

By the Committees on Commerce and Consumer Services;
Communications and Public Utilities; and Senator Constantine

577-2153-05

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; requiring
13 providers to comply with certain laws; amending
14 s. 364.051, F.S.; providing that damage to the
15 equipment and facilities of a local exchange
16 telecommunications as a result of a named
17 tropical system constitutes a compelling
18 showing of changed circumstances to justify a
19 rate increase; allowing such companies to
20 petition for recovery of such costs and
21 expenses; requiring the Public Service
22 Commission to verify the intrastate costs and
23 expenses for repairing, restoring, or replacing
24 damaged lines, plants, or facilities; requiring
25 the commission to determine whether the
26 intrastate costs and expenses are reasonable;
27 requiring a company to exhaust any
28 storm-reserve funds prior to recovery from
29 customers; providing that the commission may
30 authorize adding an equal line-item charge per
31 access line for certain customers; providing

1 for a rate cap and providing the maximum number
2 of months the rate may be imposed; providing a
3 12-month limit for the application; allowing
4 recovery for more than one storm within the
5 limit; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Section 364.01, Florida Statutes, is
10 amended to read:

11 364.01 Powers of commission, legislative intent.--

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

15 (2) It is the legislative intent to give exclusive
16 jurisdiction in all matters set forth in this chapter to the
17 Florida Public Service Commission in regulating
18 telecommunications companies, and such preemption shall
19 supersede any local or special act or municipal charter where
20 any conflict of authority may exist. However, the provisions
21 of this chapter shall not affect the authority and powers
22 granted in s. 166.231(9) or s. 337.401.

23 (3) Communications activities that are not regulated
24 by the Florida Public Service Commission, including, but not
25 limited to, VoIP, wireless, and broadband, are subject to this
26 state's generally applicable business regulation and deceptive
27 trade practices and consumer protection laws, as enforced by
28 the appropriate state authority or through actions in the
29 judicial system. This chapter does not limit the availability
30 to any party of any remedy or defense under state or federal
31 antitrust laws. The Legislature finds that the competitive

1 provision of telecommunications services, including local
2 exchange telecommunications service, is in the public interest
3 and will provide customers with freedom of choice, encourage
4 the introduction of new telecommunications service, encourage
5 technological innovation, and encourage investment in
6 telecommunications infrastructure. The Legislature further
7 finds that the transition from the monopoly provision of local
8 exchange service to the competitive provision thereof will
9 require appropriate regulatory oversight to protect consumers
10 and provide for the development of fair and effective
11 competition, but nothing in this chapter shall limit the
12 availability to any party of any remedy under state or federal
13 antitrust laws. The Legislature further finds that changes in
14 regulations allowing increased competition in
15 telecommunications services could provide the occasion for
16 increases in the telecommunications workforce; therefore, it
17 is in the public interest that competition in
18 telecommunications services lead to a situation that enhances
19 the high-technological skills and the economic status of the
20 telecommunications workforce. The Legislature further finds
21 that the provision of voice-over-Internet protocol (VOIP) free
22 of unnecessary regulation, regardless of the provider, is in
23 the public interest.

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

26 (a) Protect the public health, safety, and welfare by
27 ensuring that basic local telecommunications services are
28 available to all consumers in the state at reasonable and
29 affordable prices.

30 (b) Encourage competition through flexible regulatory
31 treatment among providers of telecommunications services in

1 order to ensure the availability of the widest possible range
2 of consumer choice in the provision of all telecommunications
3 services.

4 (c) Protect the public health, safety, and welfare by
5 ensuring that monopoly services provided by telecommunications
6 companies continue to be subject to effective price, rate, and
7 service regulation.

8 (d) Promote competition by encouraging innovation and
9 investment in ~~new entrants into~~ telecommunications markets and
10 by allowing a transitional period in which new and emerging
11 technologies ~~entrants~~ are subject to a reduced ~~lesser~~ level of
12 regulatory oversight ~~than local exchange telecommunications~~
13 ~~companies~~.

