

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill repeals statutes relating to telecommunications rates. Any rate adjustment pursuant to the repealed statutes would be rendered moot, and rates would go back to rates in effect on December 1, 2003.

B. EFFECT OF PROPOSED CHANGES:

Background

On May 23, 2003, the Governor signed into law the Tele-competition Innovation and Infrastructure Enhancement Act of 2003.¹ Key provisions of the bill were outlined in section 364.164, F.S., which provided, in part, that each local exchange telecommunications carrier (LEC), after July 1, 2003, may petition the PSC to reduce its intrastate switched network access rate in a revenue neutral manner, provided that it met the criteria outlined in subsection (1)(a-d). The balance of the section prescribes the methodology for implementing the rate changes, including the creation of a revenue category mechanism for ensuring revenue neutrality through offsetting decreases in access rates with increases in basic local exchange service rates.

A significant provision of s. 364.164, F.S., appears in ss. (8). This subsection contains the so-called "VoIP² trigger" provision. This subsection provides that the access charge rate reduction schedule and the offsetting basic local service rate increases associated with the section are immediately operative as though a petition pursuant to the section were approved by the Commission if either the PSC or the Federal Communications Commission (FCC) were to find that switched network access charges were not applicable to providers of VoIP services or their equivalent.

Subsection (6) of 364.051, F.S., provides that a LEC with greater than one million lines in service that has reduced its switched network access charges to parity, as defined in s. 364.164(5), may, at the election of the company, have its basic local services be subject to the same regulatory treatment as its nonbasic services. The subsection also provides that upon approval by the PSC, the company's service quality standards may be reduced, in whole or in part, to a level no greater than that imposed on competitive local exchange telecommunications companies (CLECs). The subsection further provides that the PSC may impose no greater service quality standards on CLECs than those in effect as of December 1, 2003.

Subsection (7) of 364.051, F.S., provides for a LEC that has made an election pursuant to subsection (6) to subsequently petition the PSC for regulatory treatment of retail services at a level no greater than that applicable to CLECs. The LEC shall: (a) show that granting the petition is in the public interest; and (b) reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon the granting of the petition. The PSC must act within 9 months of receiving the petition.

Subsection (8) of 364.051, F.S., extends the provisions of ss. (6) and (7) to any LEC with one million or fewer access lines in service that has reduced its intrastate switched network access rates to a level equal to the company's interstate switched network access in effect on December 1, 2003.

Section 364.059, F.S., provides that upon a LEC electing, pursuant to 364.051(6), F.S., to have its basic local telecommunications services treated the same as nonbasic services, there shall be a mechanism for seeking a stay of any anticompetitive allegation relating to a LEC's basic local service

¹ Ch. 2003-32, L.O.F.

² Voice-over-Internet-Protocol

rate reduction. The section provides that the PSC must issue an order resolving the allegation within 45 days after a petition is filed. Subsection (2) further provides that the PSC, no sooner than January 1, 2005, must establish a benchmark, such as a price or cost floor, for determining whether a stay pursuant to subsection (1) is warranted.

In September 2003, BellSouth, Sprint and Verizon filed petitions pursuant to s. 364.164, F.S., and the Commission subsequently approved them.³ However, the PSC orders for each of the respective companies were appealed to the state Supreme Court, and on July 7, 2005, the Court upheld the PSC orders.⁴ Among other things, the Court:

- Reaffirmed that the PSC's orders, and its interpretation of the statutes and legislative policies it is charged with enforcing, are entitled to great deference;
- Concluded that both economic and empirical evidence supported the Commission's finding that granting the petitions will create competition to the benefit of residential consumers as required by section 364.164(1)(a);
- Concluded that the PSC had interpreted the term "benefit" consistent with the plain meaning of the term and the announced intent of the legislation;
- Concluded that there was competent, substantial theoretical and empirical evidence to support the determination that granting the petitions will induce enhanced market entry as required by section 364.164(1)(b);
- Concluded that the Commission "acted within the bounds of its authority and discretion" in determining that granting the petitions is consistent with the requirement to ensure that basic local service is available at reasonable and affordable prices under section 364.01(4)(a); and
- Rejected (in a footnote) the argument that the Commission erred in failing to reconsider its decision in light of the federal court decision in *USTA II*.⁵

BellSouth, Sprint, and Verizon may now, on 45 days notice implement the rate changes authorized by the orders. During September 2005, BellSouth, Verizon, and Sprint filed their access charge reductions/local rate increases in the form of tariffs. If the filings are consistent with the order issued in these cases, staff will handle the tariffs administratively as allowed in the order. The first round of rate changes went into effect on November 1, 2005.⁶

It should be noted that basic local exchange telecommunications service rates have been increased by BellSouth, Sprint, and Verizon under the provision of ss. 364.051(3), F.S., since December 1, 2003. This provision was in existence prior to the 2003 Act and permits LECs that have elected price cap regulation to annually increase basic local service rates. In accordance with ss. 365.051(3), F.S., companies are permitted to increase basic local service rates by an amount not to exceed the change in inflation minus 1% as measured by the Gross Domestic Product Fixed 1987 Weights Price Index. BellSouth, Sprint and Verizon have each implemented increases pursuant to this section during the stay of the access charge reduction changes under s. 364.164, F.S.

Effect of Change

The bill repeals ss. 364.059, 364.164, and 364.051(6),(7), and (8), F.S. In addition, any local service rate increase and corresponding intrastate access fee that was reduced by the PSC under s. 364.164,

³ PSC Order No. PSC 03-1469-FOF-TL, issued December 24, 2003.

⁴ *Christ v. Jaber*, 908 So.2d 426 (Fla. 2005).

⁵ *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*.

⁶ PSC Order No. PSC-05-1053-FOF-TL, issued October 31, 2005.

F.S. is no longer valid. The local exchange telecommunications must again charge the local service rates and intrastate access fees at the rates in effect on December 1, 2003.

The orders issued in the BellSouth, Sprint and Verizon petition cases were upheld pursuant to Supreme Court review, on July 7, 2005. The bill would restore any rate changes resulting from the approval of the petitions to December 1, 2003 levels. The bill does not provide for refunds for any local rate increases implemented as a result of the petitions.

As noted previously, each of the affected companies has increased rates pursuant to ss. 364.051(3), F.S., during the stay of rate changes associated with s. 364.164, F.S. The bill would require those rate changes previously authorized in accordance with s. 364.051(3), F.S., to be returned to December 1, 2003 levels. Since the proposed bill is silent as to increases of this nature and silent in regard to whether refunds would be required, it can only be assumed that reductions should be made without refunds. In conjunction with those rate changes, some customers received decreases in their basic local service rates, as well as, increased calling scopes. Presumably, those changes would also be required to be returned to their December 1, 2003 status. Depending on the legislative intent, there may be reason to leave these rate changes unaffected.

Several proceedings resulting from current law will be rendered moot by passage of the bill. Those proceedings include the determination of whether LEC service quality standards should ultimately be relaxed (ss. 364.051(6), F.S.), and whether LEC retail regulation should be relaxed.

C. SECTION DIRECTORY:

- Section 1 Repeals ss. 364.059, 364.164, and 364.051(6), (7), and (8), F.S., relating to telecommunications rates.
- Section 2 Voids local service rate increase and intrastate access fee reduction granted under the former s. 364.164, F.S.
- Section 3 This act shall take effect May 15, 2006, or upon becoming a law, whichever occurs later.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None
2. Expenditures:
None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None
2. Expenditures:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the overall telephone (local and long-distance) bills for some customers.

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES