directly to the dealer by the governmental entity.

1 This exemption shall not inure to any transaction otherwise  
2 taxable under this chapter when payment is made by a  
3 government employee by any means, including, but not limited  
4 to, cash, check, or credit card when that employee is  
5 subsequently reimbursed by the governmental entity. This  
6 exemption does not include sales of tangible personal property  
7 made to contractors employed either directly or as agents of  
8 any such government or political subdivision thereof when such  
9 tangible personal property goes into or becomes a part of  
10 public works owned by such government or political  
11 subdivision. A determination whether a particular transaction  
12 is properly characterized as an exempt sale to a government  
13 entity or a taxable sale to a contractor shall be based on the  
14 substance of the transaction rather than the form in which the  
15 transaction is cast. The department shall adopt rules that  
16 give special consideration to factors that govern the status  
17 of the tangible personal property before its affixation to  
18 real property. In developing these rules, assumption of the  
19 risk of damage or loss is of paramount consideration in the  
20 determination. This exemption does not include sales, rental,  
21 use, consumption, or storage for use in any political  
22 subdivision or municipality in this state of machines and  
23 equipment and parts and accessories therefor used in the  
24 generation, transmission, or distribution of electrical energy  
25 by systems owned and operated by a political subdivision in  
26 this state for transmission or distribution expansion.  
27 Likewise exempt are charges for services rendered by radio and  
28 television stations, including line charges, talent fees, or  
29 license fees and charges for films, videotapes, and  
30 transcriptions used in producing radio or television  
31 broadcasts. The exemption provided in this subsection does not

1 include sales, rental, use, consumption, or storage for use in  
2 any political subdivision or municipality in this state of  
3 machines and equipment and parts and accessories therefor used  
4 in providing two-way telecommunications services to the public  
5 for hire by the use of a telecommunications facility, as  
6 defined in s. 364.02(15) ~~s. 364.02(14)~~, and for which a  
7 certificate is required under chapter 364, which facility is  
8 owned and operated by any county, municipality, or other  
9 political subdivision of the state. Any immunity of any  
10 political subdivision of the state or other entity of local  
11 government from taxation of the property used to provide  
12 telecommunication services that is taxed as a result of this  
13 section is hereby waived. However, the exemption provided in  
14 this subsection includes transactions taxable under this  
15 chapter which are for use by the operator of a public-use  
16 airport, as defined in s. 332.004, in providing such  
17 telecommunications services for the airport or its tenants,  
18 concessionaires, or licensees, or which are for use by a  
19 public hospital for the provision of such telecommunications  
20 services.

21 Section 14. Subsection (8) of section 290.007, Florida  
22 Statutes, is amended to read:

23 290.007 State incentives available in enterprise  
24 zones.--The following incentives are provided by the state to  
25 encourage the revitalization of enterprise zones:

26 (8) Notwithstanding any law to the contrary, the  
27 Public Service Commission may allow public utilities and  
28 telecommunications companies to grant discounts of up to 50  
29 percent on tariffed rates for services to small businesses  
30 located in an enterprise zone designated pursuant to s.  
31 290.0065. Such discounts may be granted for a period not to

1 exceed 5 years. For purposes of this subsection, the term  
2 "public utility" has the same meaning as in s. 366.02(1) and  
3 the term "telecommunications company" has the same meaning as  
4 in s. 364.02(14) ~~s. 364.02(13)~~.

5 Section 15. Subsection (3) of section 350.0605,  
6 Florida Statutes, is amended to read:

7 350.0605 Former commissioners and employees;  
8 representation of clients before commission.--

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

26 Section 16. Subsection (4) of section 364.602, Florida  
27 Statutes, is amended to read:

28 364.602 Definitions.--For purposes of this part:

29 (4) "Originating party" means any person, firm,  
30 corporation, or other entity, including a telecommunications  
31 company or a billing clearinghouse, that provides any

1 telecommunications service or information service to a  
2 customer or bills a customer through a billing party, except  
3 the term "originating party" does not include any entity  
4 specifically exempted from the definition of  
5 "telecommunications company" as provided in s. 364.02(14) ~~s.~~  
6 ~~364.02(13)~~.

7 Section 17. Subsection (5) of section 489.103, Florida  
8 Statutes, is amended to read:

9 489.103 Exemptions.--This part does not apply to:

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

20 Section 18. This act shall take effect July 1, 2005.

21  
22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
23 COMMITTEE SUBSTITUTE FOR  
24 SB 2068

25 The committee substitute reinstates legislative intent and  
26 clarifies available remedies outside commission jurisdiction.  
27 It also preserves consumer action under chapter 501, F.S. The  
28 bill clarifies the meaning of the terms "broadband" and  
29 "service." The committee substitute removes nonbasic services  
30 from a new exemptions section and replaces it with intrastate  
31 interexchange telecommunications carriers. It conforms the  
wireless telecommunication providers exempt with current law  
and modifies the qualifier of broadband services. The  
committee substitute includes defenses as an action available  
to parties under state or federal law. It also raises the  
threshold of fees that the commission can charge for  
regulatory assessment and application for certificate. The  
committee substitute makes conforming and technical changes.