14 (e) Encourage all providers of telecommunications
15 services to introduce new or experimental telecommunications
16 services free of unnecessary regulatory restraints.

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

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

22 (h) Recognize the continuing emergence of a
23 competitive telecommunications environment through the
24 flexible regulatory treatment of competitive
25 telecommunications services, where appropriate, if doing so
26 does not reduce the availability of adequate basic local
27 telecommunications service to all citizens of the state at
28 reasonable and affordable prices, if competitive
29 telecommunications services are not subsidized by monopoly
30 telecommunications services, and if all monopoly services are
31 available to all competitors on a nondiscriminatory basis.

1 (i) Continue its historical role as a surrogate for
2 competition for monopoly services provided by local exchange
3 telecommunications companies.

4 Section 2. Section 364.011, Florida Statutes, is
5 created to read:

6 364.011 Exemptions from commission jurisdiction.--The
7 following services are exempt from oversight by the
8 commission, except to the extent delineated in this chapter or
9 specifically authorized by federal law:

10 (1) Intrastate interexchange telecommunications
11 services.

12 (2) Broadband services, regardless of the provider,
13 platform, or protocol.

14 (3) VoIP.

15 (4) Wireless telecommunications, including commercial
16 mobile radio service providers.

17 Section 3. Section 364.012, Florida Statutes, is
18 created to read:

19 364.012 Consistency with federal law.--

20 (1) In order to promote commission coordination with
21 federal policymakers and regulatory agencies, the commission
22 shall maintain continuous liaisons with appropriate federal
23 agencies whose policy decisions and rulemaking authority
24 affect those telecommunications companies over which the
25 commission has jurisdiction. The commission is encouraged to
26 participate in the proceedings of federal agencies in cases in
27 which the state's consumers may be affected and to convey the
28 commission's policy positions and information requirements in
29 order to achieve greater efficiency in regulation.

30 (2) This chapter does not limit or modify the duties
31 of a local exchange carrier to provide unbundled access to

1 network elements or the commission's authority to arbitrate
2 and enforce interconnection agreements to the extent that
3 those elements are required under 47 U.S.C. ss. 251 and 252,
4 and under any regulations issued by the Federal Communications
5 Commission at rates determined in accordance with the
6 standards established by the Federal Communications Commission
7 pursuant to 47 C.F.R. ss. 51.503-51.513, inclusive of any
8 successor regulation or successor forbearance of regulation.

9 Section 4. Section 364.013, Florida Statutes, is
10 created to read:

11 364.013 Emerging and advanced services.--Broadband
12 service and the provision of voice-over-Internet protocol
13 (VoIP) shall be free of state regulation, except as delineated
14 in this chapter or as specifically authorized by federal law,
15 regardless of the provider, platform, or protocol.

16 Section 5. Section 364.02, Florida Statutes, is
17 amended to read:

18 364.02 Definitions.--As used in this chapter:

19 (1) "Basic local telecommunications service" means
20 voice-grade, flat-rate residential, and flat-rate single-line
21 business local exchange services which provide dial tone,
22 local usage necessary to place unlimited calls within a local
23 exchange area, dual tone multifrequency dialing, and access to
24 the following: emergency services such as "911," all locally
25 available interexchange companies, directory assistance,
26 operator services, relay services, and an alphabetical
27 directory listing. For a local exchange telecommunications
28 company, ~~the such~~ term shall include any extended area service
29 routes, and extended calling service in existence or ordered
30 by the commission on or before July 1, 1995.

31

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

5 (a) Is used to provide access to the Internet; or

6 (b) Provides computer processing, information storage,
7 information content, or protocol conversion in combination
8 with the service.

9
10 The definition of broadband service does not include any
11 intrastate telecommunications services that have been tariffed
12 with the commission on or before January 1, 2005.

13 ~~(3)(2)~~ "Commercial mobile radio service provider"
14 means a commercial mobile radio service provider as defined by
15 and pursuant to 47 U.S.C. ss. 153(n) and 332(d).

16 ~~(4)(3)~~ "Commission" means the Florida Public Service
17 Commission.

