HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 313 CS — Lifeline Telecommunications Service
SPONSOR(S): Bullard
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	12 Y, 0 N, w/CS	Cater	Holt
2) Future of Florida's Families Committee	6 Y, 0 N, w/CS	Davis	Collins
3) Transportation & Economic Development Appropriations Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

The bill amends s. 364.10(2), F.S., relating to Lifeline telecommunications service for low-income consumers. The bill requires local exchange telecommunications companies (LECs) to offer consumers who apply for or receive Lifeline the option to block all toll calls, or if technically capable, place a limit on the amount of toll calls a consumer can make. The LEC may not charge the customer an administrative charge or other fee for blocking the service.

The bill expands the application of provisions for Lifeline Assistance to companies that request and are granted eligible telecommunications carrier status.

The bill provides that a LEC may not discontinue basic local telephone service to a consumer who receives Lifeline due to nonpayment of other charges billed by the LEC.

The bill allows that a LEC may block a Lifeline participant's access to all long-distance services when the participant owes an outstanding amount for long-distance service. The LEC shall remove the block without additional cost to the participant on payment of the outstanding amount.

The bill requires that by December 31, 2005, each state agency providing benefits to persons eligible for Lifeline shall undertake, in cooperation with the Department of Education, the Department of Children and Family Services (DCF) the Public Service Commission (PSC), and the Office of Public Council (OPC), and telecommunications companies providing Lifeline service, to develop procedures to promote Lifeline participation.

The bill requires the PSC to establish procedures for notification and termination of the Lifeline credit.

The bill requires a study that will aid the companies, the PSC and the Legislature in improving education and promotional efforts for Lifeline service. The goal is to increase awareness and enrollment in Lifeline Service.

The bill requires the PSC to establish rules to relating to the LECs not discontinuing basic local service to Lifeline customers because of nonpayment of other services.

Section 364.164, F.S., is currently at issue in the Florida Supreme Court in the case *Crist v Jaber*.

This act shall take effect on July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families: The bill broadens the empowerment of families who receive social benefits since it allows Lifeline participants to have long-distance telephone service blocked at no charge. Additionally, it allows Lifeline participants to keep their local service, even if they have unpaid balances for other services billed by the local exchange telecommunications companies (LEC).

B. EFFECT OF PROPOSED CHANGES:

Background

Lifeline is part of the federal Universal Service program[1] and is designed to enable low-income households to afford basic local telephone service. Under the Federal Communications Commission's (FCC) rules, there are four tiers on monthly federal Lifeline Support, which are:

- A federal support credit for the federal subscriber line charge, which is available to all eligible subscribers. In Florida, this credit is either $6.45 or $6.50, depending on your LEC.
- A federal support credit of $1.75 that is available to all subscribers in those states that have approved the credit. Florida has approved this tier of support.
- Federal support of one-half the amount of additional state support up to a maximum of $1.75 in federal support. Since Florida carriers provide an additional $3.50 credit to Lifeline customers' bills, Florida subscribers receive a monthly credit of up to $13.50. Since Florida does not have a state universal service fund, the $3.50 state credit is absorbed by the (LEC) providing service.
- An additional credit of up to $25 per month is available only to eligible subscribers living on tribal lands.[2]

In Florida, a customer's eligibility for Lifeline is determined by a subscriber's enrollment in any one of the following programs:

- Temporary Assistance to Needy Families (TANF)
- Supplemental Security Income
- Food Stamps
- Medicaid
- Federal Public Housing Assistance (Section 8)
- Low-Income Home Energy Assistance Plan (LIHEAP)
- Bureau of Indian Affairs Programs.

In 2001, the Public Service Commission (PSC) approved settlement between BellSouth and the Office of Public Council (OPC) where BellSouth expanded Lifeline eligibility to its subscribers whose annual incomes are up to 125 percent of the Federal Poverty Guidelines (FPG). As a result of "The Tele-Competition Innovation and Infrastructure Enhancement Act of 2003" (the 2003 Act), any local exchange company authorized by the PSC to reduce its switched network access rates pursuant to s. 364.164, F.S., shall provide Lifeline service to customers who meet an income eligibility test at 125 percent or less of the FPG.[3] While PSC Order approving the petitions is currently on appeal at the Florida Supreme Court, BellSouth, Sprint, and Verizon currently have tariffs on file with the PSC with

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[1] In addition to Lifeline for low-income consumers, the Universal Service program also provides support for high cost areas, rural health care, and schools and libraries.

[2] Florida Public Service Commission *Report on the Number of Customers Subscribing to Lifeline Service and the Effectiveness of any Procedures to Promote Participation.*, December 2004. (*PSC Lifeline Report*)

[3] s. 364.164(3)(a), F.S.

the criteria of 125 percent or less of the FPC.[4] At this time, pursuant to s. 364.10(3)(a), F.S., the OPC certifies and maintains claims submitted by a customer for eligibility under the income test.

