

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1191 CS Telecommunication Rates
SPONSOR(S): Legg and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	16 Y, 0 N, w/CS	Cater	Holt
2) Local Government Council			
3) Finance & Tax Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

HB 1191 CS addresses ex parte communications and price regulation of nonbasic services. To begin, the bill provides rules regulating ex parte presentations in commission proceedings. The bill provides rule guidelines for establishing varying degrees of disclosure for three types of proceedings. The first proceeding is an exempt proceeding; second is a permit-but-disclose proceeding, and third is a restricted proceeding. Procedures for written ex parte presentations are also included in the bill along with definitions as used in s. 350.042

The bill also speaks to price regulation of nonbasic services. It allows each local exchange telecommunications company, (LEC), at its option, to either maintain filing its tariffs with the Public Service Commission (PSC or commission), or to publicly publish the terms, conditions, and rates for each of its nonbasic services. Further the bill allows a LEC to set or change on 1 day's notice, in lieu of 15 days notice, the rate for each of its nonbasic services.

Moreover, the bill deletes the provisions allowing a LEC the election to have its basic service treated as nonbasic. It also requires the LEC to request from the PSC to have its service quality requirements treated the same as competitive providers.

Additionally, it allows the LEC after its intrastate access rates are at parity with its interstate access rates to petition the PSC for lesser regulatory treatment of its retail services. In order to receive lesser regulation or its retail services, the bill provides that in addition to a LEC showing that the change is in the public interest and that upon a grant of its petition it shall reduce its intrastate switched network access rates to its local reciprocal interconnection rate, but that it demonstrate the level of competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the PSC. The bill deletes the provision that the PSC determine the extent to which the level of competition faced by the company permits and will continue to permit the company to have its retail services regulated differently than its competitors.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill also provides requirements concerning ex parte communications at the PSC. It revises the requirements for local exchanges telecommunications companies to have the same regulatory treatment of services as competitive providers. It allows each ILEC, at its option, to either maintain filing its tariffs with the PSC, or to publicly publish the terms, conditions, and rates for each of its nonbasic services.

B. EFFECT OF PROPOSED CHANGES:

Ex Parte Communications

Section 350.042, F.S., addresses ex parte communications with commissioners of Public Service Commission. This statute prohibits ex parte communications with commissioners regarding the merits of a case except:

- Communications from individual residential customers representing only themselves
- Rulemaking proceedings
- Declaratory statement proceedings
- Workshops
- Internal Affairs meetings.

This statute does not apply to PSC staff. However, PSC Rule 25-22.033, F.A.C., governs communications between PSC staff and parties to most cases in which hearings are required. The rule requires that all parties receive copies of any written communication and that reasonable notice be given to all parties of scheduled meetings and conference calls regarding the merits of a case. This rule does not apply to proposed agency action proceedings prior to the commission vote, rulemaking proceedings, declaratory statement proceedings, docket and undocked audits, telephone service evaluations, water and wastewater staff assisted rate cases, non-rate case tariffs, and electric and gas safety inspections.

Proposed Changes

Section 350.042 provides in part:

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

The bill provides that ex parte communication with a commissioner shall continue to be in accordance with law, but add the exception as otherwise specifically allowed is ss. 120.80(13)(d) (Administrative Procedures Act) and newly created 364.017. This is a conforming amendment.

The bill creates s. 364.017, F.S., relating to ex parte communications. To ensure the fairness and integrity of its decisionmaking, the bill requires the PSC to prescribe rules to regulate ex parte presentations in commission proceedings. The bill provides rule guidelines for establishing varying degrees of disclosure for three types of proceedings.

In contemplating the rules for the three types of proceedings, the following general intent is to be considered for the levels of disclosure. One type of proceeding is an exempt proceeding. In this proceeding, ex parte presentations are made freely. In another type of proceeding, a permit-but-disclose proceeding, ex parte presentations are permissible but subject to certain disclosure requirements. Lastly, a restricted proceeding is one in which ex parte presentations to and from commission decisionmaking personnel are generally prohibited.

For all of the described proceedings, there will be a period of time prior to the date scheduled for a decision to be made when all presentations or correspondence to PSC decisionmaking staff are prohibited. The exceptions to this requirement are those instances when the presentation or correspondence is otherwise allowed by statute; relates to emergency situations, or relate to classified security information.