18 ~~(5)(4)~~ "Competitive local exchange telecommunications
19 company" means any company certificated by the commission to
20 provide local exchange telecommunications services in this
21 state on or after July 1, 1995.

22 ~~(6)(5)~~ "Corporation" includes a corporation, company,
23 association, or joint stock association.

24 ~~(7)(6)~~ "Intrastate interexchange telecommunications
25 company" means any entity that provides intrastate
26 interexchange telecommunications services.

27 ~~(8)(7)~~ "Local exchange telecommunications company"
28 means any company certificated by the commission to provide
29 local exchange telecommunications service in this state on or
30 before June 30, 1995.

31

1 ~~(9)(8)~~ "Monopoly service" means a telecommunications
2 service for which there is no effective competition, either in
3 fact or by operation of law.

4 ~~(10)(9)~~ "Nonbasic service" means any
5 telecommunications service provided by a local exchange
6 telecommunications company other than a basic local
7 telecommunications service, a local interconnection
8 arrangement described in s. 364.16, or a network access
9 service described in s. 364.163.

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

15 ~~(12)(11)~~ "Operator service provider" means a person
16 who furnishes operator service through a call aggregator.

17 ~~(13)(12)~~ "Service" is to be construed in its broadest
18 and most inclusive sense. The term "service" does not include
19 broadband service or voice-over-Internet protocol service for
20 purposes of regulation by the commission. Nothing herein shall
21 affect the rights and obligations of any entity related to the
22 payment of switched network access rates or other intercarrier
23 compensation, if any, related to voice-over-Internet protocol
24 service. Notwithstanding s. 364.013 and the exemption of
25 services pursuant to this subsection, the commission may
26 arbitrate, enforce, or approve interconnection agreements, and
27 resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or
28 any other applicable federal law or regulation. With respect
29 to the services exempted in this subsection, regardless of the
30 technology, the duties of a local exchange telecommunications
31

1 company are only those that the company is obligated to extend
2 or provide under applicable federal law and regulations.

3 ~~(14)~~(13) "Telecommunications company" includes every
4 corporation, partnership, and person and their lessees,
5 trustees, or receivers appointed by any court whatsoever, and
6 every political subdivision in the state, offering two-way
7 telecommunications service to the public for hire within this
8 state by the use of a telecommunications facility. The term
9 "telecommunications company" does not include:

10 (a) An entity which provides a telecommunications
11 facility exclusively to a certificated telecommunications
12 company;

13 (b) An entity which provides a telecommunications
14 facility exclusively to a company which is excluded from the
15 definition of a telecommunications company under this
16 subsection;

17 (c) A commercial mobile radio service provider;

18 (d) A facsimile transmission service;

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

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

23 (g) An intrastate interexchange telecommunications
24 company.

25
26 However, each commercial mobile radio service provider and
27 each intrastate interexchange telecommunications company shall
28 continue to be liable for any taxes imposed under ~~pursuant to~~
29 chapters 202, 203, and 212 and any fees assessed under
30 ~~pursuant to~~ ss. 364.025 and 364.336. Each intrastate
31 interexchange telecommunications company shall continue to be

1 subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285,
2 364.501, 364.603, and 364.604, shall provide the commission
3 with such current information as the commission deems
4 necessary to contact and communicate with the company, shall
5 continue to pay intrastate switched network access rates or
6 other intercarrier compensation to the local exchange
7 telecommunications company or the competitive local exchange
8 telecommunications company for the origination and termination
9 of interexchange telecommunications service, and shall reduce
10 its intrastate long distance toll rates in accordance with s.
11 364.163(2).

12 ~~(15)(14)~~ "Telecommunications facility" includes real
13 estate, easements, apparatus, property, and routes used and
14 operated to provide two-way telecommunications service to the
15 public for hire within this state.

