

# 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: Commerce and Consumer Services Committee

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BILL: CS/CS/SB 2232

SPONSOR: Commerce and Consumer Services and Communications and Public Utilities and  
Senator Constantine

SUBJECT: Regulation of Telephone Rates

DATE: April 15, 2005

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

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

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## I. Summary:

This committee substitute amends ch. 364, F.S., relating to Florida Public Service Commission's (PSC or commission) regulation of telecommunications services. The committee substitute:

- Specifies the commission's exclusive jurisdiction over regulation of telecommunications companies; clarifies jurisdiction of consumer related matters between regulated and non-regulated entities;
- Specifies intrastate interexchange telecommunications services, broadband services, voice-over-Internet protocol (VoIP), and wireless telecommunications as exempt from commission jurisdiction, except as otherwise delineated in ch. 364, F.S., or federal law;
- Requires the commission to promote consistency with federal law and coordination with federal agencies;
- Requires that broadband and voice-over-Internet protocol remain free of regulation except as specifically provided for in ch. 364, F.S., and federal law;
- Defines the terms "broadband" and "VoIP" and modifies the definition of the term "service;"
- Prohibits local government from regulating VoIP or other advanced telecommunications, regardless of the platform or provider;
- Increases the income eligibility threshold for Lifeline;
- Repeals s. 364.502, F.S., relating to video programming services; and
- Provides that this act does not limit rights of local governments or the duties of service providers to comply with any federal, state, or local law pertaining to the provision of cable service.

There are also conforming changes to other sections and chapters.

This committee substitute also provides that evidence of damage occurring after June 1, 2005, as a result of a named tropical system, to the lines, plant, or facilities of a local exchange telecommunications company constitutes a change of circumstances thereby justifying a rate increase. The committee substitute sets forth the procedure a company must follow to petition the commission for a rate increase that includes meeting a threshold cost and expense amount. The commission must verify the costs and expenses relating to repairing, restoring, or replacing storm-related damage to the lines, plant, or facilities of a company and find such costs and expenses were reasonable. The commission is to determine the amount of an increase, which is limited by the committee substitute, and order the company to add a separate line-item increase for certain customers.

This committee substitute substantially amends sections, 196.012, 199.183, 212.08, 290.007, 350.0605, 364.01, 364.02, 364.0361, 364.10, 364.335, 364.366, 364.051, 364.602, and 489.103, of the Florida Statutes; it creates sections 364.011, 364.012, and 364.013, of the Florida Statutes, and repeals section 364.502, of the Florida Statutes.

## **II. Present Situation:**

### **The Public Service Commission's Regulation of Telecommunication Services**

Chapter 364, F.S., 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, it 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), F.S., 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.

Section 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.

Section 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.

Section 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 ch. 364, F.S., and services such as cable modem service, digital subscriber line (DSL), or wireless and satellite broadband service are not referenced in ch. 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.

Section 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.

### **Telecommunications Price Regulation**

Currently, most local exchange telecommunications companies are under price cap regulation pursuant to s. 366.051, F.S. In 1996, the rates for basic local telecommunications service were capped at rates in effect on July 1, 1995, and could not be increased until January 1, 2000. (BellSouth, Inc., could not increase its rates until January 1, 2001.) Since that time, incumbent local exchange telecommunications companies were allowed to increase their rates for basic

services by the change in inflation less 1 percent once in any 12-month period. However, s. 364.051(4), F.S., permits local exchange companies to petition for an increase in rates for basic service based on “a compelling showing of changed circumstances.” According to the Florida Public Service Commission (commission), no local exchange company has ever used this provision.

Section 364.025, F.S., provides for universal service, which means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. This section further provides that it is the legislative intent that universal service objectives be maintained after the local exchange market is opened to competitively provided services. Each local exchange telecommunications company is required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company’s service territory until January 1, 2009. (s. 364.025(1), F.S.)

During August and September 2004, Hurricanes Charley, Frances, Ivan, and Jeanne struck Florida causing significant damage to telecommunications facilities and other infrastructures throughout the state. According to BellSouth, Inc., it sustained approximately \$165 million in damages to its facilities within Florida from these storms.

According to the commission, in 1994, BellSouth, Inc., and the Office of Public Counsel entered into a stipulation as a means to resolve a pending rate case (Docket No. 920260). The stipulation was the resolution of the last rate case filed by BellSouth, Inc., prior to electing price cap regulation in 1997. The stipulation was approved by the commission 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 has had \$10 million per year in its rates to cover storm damage since 1994.

As discussed above, in 1995, the Legislature enacted law that permitted incumbent local exchange companies, such as BellSouth, to elect price cap regulation. Since that time, the commission 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 commission states that BellSouth has not reduced its rates since that time and therefore continues to collect revenue that in 1994 was designated for storm damage recovery. BellSouth states that circumstances have changed dramatically since 1994 in many areas of the telecommunications environment and revenues designated for storm damage protection in 1994 through 1997 are no longer available for that purpose. According to the commission, neither Verizon, Inc., of Florida nor Sprint Florida had such reserves.