The 2003 Act required, by December 31, 2003, that each state agency that provides benefits to persons eligible for Lifeline undertake, in cooperation with the DCF, the PSC, and telecommunications companies providing Lifeline, to develop procedures to promote Lifeline participation.[5]

While several state agencies are involved in administering programs that provide benefits to those eligible for Lifeline, DCF is the only state agency that determines eligibility and provides these benefits directly to citizens. According to DCF, its current eligibility notice to clients informs them that they may be eligible for Lifeline. These notification procedures have streamlined eligibility verification and the enrollment process with the LECs.[6]

On April 29, 2004, the FCC released its Report and Order, and Further Notice of Proposed Rule Making regarding Lifeline and Link-Up. In that Order, the FCC, in part, 1) added TANF and the National School Lunch program to the program-based eligibility criteria; and 2) added an income-based eligibility criterion of 135 percent of the FPG. The PSC established Docket No. 040604-TP to adopt the National School Lunch (NSL) program and the 135 percent FPG. In this docket, the parties have entered into a settlement agreement where BellSouth, Sprint, and Verizon will file tariffs implementing a simplified certification process where an eligible consumer would be allowed to enroll in Lifeline by signing a document certifying "under penalty of perjury" the customer participates in one of the Florida Lifeline eligible programs and identify the program. This process is on a trial basis and the Docket No. 040604-TP is held in abeyance for at least one year from the effective date of the tariffs. Additionally, after six-months or the Florida Supreme Court's ruling on the appeals of the network access rate docket pursuant to s. 364.164, F.S., whichever is earlier, the issue of adding the NSL program and the income-based criterion on 135 percent of the federal poverty guideline as eligibility criteria will be revisited.[7]

Based on the PSC's December 2004 *Lifeline Report*, as December 2003, which is prior to the income criteria being approved, the Lifeline participation rate was approximately 18 percent (148,905 enrolled, 819,112 eligible households). After the income eligibility criteria went into effect, the September 2004, Lifeline Participation rate was approximately 14 percent (154,017 enrolled, 1,100,000 eligible households).

Effect

The bill is the result of a Senate Interim Report that looked at promotional efforts and results to subscribe customers to Lifeline Assistance. The bill authorizes the Public Service Commission to adopt rules in order to promote and enroll as many customers as possible who are eligible to participate in the Lifeline and Link-Up Assistance Program.

The bill changes the applicability from telecommunications companies serving as carriers of last resort to Eligible Telecommunications Carriers and defines them as carriers that have been designated eligible by the PSC. This language does not include wireless providers that have been given ETC designation by the FCC. The PSC has determined that it does not have jurisdiction to grant ETC status to wireless providers; therefore, they must go to the FCC in order to receive ETC status in Florida.

The bill creates s. 364.10(2)(b), F.S., where a LEC shall offer a consumer who applies for or receives Lifeline services the option of blocking all toll calls, or if technically capable, placing a limit on the number of toll calls a consumer can make. The LEC is prohibited from charging a Lifeline customer an administrative charge or other additional fee for blocking the service. Currently, pursuant to PSC Order No. PSC-99-2503-PAA-TL, LECs may require toll blocking for Lifeline customers with unpaid toll

[4] *PSC Lifeline Report*
[5] s. 364.10(3)(2)
[6] *PSC Lifeline Report*
[7] PSC Order No. PSC-05-0153-AS-TL

balances. The LECs may also require payment of all unpaid balances and an adequate deposit prior to the removal of toll blocking. The LECs are currently permitted to charge for mandatory toll blocking imposed on Lifeline customers. This change is consistent with the Federal Communications Commission Statutes.

The bill creates s. 364.10(2)(c), F.S., which states that a eligible telecommunications carrier may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll blocking or toll limitation.

The bill creates s. 364.10(2)(d), F.S., which provides that an eligible telecommunications carrier may not charge Lifeline subscribers a monthly number-portability charge. Congress, in order to increase competition in the local market service, recognized that certain barriers to competition must be eliminated. One of the major barriers to competition was the inability of customers to switch from one telephone company to another and retain the same telephone number. Congress realized that customers would be reluctant to switch to new telephone service providers if they were unable to keep their existing telephone numbers. Congress then directed local telephone companies to offer "telephone number portability," in accordance with requirements prescribed by the FCC.

The bill requires the PSC to establish procedures for notification and termination of the Lifeline credit if the company has reasonable basis to believe that the subscriber no longer qualifies. The carrier shall allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility.

Section 364.10(3)(d), F.S., is created where a LEC may not discontinue a Lifeline customer's basic local telephone service due to nonpayment of charges for other services billed by the telecommunications company, including long-distance service.

The bill creates s. 364.10(3)(g), F.S., to allow a LEC to block a Lifeline participant's access to all long-distance service except toll-free numbers and the ability to accept collect calls when the participant owes an outstanding amount for long-distance service. On payment of the outstanding amount, the LEC shall remove the block without additional cost to the participant. At this time, s. 364.604(4), F.S., prohibits billing parties from disconnecting a customer's Lifeline service of the charges, taxes, and fees applicable to basic local exchange telecommunications. The PSC has interpreted this to mean that nonpayment of toll or ancillary services is not grounds for disconnecting a Lifeline customer's local service.[8]

The bill revises changes the deadline, from December 31, 2003, to December 31, 2005, for state agencies providing benefits to persons eligible for Lifeline to develop procedures for Lifeline participation. Additionally, state agencies providing benefits to persons eligible for Lifeline service shall undertake in cooperation with, The Department of Education, OPC, the DCF, the PSC, and telecommunication companies the development of procedures to provide Lifeline participation.