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

18 Section 6. Section 364.0361, Florida Statutes, is
19 amended to read:

20 364.0361 Local government authority; nondiscriminatory
21 exercise.--A local government shall treat each
22 telecommunications company in a nondiscriminatory manner when
23 exercising its authority to grant franchises to a
24 telecommunications company or to otherwise establish
25 conditions or compensation for the use of rights-of-way or
26 other public property by a telecommunications company. A local
27 government may not directly or indirectly regulate the terms
28 and conditions, including, but not limited to, the operating
29 systems, qualifications, services, service quality, service
30 territory, and prices, applicable to or in connection with the
31 provision of any voice-over-Internet protocol, broadband or

1 | information service, regardless of the platform, provider, or
2 | protocol. This section does not relieve a provider from any
3 | obligations under s. 166.046 or s. 337.401.

4 | Section 7. Paragraph (a) of subsection (3) of section
5 | 364.10, Florida Statutes, is amended to read:

6 | 364.10 Undue advantage to person or locality
7 | prohibited; Lifeline service.--

8 | (3)(a) Effective September 1, 2003, any local exchange
9 | telecommunications company authorized by the commission to
10 | reduce its switched network access rate under ~~pursuant to~~ s.
11 | 364.164 shall have tariffed and shall provide Lifeline service
12 | to any otherwise eligible customer or potential customer who
13 | meets an income eligibility test at 135 ~~125~~ percent or less of
14 | the federal poverty income guidelines for Lifeline customers.
15 | ~~The Such a~~ test for eligibility must augment, rather than
16 | replace, the eligibility standards established by federal law
17 | and based on participation in certain low-income assistance
18 | programs. Each intrastate interexchange telecommunications
19 | company shall, effective September 1, 2003, file a tariff
20 | providing at a minimum the intrastate interexchange
21 | telecommunications carrier's current Lifeline benefits and
22 | exemptions to Lifeline customers who meet the income
23 | eligibility test set forth in this subsection. The Office of
24 | Public Counsel shall certify and maintain claims submitted by
25 | a customer for eligibility under the income test authorized by
26 | this subsection.

27 | Section 8. Section 364.502, Florida Statutes, is
28 | repealed.

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

31 | 364.335 Application for certificate.--

1 (1) Each applicant for a certificate shall:

2 (a) Provide all information required by rule or order
3 of the commission, which may include a detailed inquiry into
4 the ability of the applicant to provide service, a detailed
5 inquiry into the territory and facilities involved, and a
6 detailed inquiry into the existence of service from other
7 sources within geographical proximity to the territory applied
8 for.

9 (b) File with the commission schedules showing all
10 rates for service of every kind furnished by it and all rules
11 and contracts relating to such service.

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

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

18 Section 10. Section 364.336, Florida Statutes, is
19 amended to read:

20 364.336 Regulatory assessment fees.--Notwithstanding
21 any provisions of law to the contrary, each telecommunications
22 company licensed or operating under this chapter, for any part
23 of the preceding 6-month period, shall pay to the commission,
24 within 30 days following the end of each 6-month period, a fee
25 that may not exceed 0.25 percent annually of its gross
26 operating revenues derived from intrastate business, except,
27 for purposes of this section and the fee specified in s.
28 350.113(3), any amount paid to another telecommunications
29 company for the use of any telecommunications network shall be
30 deducted from the gross operating revenue for purposes of
31 computing the fee due. The commission shall by rule assess a

1 minimum fee in an amount up to \$1,000. The minimum amount may
2 vary depending on the type of service provided by the
3 telecommunications company, and shall, to the extent
4 practicable, be related to the cost of regulating such type of
5 company. Differences, if any, between the amount paid in any
6 6-month period and the amount actually determined by the
7 commission to be due shall, upon motion by the commission, be
8 immediately paid or refunded. Fees under this section may not
9 be less than \$50 annually. Such fees shall be deposited in
10 accordance with s. 350.113. The commission may by rule
11 establish criteria for payment of the regulatory assessment
12 fee on an annual basis rather than on a semiannual basis.