### III. Effect of Proposed Changes:

#### Regulation of Telecommunication Services

Generally, sections 1 through 18 of this committee substitute revise ch. 364, F.S., to recognize the evolution of the telecommunications technologies and markets and provide specificity to Public Service Commission (commission) authority, particularly as it relates to new and emerging technologies and services.

**Section 1** amends s. 364.01, F.S., to provide 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. This section 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.

Section 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 s. 364.011, F.S., to provide exemptions from commission jurisdiction. The committee substitute 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 ch. 364, F.S., or specifically authorized by federal law.

**Section 3** creates section 364.012, F.S., relating to consistency with federal law. The committee substitute 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.

This 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 s. 364.013, F.S., relating to emerging and advanced services. This section provides that broadband service and VoIP shall be free of regulation, except as delineated in

chapter 364 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 ch. 364, F.S., depending on the definition of VoIP services.

**Section 5** amends s. 364.02, F.S., relating to definitions. In the committee substitute, the term “broadband service” is defined to mean 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 in the definition. Section 364.013, F.S., exempts broadband service and VoIP from PSC regulation, however, the commission and telecommunications companies must continue to enforce federal regulation. Specifically, this section provides that, notwithstanding s. 364.013, F.S., the commission may arbitrate, enforce, or approve interconnection agreements, and resolve disputes according to federal law; and local exchange telecommunications companies must provide certain services under federal law.

The term “VoIP” is added in s. 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 s. 364.0361, F.S., relating to nondiscriminatory exercise of local government authority. The committee substitute 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 s. 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 regulatory assessment fees to allow the commission to increase the minimum application fee \$250 to \$500 for obtaining a certificate. This increase will allow the commission to more closely collect the cost of processing the application.

**Section 10** amends s. 364.336, 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.

**Sections 11 through 17** make conforming changes to ss. 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 that nothing in this act limits the rights of local government or the duties of providers of cable service to comply with any federal, state, or local law pertaining to the provision of cable service.

### **Telecommunications Price Regulation**

**Section 19** amends s. 364.051, F.S., to provide that evidence of damage occurring after June 1, 2005, as a result of a named tropical system, to the lines, plants, or facilities of a local exchange telecommunications company subject to carrier-of-last-resort obligations constitutes a compelling showing of changed circumstances. A telecommunications company that demonstrates changed circumstances may petition for a rate increase. This section provides that a company must file a petition to recover its intrastate costs and expenses relating to the repair, restoration, or replacement of damaged lines, plants, or facilities. The committee substitute provides a threshold that medium and large companies must meet before filing a petition. A company with 1-3 million access lines must have storm related costs and expenses exceeding \$1.5 million in order to petition for a rate increase. A company with more than 3 million access lines must have storm related costs and expenses of at least \$5 million. A company with less than 1 million access lines does not have to reach a threshold before filing. The commission is responsible for verifying such costs and expenses.

The committee substitute requires that the company show, and the commission determine, whether costs and expenses are reasonable under the circumstances. Traditionally, for rate-base-regulated 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 implies a similar type of review.

According to the commission, price-capped companies are currently required by the Federal Communications Commission (FCC) to keep their books and records according to the Uniform System of Accounts, that requirement could be deleted by the FCC at any point in time. The commission states that it is not clear that the cost and expense information would continue to be organized in a manner amenable to regulatory review.

The committee substitute provides that a company having a storm-reserve fund may recover tropical-system-related costs and expenses from its customers only in excess of any amount available in its storm-reserve fund. The commission may determine the amount of any increase, but the charge per line item may not exceed 50 cents per month per customer line for a period of not more than 12 months. The commission may order the company to add an equal line-item charge per access line to the billing statement of the company's retail basic and non-basic local telecommunications service customers and, to the extent the commission determines appropriate, to its wholesale loop unbundled network element customers. At the end of the collection period, the commission must verify that the collected amount does not exceed the amount authorized by the order. If collections exceed the ordered amount, the commission must order the company to refund the excess.

The committee substitute limits a company to filing only one petition for storm recovery in any 12-month period for the previous storm season, but allows damages to be recovered from more than one named tropical system in that period.

Finally, the committee substitute does not adversely affect any petition filed before the effective date of this act to recover storm related costs.

**Section 20** provides that this act will be effective upon becoming law.

#### **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:**

Sections 9 and 10 of the committee substitute increase assessment and application fees, respectively.

**B. Private Sector Impact:**

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

According to the commission, there are approximately 11 million subscriber lines in Florida. For illustration, a \$.50 per month charge over 12 months would produce between \$60 - \$70 million per year depending on the extent of customer migration to alternative providers. Moreover, wholesale providers estimate that they would pay at least \$12 million of that \$60 - \$70 million.

**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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