

HB 1191

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## CHAMBER ACTION

1 The Utilities & Telecommunications Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to telecommunications service regulation;  
8 amending s. 350.042, F.S.; specifying provisions for ex  
9 parte communications procedures; creating s. 364.017,  
10 F.S.; providing for ex parte communications relating to  
11 Public Service Commission proceedings; directing the  
12 commission to adopt rules to regulate such communications;  
13 amending s. 364.051, F.S., relating to price regulation;  
14 allowing certain local exchange telecommunications  
15 companies to publish terms, conditions, and rates for  
16 nonbasic services in lieu of maintaining tariffs with the  
17 Public Service Commission; revising the notice requirement  
18 for price changes to nonbasic services; removing a  
19 provision that allows a company to elect that its basic  
20 services be subject to the same regulatory treatment as  
21 its nonbasic services; providing for a request from a  
22 company to the Public Service Commission to make certain  
23 reductions in its retail service quality requirements;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 |       revising criteria for granting a petition to change  
25 |       regulatory treatment of retail services; providing an  
26 |       effective date.

27

28 | Be It Enacted by the Legislature of the State of Florida:

29

30 |       Section 1. Subsection (1) of section 350.042, Florida  
31 | Statutes, is amended to read:

32 |       350.042 Ex parte communications.--

33 |       (1) A commissioner should accord to every person who is  
34 | legally interested in a proceeding, or the person's lawyer, full  
35 | right to be heard according to law, and, except as otherwise  
36 | authorized by law, or specifically allowed in ss. 120.80(13)(d)  
37 | and 364.017, a commissioner shall neither initiate nor consider  
38 | ex parte communications concerning the merits, threat, or offer  
39 | of reward in any proceeding other than a proceeding under s.  
40 | 120.54 or s. 120.565, workshops, or internal affairs meetings.  
41 | No individual shall discuss ex parte with a commissioner the  
42 | merits of any issue that he or she knows will be filed with the  
43 | commission within 90 days. The provisions of this subsection  
44 | shall not apply to commission staff.

45 |       Section 2. Section 364.017, Florida Statutes, is created  
46 | to read:

47 |       364.017 Ex parte communications.--

48 |       (1) To ensure the fairness and integrity of its  
49 | decisionmaking, the commission shall prescribe rules to regulate  
50 | ex parte presentations in commission proceedings. The rules  
51 | shall specify exempt proceedings in which ex parte presentations

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52 | may be made freely; permit-but-disclose proceedings in which ex  
53 | parte presentations to commission decisionmaking personnel are  
54 | permissible but subject to certain disclosure requirements; and  
55 | restricted proceedings in which ex parte presentations to and  
56 | from commission decisionmaking personnel are generally  
57 | prohibited.

58 | (2) In all proceedings, there shall be designated a period  
59 | of time prior to the date established for making a decision  
60 | during which all presentations or correspondence to commission  
61 | decisionmaking staff are prohibited. Exceptions to this  
62 | requirement shall be any presentation or correspondence  
63 | otherwise allowed by statute; any presentation that relates to  
64 | emergency situations involving public health, safety, and  
65 | welfare; and any presentation involving classified security  
66 | information.

67 | (3) A person who makes a written ex parte presentation  
68 | subject to this section shall, no later than the next business  
69 | day after the presentation, submit two copies of the  
70 | presentation to the commission's clerk under separate cover for  
71 | inclusion in the public record. The presentation and cover  
72 | letter shall clearly identify the proceeding to which it  
73 | relates, including the docket number, if any; shall indicate  
74 | that two copies have been submitted to the clerk; and must be  
75 | labeled as an ex parte presentation. A person who makes an oral  
76 | ex parte presentation subject to this section that presents data  
77 | or arguments not already reflected in that person's written  
78 | comments, memoranda, or other filings in that proceeding shall,  
79 | no later than the next business day after the presentation,

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80 submit to the commission's clerk an original and one copy of a  
81 memorandum which summarizes the new data or arguments. A copy of  
82 the memorandum must also be submitted to the commissioners or  
83 commission employees involved in the oral presentation. Any such  
84 memoranda must contain a summary of the substance of the ex  
85 parte presentation and not merely a listing of the subjects  
86 discussed.

87 (4) The commission's clerk shall place in the public file  
88 or record of the proceeding written ex parte presentations and  
89 memoranda reflecting oral ex parte presentations. The clerk  
90 shall issue a public notice listing any written ex parte  
91 presentations or written summaries of oral ex parte  
92 presentations received by his or her office relating to any  
93 permit-but-disclose proceeding. Such public notices should  
94 generally be released at least twice per week.

95 (5) For purposes of this section, the following  
96 definitions shall apply:

97 (a) "Decisionmaking personnel" means any member, officer,  
98 or employee of the commission who is or may reasonably be  
99 expected to be involved in formulating a substantive  
100 recommendation or decision, rule, or order in a proceeding. Any  
101 person who has been made a party to a proceeding or who  
102 otherwise has been excluded from the decisionmaking process  
103 shall not be treated as a decisionmaker with respect to that  
104 proceeding, and any person designated as part of a separate  
105 trial staff shall not be considered a decisionmaking person in  
106 the designated proceeding.

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107        (b) "Ex parte presentation" means any presentation that,  
108 if written, is not served on the parties of record to the  
109 proceeding or, if oral, is made without advance notice to the  
110 parties and without opportunity for the parties to be present.

