

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.)

Prepared By: Communications and Public Utilities Committee

BILL: CS/SB 2232

SPONSOR: Communications and Public Utilities and Senator Constantine

SUBJECT: Regulation of Telephone Rates

DATE: April 5, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute provides that evidence of damage occurring after June 1, 2005, to the lines, plant or facilities of a local exchange telecommunications company subject to the carrier-of-last-resort obligation constitutes a change of circumstances thereby justifying a rate increase. The bill sets forth the procedure a company must follow to petition the Florida Public Service 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 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 bill, and order the company to add a separate line-item increase for certain customers.

This bill substantially amends section 364.051 of the Florida Statutes.

II. Present Situation:

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:

Section 1 provides that evidence of damage occurring after June 1, 2005, to the lines, plants, or facilities of a local exchange telecommunications company subject to carrier-of-last-resort obligations which is the result of a named tropical system constitutes a compelling showing of changed circumstances. 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 bill provides a threshold for medium and large companies must meet before filing a petition. Small companies do not have to reach a threshold before filing. The commission would be responsible for verifying such costs and expenses.

The bill 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 bill 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 for 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 nonbasic local telecommunications service customers and 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 bill 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 bill does not adversely affect any petition filed before the effective date of this act to recover storm related costs.

Section 2 provides that the 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:**

None.

B. Private Sector Impact:

According to the commission, there are approximately 11 million subscriber lines in Florida. For illustration, 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. Moreover, wholesale provides 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.

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

VIII. Summary of Amendments:

None.

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