The bill requires a study that will aid the companies, the PSC and the Legislature in improving education and promotional efforts for Lifeline service. The goal is to increase awareness and enrollment in Lifeline Service. Each telecommunication company that has, by July 1, 2005, had a petition granted under s. 364.164, F.S., shall file with the Public Service Commission a report on Lifeline participation in the state.

This act shall take effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 364.10, F.S., regarding Lifeline service.

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[8] PSC Order No. PSC-99-2503-PAA-TL

Section 2. Creates an undesignated section of law that requires a study that will aid the companies, the PSC and the Legislature in improving education and promotional efforts for Lifeline service.

Section 3. This act shall take effect July 1, 2005

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the PSC any workload required by this bill can be addressed with its current staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The PSC is required to adopt rules to administer s. 364.10(3)(c)2., F.S., relating to a LEC not being able to discontinue local service to Lifeline consumers due to nonpayment of other services billed by the telecommunications company.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Legal Issues:

Currently, there is issue with s. 364.164, F.S., as the Florida Supreme Court has taken up the case *Crist v Jaber*, which has the docket number SC04-9. The general issue of the case is the justification of rate increases which are granted to telecommunications providers by petition by the PSC under the authority of s. 364.10, F.S. The PSC found section 364.164(1) to be ambiguous, in reaching this conclusion, the Commission states:

> We note the lack of clarifying language or punctuation in the provisions at issue contributes to the differing interpretations. As such, having considered the arguments and the language of the statute itself, we find that the language of Section 364.164, Florida Statutes, is not clear on its face and, thus, is subject to statutory interpretation.

The American Association for Retired Persons (AARP) submitted to the Court that a mere reading of the statute gives obvious support for the PSC's finding of ambiguity. According to AARP, subsections (1)(b),(c) and (d) are not troubling, but subsection (1)(a) is extremely convoluted, especially as to what type, or level of, "benefit" residential consumers are to receive if their rates are to be increased so dramatically.

Section. 364.164 F.S., Competitive market enhancement states:

> (1) Each local exchange telecommunications company may, after July 1, 2003, petition the commission to reduce its intrastate switched network access rate in a revenue-neutral manner. The commission shall issue its final order granting or denying any petition filed pursuant to this section within 90 days. In reaching its decision, the commission shall consider whether granting the petition will:
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> (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers.
>
> (b) Induce enhanced market entry.
>
> (c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years.
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> (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

The Florida Supreme Court heard oral arguments on March 11, 2005, and it is not certain the complete effect the outcome will have on this bill.

Other Issues:

This bill does not address the provisioning of Lifeline service by Eligible Telecommunications Carriers (ETCs) other than the LECs. Section 214(e) of the Telecommunications Act of 1996[9] addresses the provision of Universal Service. Section 214(e)(2) provides for designation of eligible telecommunications carriers. Currently, several wireless providers have received ETC in Florida from the FCC,[10] and the PSC has voted to grant Knology of Florida, Inc.'s petition for ETC designation in five wire centers.[11] Additionally, there are petitions requesting ETC designation pending at the PSC.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[9] 47 U.S.C. 214(e)

[10] In Order No. PSC-03-1063-DS-TP, the PSC determined that since ch. 364, F.S., specifically excludes commercial radio service (wireless) providers from its definition of "telecommunications company" it lacks jurisdiction over these providers for purposes of ETC status pursuant to 47 U.S.C. s. 214(e); therefore these providers must go to the FCC in order to receive ETC status in Florida.

[11] Docket No. 041302-TX; the PSC voted on this petition on March 1, 2005. The written order has yet to be issued.

On March 10, 2005, the Utilities & Telecommunications Committee adopted two amendments to create a committee substitute.

Amendment 1.	On page 4, line 99, the number 1 following (d) in the paragraph numbering was removed.
Amendment 2.	Page 4, line 106 through page 5, 117 were deleted. This removed the provisions about automatic enrollment in Lifeline.

On April 6, 2005, the Future of Florida's Families Committee (FFF) adopted a committee substitute to this bill. The bill provided that a LEC may not discontinue basic local telephone service to a consumer who receives Lifeline due to nonpayment of other charges billed by the LEC. The original committee substitute contains all of the provisions in the FFF committee substitute with the addition of the following:

> The bill expands the application of provisions for Lifeline Assistance to companies that request and are granted eligible telecommunications carrier status.
>
> The bill requires that by December 31, 2005, each state agency providing benefits to persons eligible for Lifeline shall undertake, in cooperation with the Department of Education.
>
> The bill requires the PSC to establish procedures for notification and termination of the Lifeline credit.
>
> The bill requires a study that will aid the companies, the PSC and the Legislature in improving education and promotional efforts for Lifeline service. The goal is to increase awareness and enrollment in Lifeline Service.

The analysis reflects the bill as a committee substitute.