For an individual making a written ex parte communication subject to this section, the bill provides that no later than the next business day, that person must submit two copies of the presentation to the commission's clerk under separate cover for inclusion in the public record. The bill further outlines the content of the cover letter.

An individual making an oral ex parte presentation subject to this section, that presents data or arguments not already reflected in that person's written filings, shall no later than the next business day submit to the commission clerk, an original and one copy of a memorandum summarizing the new data or arguments. The memorandum must also be provided to the commissioners and commission employees who were involved in the oral presentation. The memoranda must contain a summary of the substance of the presentation not just a list of subjects discussed.

The commission clerk is required to place in the proceeding public record all written ex parte presentations and oral memorandums. The clerk also is required to issue public notice of all such submissions received, at two times per week, for any permit-but-disclose proceeding.

The bill provides the following definitions as they pertain to this section:

Decisionmaking personnel is defined as any member, officer, or employee of the commission who is or may reasonably be expected to be involved in formulating a substantive recommendation or decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisionmaking process shall not be treated as a decisionmaker with respect to that proceeding, and any person designated as part of a separate trial staff shall not be considered a decisionmaking person in the decisionmaking proceeding.

Ex parte presentation is defined as any presentation that, if written, is not served on the parties of record to the proceeding; or, if oral, is made without advance notice to the parties to be present.

Presentation is defined as a means of communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this definition are inquires concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquires relating solely to the status of a proceeding.

Price Regulation of Nonbasic Services

Section 364.051(5) (a)-(b) read in part:

(5) NONBASIC SERVICES.—Price regulation of nonbasic services shall consist of the following:

(a) Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid. . .

(b) The commission shall have continuing regulatory oversight of nonbasic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

The bill allows each LEC, at its option, to either maintain filing its tariffs with the PSC, or to publicly publish the terms, conditions, and rates for each of its nonbasic services. Further the bill allows a LEC to set or change on 1 day's notice, in lieu of 15 days notice, the rate for each of its nonbasic services.

According to the commission, if a LEC opts to publicly publish its terms, conditions and rates in lieu of maintaining its tariff filings at the commission. It is unclear how the provisions of s. 364.051(5)(b), F.S., will operate. Section 364.051(5)(b) gives the PSC continuing regulatory oversight over nonbasic services as described above. If the LECs are not required to file their prices for nonbasic services with the PSC, the PSC may be losing some of its regulatory oversight over these services.

Section 364.051(6), F.S., reads:

After a local exchange telecommunications company that has more than 1 million access lines in service has reduced its intrastate switched network access rates to parity, as defined in s. 364.164(5), the local exchange telecommunications company's basic local telecommunications service may, at the company's election, be subject to the same regulatory treatment as its nonbasic services. The company's retail service quality requirements that are not already equal to the service quality requirements imposed upon the competitive local exchange telecommunications companies shall thereafter be no greater than those imposed upon competitive local exchange telecommunications companies unless the commission, within 120 days after the company's election, determines otherwise. In such event, the commission may grant some reductions in service quality requirements in some or all of the company's local calling areas. The commission may not impose retail service quality requirements on competitive local exchange telecommunications companies greater than those existing on January 1, 2003.

The bill deletes the PSC, has the option of publicly publishing the terms, conditions, and rates of nonbasic services and may set or change those rates on one day's notice. However s. 364.051(5)(b), F.S., gives the PSC continuing regulatory oversight over nonbasic services to ensure the resolution of service complaints, preventing the cross-subsidization of nonbasic service with revenues from basic service, and to ensure that all providers are treated fairly. If the LECs are not required to file their prices for nonbasic services with the PSC, the PSC may be losing some of its regulatory oversight over these services.

Moreover, the bill deletes the provisions allowing a LEC the election to have its basic service treated as nonbasic. It also requires the LEC to request from the PSC to have its service quality requirements treated the same as competitive providers.