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

15 196.012 Definitions.--For the purpose of this chapter,
16 the following terms are defined as follows, except where the
17 context clearly indicates otherwise:

18 (6) Governmental, municipal, or public purpose or
19 function shall be deemed to be served or performed when the
20 lessee under any leasehold interest created in property of the
21 United States, the state or any of its political subdivisions,
22 or any municipality, agency, special district, authority, or
23 other public body corporate of the state is demonstrated to
24 perform a function or serve a governmental purpose which could
25 properly be performed or served by an appropriate governmental
26 unit or which is demonstrated to perform a function or serve a
27 purpose which would otherwise be a valid subject for the
28 allocation of public funds. For purposes of the preceding
29 sentence, an activity undertaken by a lessee which is
30 permitted under the terms of its lease of real property
31 designated as an aviation area on an airport layout plan which

1 | has been approved by the Federal Aviation Administration and
2 | which real property is used for the administration, operation,
3 | business offices and activities related specifically thereto
4 | in connection with the conduct of an aircraft full service
5 | fixed base operation which provides goods and services to the
6 | general aviation public in the promotion of air commerce shall
7 | be deemed an activity which serves a governmental, municipal,
8 | or public purpose or function. Any activity undertaken by a
9 | lessee which is permitted under the terms of its lease of real
10 | property designated as a public airport as defined in s.
11 | 332.004(14) by municipalities, agencies, special districts,
12 | authorities, or other public bodies corporate and public
13 | bodies politic of the state, a spaceport as defined in s.
14 | 331.303(19), or which is located in a deepwater port
15 | identified in s. 403.021(9)(b) and owned by one of the
16 | foregoing governmental units, subject to a leasehold or other
17 | possessory interest of a nongovernmental lessee that is deemed
18 | to perform an aviation, airport, aerospace, maritime, or port
19 | purpose or operation shall be deemed an activity that serves a
20 | governmental, municipal, or public purpose. The use by a
21 | lessee, licensee, or management company of real property or a
22 | portion thereof as a convention center, visitor center, sports
23 | facility with permanent seating, concert hall, arena, stadium,
24 | park, or beach is deemed a use that serves a governmental,
25 | municipal, or public purpose or function when access to the
26 | property is open to the general public with or without a
27 | charge for admission. If property deeded to a municipality by
28 | the United States is subject to a requirement that the Federal
29 | Government, through a schedule established by the Secretary of
30 | the Interior, determine that the property is being maintained
31 | for public historic preservation, park, or recreational

1 | purposes and if those conditions are not met the property will
2 | revert back to the Federal Government, then such property
3 | shall be deemed to serve a municipal or public purpose. The
4 | term "governmental purpose" also includes a direct use of
5 | property on federal lands in connection with the Federal
6 | Government's Space Exploration Program or spaceport activities
7 | as defined in s. 212.02(22). Real property and tangible
8 | personal property owned by the Federal Government or the
9 | Florida Space Authority and used for defense and space
10 | exploration purposes or which is put to a use in support
11 | thereof shall be deemed to perform an essential national
12 | governmental purpose and shall be exempt. "Owned by the
13 | lessee" as used in this chapter does not include personal
14 | property, buildings, or other real property improvements used
15 | for the administration, operation, business offices and
16 | activities related specifically thereto in connection with the
17 | conduct of an aircraft full service fixed based operation
18 | which provides goods and services to the general aviation
19 | public in the promotion of air commerce provided that the real
20 | property is designated as an aviation area on an airport
21 | layout plan approved by the Federal Aviation Administration.
22 | For purposes of determination of "ownership," buildings and
23 | other real property improvements which will revert to the
24 | airport authority or other governmental unit upon expiration
25 | of the term of the lease shall be deemed "owned" by the
26 | governmental unit and not the lessee. Providing two-way
27 | telecommunications services to the public for hire by the use
28 | of a telecommunications facility, as defined in s. 364.02(15)
29 | ~~s. 364.02(14)~~, and for which a certificate is required under
30 | chapter 364 does not constitute an exempt use for purposes of
31 | s. 196.199, unless the telecommunications services are

1 provided by the operator of a public-use airport, as defined
2 in s. 332.004, for the operator's provision of
3 telecommunications services for the airport or its tenants,
4 concessionaires, or licensees, or unless the
5 telecommunications services are provided by a public hospital.
6 However, property that is being used to provide such
7 telecommunications services on or before October 1, 1997,
8 shall remain exempt, but such exemption expires October 1,
9 2004.

