

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Communications and Public Utilities Committee

BILL: CS/SB 1544

INTRODUCER: Communications and Public Utilities Committee & Senator Constantine

SUBJECT: Telecommunications

DATE: April 4, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	GE	_____
4.	_____	_____	TA	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute provides for definitions and creates an automatic waiver of the carrier-of-last-resort (COLR) obligation for a local exchange telecommunications company (LEC) under certain circumstances. Notice to the Public Service Commission (PSC or commission) in a timely manner is required for automatic waivers. The bill also allows a LEC to petition for waiver for good cause shown based upon the facts and circumstances. Notice to the building owner or developer is required. The commission is required to initiate rulemaking to implement this provision.

Where conditions of exclusion cease to exist, the owner or developer requests in writing that the LEC make service available, and no other arrangements are made for service by another provider, the COLR obligation applies. The owner or developer may be responsible for certain costs and the LEC is allowed a reasonable time to arrange service availability.

The commission's limitations of jurisdiction under ss. 364.011 and 364.013, F.S., remain effective.

This bill substantially amends section 364.025 of the Florida Statutes.

II. Present Situation:

Section 364.025, F.S., provides for universal telecommunications service. The term "universal" service" is defined as an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. Subsection (1)

provides Legislative intent that universal service objectives be maintained after the local exchange market is opened to competitively provided services. Each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable period to any person requesting such service within the company's service territory until January 1, 2009. This provision is generally referred to as the "carrier-of-last-resort" obligation.

In Interim Project Report 2006-106¹, committee staff reviewed the broad question of access by communications companies to customers in multitenant environments, which was argued impeded competition. The report addressed the broad issues of property, carrier-of-last-resort, and customer protection. The COLR obligation becomes an issue when a tenant may request service from the LEC who is obligated to provide the service but cannot gain physical access to rights-of-way or closets. The LEC must deny the customer service. The report suggested a course of action to remedy the conundrum by seeking recourse with the commission. On December 16, 2005, BellSouth filed a Petition for Waiver of Rules 25-4.066 and 25-4.067, Florida Administrative Code and to Initiate Rulemaking.² The most recent action has been to waive the time the commission has to make its determination. Current law does not provide for waiver of the carrier-of-last-resort obligations. However, s. 364.01(4)(f), F.S., provides the commission with authority to eliminate rules and regulations that delay or impair the transition to competition.

III. Effect of Proposed Changes:

Section 1 creates a new subsection (6) of s. 364.025, F.S., to provide definitions of the terms "owner or developer," "communications service provider," and "communications service" to be used in the subsection. A local exchange telecommunications company (LEC) having the COLR obligation is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including apartments, condominiums, subdivisions, office buildings or office parks, when the owner or developer:

- Permits only one communications service provider to install its communications service related facilities or equipment to the exclusion of the LEC during the construction phase of the property;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the LEC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the LEC, to the occupants or residents in any manner, including collection through rent, fees or dues; or
- Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the LEC's access to the property.

The LEC relieved of its COLR obligation under the provision stated above must notify the commission of that fact in a timely manner.

¹ Report 2006-106, *Review of Access by Communications Companies to Customers in Multitenant Environments*, Committee on Communications and Public Utilities, September 2005.

² Public Service Commission Docket No. 050922-TL.

A LEC may seek a waiver of its COLR obligation if the commission finds good cause shown based on the facts and circumstances of provision of service to multitenant business and residential property when it is not automatically relieved. Notice must be given by the company to the relevant building owner or developer. The commission has 90 days to act on the petition. The commission is to initiate rulemaking to implement the provision.

1) If the conditions for automatic waiver cease to exist, 2) the owner or developer requests in writing that the LEC make service available to customers at the property and confirms in writing the conditions no longer exist at the property, and 3) no other arrangements have been or plan to be arranged for service, then the COLR obligation again applies to the LEC. The LEC may require the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially. The LEC is allowed a reasonable time following the request from the owner or developer to make arrangement for service availability. If any conditions for automatic waiver again exist on the property, the waiver again applies.

The commission's limitations of jurisdiction under ss. 364.011 (long distance broadband, VoIP, and wireless) and 364.013 (broadband and VoIP), F.S., remain effective.

Section 2 provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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