Additionally, it allows the LEC after its intrastate access rates are at parity with its interstate access rates to petition the PSC for lesser regulatory treatment of its retail services. In order to receive lesser regulation or its retail services, the bill provides that in addition to a LEC showing that the change is in the public interest and that upon a grant of its petition it shall reduce its intrastate switched network access rates to its local reciprocal interconnection rate, but that it demonstrate the level of competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the PSC. The bill deletes the provision that the PSC determine the extent to which the level of competition faced by the company permits and will continue to permit the company to have its retail services regulated differently than its competitors.

Section 364.051(6) reads:

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Subsection (6) is amended to remove the LEC's ability to elect to have its basic local telecommunications service subject to the same regulatory treatment as its nonbasic services. It also requires the LEC to request from the PSC to have its service quality requirements treated the same as competitive providers.

Additionally, the bill amends s. 364.051(7) to allow a LEC after its intrastate access rates are at parity with its interstate access rates to petition the PSC for lesser regulatory treatment of its retail services. In order to receive lesser regulation or its retail services, the bill provides that in addition to a LEC showing that the change is in the public interest and that upon a grant of its petition it shall reduce its intrastate switched network access rates to its local reciprocal interconnection rate, but that it

demonstrate the level of competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the PSC. The bill deletes the provision that the PSC determine the extent to which the level of competition faced by the company permits and will continue to permit the company to have its retail services regulated differently than its competitors.

The act shall take effect upon becoming law.

C. SECTION DIRECTORY:

- Section 1 Amends s. 350.042, F.S., relating to ex parte communications.
- Section 2 Creates s. 364.017, F.S., relating to ex parte communications.
- Section 3 Amends s. 364.051(5),(6), and (7), F.S., relating to price regulation.
- Section 4 This act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The PSC will incur some expenditure associated with establishing rules relating to ex parte communications, and publishing notices of ex parte communications that the clerk office receives. The PSC may also see lower administrative costs as a result of ILECs being able to publicly publish nonbasic service rate increases, rather than filing tariffs with the PSC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The LECs may see reduced cost as a result of not being required to file tariffs for rate changes to nonbasic services.

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 bill requires the PSC to prescribe rules regulating ex parte communications in PSC proceeding.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 364.051(5)(a), F.S., to allow the LECs in lieu of maintaining tariffs at the PSC, has the option of publicly publishing the terms, conditions, and rates of nonbasic services and may set or change those rates on one day's notice. However s. 364.051(5)(b), F.S., gives the PSC continuing regulatory oversight over nonbasic services to ensure the resolution of service complaints, preventing the cross-subsidization of nonbasic service with revenues from basic service, and to ensure that all providers are treated fairly. If the LECs are not required to file their prices for nonbasic services with the PSC, the PSC may be losing some of its regulatory oversight over these services.

The current PSC statute relating to ex parte communications is located in s. 350.042, F.S., while the bill's provisions for ex parte communications are contained in s. 364.017, F.S.,. While ch. 350, F.S., governs the Public Service Commission, ch. 364, F.S., governs the regulation of telecommunications companies. With the new ex parte communications provisions being contained in ch. 364, F.S., these provisions may be construed to only apply to proceeding involving telecommunications companies, and not apply to proceeding involving electric, natural gas, water, or wastewater companies.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment to the bill. The strike-all amendment eliminated the language repealing the rate rebalancing provisions of the Tele-competition Innovation and Infrastructure Enhancement Act of 2003, and replaced it with new provisions. These new provisions:

- Establish guidelines regarding ex parte presentations at the PSC which:
 - Requires the PSC to establish rules
 - Provide guidelines for public disclosure of ex parte communications
 - Provides definitions.
- Delete a provision allowing a LEC to elect to have its basic service treated as nonbasic service.
- Require a LEC to request from the PSC to have its service quality requirements treated the same as competitive companies.
- Allow the LEC to petition the PSC after parity is reached, for lesser regulatory treatment of its retail services. The petition must show and the PSC must find:
 - The change would be in the public interest.
 - The level of competition has been demonstrated to be sufficient and sustainable to allow regulation be supplanted by competitive forces.
 - The company has reduced its intrastate switched network access rates to its local reciprocal interconnect rate once the petition is granted.
- Allow the LEC to change its prices for nonbasic services on only one day's notice and to publicly publish its pricelists rather than file tariffs with the PSC.