10 Section 12. Paragraph (b) of subsection (1) of section
11 199.183, Florida Statutes, is amended to read:

12 199.183 Taxpayers exempt from annual and nonrecurring
13 taxes.--

14 (1) Intangible personal property owned by this state
15 or any of its political subdivisions or municipalities shall
16 be exempt from taxation under this chapter. This exemption
17 does not apply to:

18 (b) Property related to the provision of two-way
19 telecommunications services to the public for hire by the use
20 of a telecommunications facility, as defined in s. 364.02(15)
21 ~~s. 364.02(14)~~, and for which a certificate is required under
22 chapter 364, when the ~~such~~ service is provided by any county,
23 municipality, or other political subdivision of the state. Any
24 immunity of any political subdivision of the state or other
25 entity of local government from taxation of the property used
26 to provide telecommunication services that is taxed as a
27 result of this paragraph is hereby waived. However, intangible
28 personal property related to the provision of ~~such~~
29 telecommunications services provided by the operator of a
30 public-use airport, as defined in s. 332.004, for the
31 operator's provision of telecommunications services for the

1 | airport or its tenants, concessionaires, or licensees, and
2 | intangible personal property related to the provision of ~~such~~
3 | telecommunications services provided by a public hospital, are
4 | exempt from taxation under this chapter.

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

7 | 212.08 Sales, rental, use, consumption, distribution,
8 | and storage tax; specified exemptions.--The sale at retail,
9 | the rental, the use, the consumption, the distribution, and
10 | the storage to be used or consumed in this state of the
11 | following are hereby specifically exempt from the tax imposed
12 | by this chapter.

13 | (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
14 | also exempt from the tax imposed by this chapter sales made to
15 | the United States Government, a state, or any county,
16 | municipality, or political subdivision of a state when payment
17 | is made directly to the dealer by the governmental entity.
18 | This exemption shall not inure to any transaction otherwise
19 | taxable under this chapter when payment is made by a
20 | government employee by any means, including, but not limited
21 | to, cash, check, or credit card when that employee is
22 | subsequently reimbursed by the governmental entity. This
23 | exemption does not include sales of tangible personal property
24 | made to contractors employed either directly or as agents of
25 | any such government or political subdivision thereof when such
26 | tangible personal property goes into or becomes a part of
27 | public works owned by such government or political
28 | subdivision. A determination whether a particular transaction
29 | is properly characterized as an exempt sale to a government
30 | entity or a taxable sale to a contractor shall be based on the
31 | substance of the transaction rather than the form in which the

1 transaction is cast. The department shall adopt rules that
2 give special consideration to factors that govern the status
3 of the tangible personal property before its affixation to
4 real property. In developing these rules, assumption of the
5 risk of damage or loss is of paramount consideration in the
6 determination. This exemption does not include sales, rental,
7 use, consumption, or storage for use in any political
8 subdivision or municipality in this state of machines and
9 equipment and parts and accessories therefor used in the
10 generation, transmission, or distribution of electrical energy
11 by systems owned and operated by a political subdivision in
12 this state for transmission or distribution expansion.
13 Likewise exempt are charges for services rendered by radio and
14 television stations, including line charges, talent fees, or
15 license fees and charges for films, videotapes, and
16 transcriptions used in producing radio or television
17 broadcasts. The exemption provided in this subsection does not
18 include sales, rental, use, consumption, or storage for use in
19 any political subdivision or municipality in this state of
20 machines and equipment and parts and accessories therefor used
21 in providing two-way telecommunications services to the public
22 for hire by the use of a telecommunications facility, as
23 defined in s. 364.02(15) ~~s. 364.02(14)~~, and for which a
24 certificate is required under chapter 364, which facility is
25 owned and operated by any county, municipality, or other
26 political subdivision of the state. Any immunity of any
27 political subdivision of the state or other entity of local
28 government from taxation of the property used to provide
29 telecommunication services that is taxed as a result of this
30 section is hereby waived. However, the exemption provided in
31 this subsection includes transactions taxable under this

1 chapter which are for use by the operator of a public-use
2 airport, as defined in s. 332.004, in providing such
3 telecommunications services for the airport or its tenants,
4 concessionaires, or licensees, or which are for use by a
5 public hospital for the provision of such telecommunications
6 services.