111        (c) "Presentation" means a communication directed to the  
112 merits or outcome of a proceeding, including any attachments to  
113 a written communication or documents shown in connection with an  
114 oral presentation directed to the merits or outcome of a  
115 proceeding. Excluded from this definition are inquiries  
116 concerning compliance with procedural requirements if the  
117 procedural matter is not an area of controversy in the  
118 proceeding, statements made by decisionmakers that are limited  
119 to providing publicly available information about pending  
120 proceedings, and inquiries relating solely to the status of a  
121 proceeding.

122        Section 3. Subsections (5), (6), and (7) of section  
123 364.051, Florida Statutes, are amended to read:

124        364.051 Price regulation.--

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

127        (a) Each company subject to this section shall, at its  
128 option, maintain tariffs with the commission or otherwise  
129 publicly publish ~~containing~~ the terms, conditions, and rates for  
130 each of its nonbasic services, and may set or change, on 1 day's  
131 15-days<sup>1</sup> notice, the rate for each of its nonbasic services,  
132 except that a price increase for any nonbasic service category  
133 shall not exceed 6 percent within a 12-month period until there  
134 is another provider providing local telecommunications service

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135 | in an exchange area at which time the price for any nonbasic  
136 | service category may be increased in an amount not to exceed 20  
137 | percent within a 12-month period, and the rate shall be  
138 | presumptively valid. However, for purposes of this subsection,  
139 | the prices of:

140 |       1. A voice-grade, flat-rate, multi-line business local  
141 | exchange service, including multiple individual lines, centrex  
142 | lines, private branch exchange trunks, and any associated  
143 | hunting services, that provides dial tone and local usage  
144 | necessary to place a call within a local exchange calling area;  
145 | and

146 |       2. Telecommunications services provided under contract  
147 | service arrangements to the SUNCOM Network, as defined in  
148 | chapter 282,

149 |  
150 | shall be capped at the rates in effect on July 1, 1995, and such  
151 | rates shall not be increased prior to January 1, 2000; provided,  
152 | however, that a petition to increase such rates may be filed  
153 | pursuant to subsection (4) utilizing the standards set forth  
154 | therein. There shall be a flat-rate pricing option for multi-  
155 | line business local exchange service, and mandatory measured  
156 | service for multi-line business local exchange service shall not  
157 | be imposed. Nothing contained in this section shall prevent the  
158 | local exchange telecommunications company from meeting offerings  
159 | by any competitive provider of the same, or functionally  
160 | equivalent, nonbasic services in a specific geographic market or  
161 | to a specific customer by deaveraging the price of any nonbasic  
162 | service, packaging nonbasic services together or with basic

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163 services, using volume discounts and term discounts, and  
164 offering individual contracts. However, the local exchange  
165 telecommunications company shall not engage in any  
166 anticompetitive act or practice, nor unreasonably discriminate  
167 among similarly situated customers.

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

178 (c) The price charged to a consumer for a nonbasic service  
179 shall cover the direct costs of providing the service and shall,  
180 to the extent a cost is not included in the direct cost, include  
181 as an imputed cost the price charged by the company to  
182 competitors for any monopoly component used by a competitor in  
183 the provision of its same or functionally equivalent service.

184 (6) After a local exchange telecommunications company that  
185 has more than 1 million access lines in service has reduced its  
186 intrastate switched network access rates to parity, as defined  
187 in s. 364.164(5), the local exchange telecommunications  
188 company's ~~basic local telecommunications service may, at the~~  
189 ~~company's election, be subject to the same regulatory treatment~~  
190 ~~as its nonbasic services. The company's retail service quality~~

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191 requirements that are not already equal to the service quality  
192 requirements imposed upon the competitive local exchange  
193 telecommunications companies shall at the company's request to  
194 the commission ~~thereafter~~ be no greater than those imposed upon  
195 competitive local exchange telecommunications companies unless  
196 the commission, within 120 days after the company's request  
197 ~~election~~, determines otherwise. In such event, the commission  
198 may grant some reductions in service quality requirements in  
199 some or all of the company's local calling areas. The commission  
200 may not impose retail service quality requirements on  
201 competitive local exchange telecommunications companies greater  
202 than those existing on January 1, 2003.

203 (7) After ~~If~~ a local exchange telecommunications company  
204 that has more than 1 million access lines in service has reduced  
205 its intrastate switched network access rates to parity, as  
206 defined in s. 364.164(5) elects, pursuant to subsection (6), to  
207 ~~subject its retail basic local telecommunications services to~~  
208 ~~the same regulatory treatment as its nonbasic services, the~~  
209 local exchange telecommunications company may petition the  
210 commission for regulatory treatment of its retail services at a  
211 level no greater than that imposed by the commission upon  
212 competitive local exchange telecommunications companies. The  
213 local exchange telecommunications company shall:

214 (a) Show that granting the petition is in the public  
215 interest;

216 (b) Demonstrate that the competition faced by the company  
217 is sufficient and sustainable to allow such competition to  
218 supplant regulation by the commission; and



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219        (c)~~(b)~~ Reduce its intrastate switched network access rates  
220 to its local reciprocal interconnection rate upon the grant of  
221 the petition.

222

223 The commission shall act upon such a petition within 9 months  
224 after its filing with the commission. ~~In making its~~  
225 ~~determination to either grant or deny the petition, the~~  
226 ~~commission shall determine the extent to which the level of~~  
227 ~~competition faced by the local exchange telecommunications~~  
228 ~~company permits and will continue to permit the company to have~~  
229 ~~its retail services regulated no differently than the~~  
230 ~~competitive local exchange telecommunications companies are then~~  
231 ~~being regulated.~~ The commission may not increase the level of  
232 regulation for competitive local exchange telecommunications  
233 companies to a level greater than that which exists on the date  
234 the local exchange telecommunications company files its  
235 petition.

236        Section 4. This act shall take effect upon becoming a law.