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

9 290.007 State incentives available in enterprise
10 zones.--The following incentives are provided by the state to
11 encourage the revitalization of enterprise zones:

12 (8) Notwithstanding any law to the contrary, the
13 Public Service Commission may allow public utilities and
14 telecommunications companies to grant discounts of up to 50
15 percent on tariffed rates for services to small businesses
16 located in an enterprise zone designated pursuant to s.
17 290.0065. Such discounts may be granted for a period not to
18 exceed 5 years. For purposes of this subsection, the term
19 "public utility" has the same meaning as in s. 366.02(1) and
20 the term "telecommunications company" has the same meaning as
21 in s. 364.02(14) ~~s. 364.02(13)~~.

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

24 350.0605 Former commissioners and employees;
25 representation of clients before commission.--

26 (3) For a period of 2 years following termination of
27 service on the commission, a former member may not accept
28 employment by or compensation from a business entity which,
29 directly or indirectly, owns or controls a public utility
30 regulated by the commission, from a public utility regulated
31 by the commission, from a business entity which, directly or

1 indirectly, is an affiliate or subsidiary of a public utility
2 regulated by the commission or is an actual business
3 competitor of a local exchange company or public utility
4 regulated by the commission and is otherwise exempt from
5 regulation by the commission under ss. 364.02(14) ~~364.02(13)~~
6 and 366.02(1), or from a business entity or trade association
7 that has been a party to a commission proceeding within the 2
8 years preceding the member's termination of service on the
9 commission. This subsection applies only to members of the
10 Florida Public Service Commission who are appointed or
11 reappointed after May 10, 1993.

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

14 364.602 Definitions.--For purposes of this part:

15 (4) "Originating party" means any person, firm,
16 corporation, or other entity, including a telecommunications
17 company or a billing clearinghouse, that provides any
18 telecommunications service or information service to a
19 customer or bills a customer through a billing party, except
20 the term "originating party" does not include any entity
21 specifically exempted from the definition of
22 "telecommunications company" as provided in s. 364.02(14) ~~s.~~
23 ~~364.02(13)~~.

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

26 489.103 Exemptions.--This part does not apply to:

27 (5) Public utilities, including special gas districts
28 as defined in chapter 189, telecommunications companies as
29 defined in s. 364.02(14) ~~s. 364.02(13)~~ and natural gas
30 transmission companies as defined in s. 368.103(4), on
31 construction, maintenance, and development work performed by

1 | their employees, which work, including, but not limited to,
2 | work on bridges, roads, streets, highways, or railroads, is
3 | incidental to their business. The board shall define, by rule,
4 | the term "incidental to their business" for purposes of this
5 | subsection.

6 | Section 18. This act may not be construed to limit the
7 | rights of local government or the duties of providers of cable
8 | service to comply with any and all requirements of federal,
9 | state, or local law pertaining to the provision of cable
10 | service.

11 | Section 19. Subsection (4) of section 364.051, Florida
12 | Statutes, is amended to read:

13 | 364.051 Price regulation.--

14 | (4)(a) Notwithstanding ~~the provisions of~~ subsection
15 | (2), any local exchange telecommunications company that
16 | believes circumstances have changed substantially to justify
17 | any increase in the rates for basic local telecommunications
18 | services may petition the commission for a rate increase, but
19 | the commission shall grant the ~~such~~ petition only after an
20 | opportunity for a hearing and a compelling showing of changed
21 | circumstances. The costs and expenses of any government
22 | program or project required in part II ~~may shall~~ not be
23 | recovered under this subsection unless the ~~such~~ costs and
24 | expenses are incurred in the absence of a bid and subject to
25 | carrier-of-last-resort obligations as provided for in part II.
26 | The commission shall act upon the ~~any such~~ petition within 120
27 | days after ~~of~~ its filing.

28 | (b) For purposes of this section, evidence of damage
29 | occurring to the lines, plants, or facilities of a local
30 | exchange telecommunications company that is subject to the
31 | carrier-of-last-resort obligations, which damage is the result

1 of a tropical system occurring after June 1, 2005, and named
2 by the National Hurricane Center, constitutes a compelling
3 showing of changed circumstances.

4 1. A company may file a petition to recover its
5 intrastate costs and expenses relating to repairing,
6 restoring, or replacing the lines, plants, or facilities
7 damaged by a named tropical system.

8 2. The commission shall verify the intrastate costs
9 and expenses submitted by the company in support of its
10 petition.

11 3. The company must show and the commission shall
12 determine whether the intrastate costs and expenses are
13 reasonable under the circumstances for the named tropical
14 system.

15 4. A company having a storm-reserve fund may recover
16 tropical-system-related costs and expenses from its customers
17 only in excess of any amount available in the storm-reserve
18 fund.

19 5. The commission may determine the amount of any
20 increase that the company may charge its customers, but the
21 charge per line item may not exceed 50 cents per month per
22 customer line for a period of not more than 12 months.

23 6. The commission may order the company to add an
24 equal line-item charge per access line to the billing
25 statement of the company's retail basic local
26 telecommunications service customers, its retail nonbasic
27 telecommunications service customers, and, to the extent the
28 commission determines appropriate, its wholesale loop
29 unbundled network element customers. At the end of the
30 collection period, the commission shall verify that the
31 collected amount does not exceed the amount authorized by the

1 order. If collections exceed the ordered amount, the
2 commission shall order the company to refund the excess.

3 7. In order to qualify for filing a petition under
4 this paragraph, a company with one million or more access
5 lines, but fewer than three million access lines, must have
6 tropical-system-related costs and expenses exceeding \$1.5
7 million, and a company with three million or more access lines
8 must have tropical-system-related costs and expenses of \$5
9 million or more. A company with fewer than one million access
10 lines is not required to meet a minimum damage threshold in
11 order to qualify to file a petition under this paragraph.

12 8. A company may file only one petition for storm
13 recovery in any 12-month period for the previous storm season,
14 but the application may cover damages from more than one named
15 tropical system.

16
17 This paragraph is not intended to adversely affect the
18 commission's consideration of any petition for an increase in
19 basic rates to recover costs related to storm damage which was
20 filed before the effective date of this act.

21 Section 20. This act shall take effect upon becoming a
22 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS/SB 2232

4 This committee substitute differs from the committee
5 substitute in that it:

- 6 - Specifies the commission's exclusive jurisdiction over
7 regulation of telecommunications companies; clarifies
8 jurisdiction of consumer related matters between
9 regulated and non-regulated entities;
- 10 - Specifies intrastate interexchange telecommunications
11 services, broadband services, voice-over-Internet
12 protocol (VoIP), and wireless telecommunications as
13 exempt from commission jurisdiction, except as otherwise
14 delineated in ch. 364, F.S., or federal law;
- 15 - Requires the commission to promote consistency with
16 federal law and coordination with federal agencies;
- 17 - Requires that broadband and voice-over-Internet protocol
18 remain free of regulation except as specifically provided
19 for in ch. 364, F.S., and federal law;
- 20 - Defines the terms "broadband" and "VoIP" and modifies the
21 definition of the term "service";
- 22 - Prohibits local government from regulating VoIP or other
23 advanced telecommunications, regardless of the platform
24 or provider;
- 25 - Increases the income eligibility threshold for Lifeline;
- 26 - Repeals s. 364.502, F.S., relating to video programming
27 services;
- 28 - Provides that this act does not limit rights of local
29 governments or the duties of service providers to comply
30 with any federal, state, or local law pertaining to the
31 provision of cable service; and
- Allows the PSC to determine if it is appropriate for
"wholesale loop unbundled network element" customers to
pay an assessed service charge, when such customers make
a case before the commission.