

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 817 CS

Telecommunications Carriers of Last Resort

**SPONSOR(S):** Murzin

**TIED BILLS:**

**IDEN./SIM. BILLS:** CS/SB 1544

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Utilities &amp; Telecommunications Committee</u>	<u>16 Y, 0 N, w/CS</u>	<u>Cater</u>	<u>Holt</u>
2) <u>Business Regulation Committee</u>	<u>14 Y, 0 N</u>	<u>Watson</u>	<u>Liepshutz</u>
3) <u>Civil Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Blalock</u>	<u>Bond</u>
4) <u>Commerce Council</u>	<u>13 Y, 0 N, w/CS</u>	<u>Cater</u>	<u>Randle</u>
5) _____	_____	_____	_____

---

### SUMMARY ANALYSIS

Current law provides that, "until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.

This bill amends s. 364.025, F.S., to provide that a local exchange telecommunications company (LEC), with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants. If it is relieved of its COLR obligation, the LEC is required to give timely notice to the Public Service Commission (PSC or Commission). If its COLR obligation is not automatically relieved, a LEC can petition the PSC for a waiver of this obligation based on the facts and circumstances of the situation.

This bill also requires the COLR obligation to go back into effect if the circumstances for automatic relief no longer exist and the owner or developer of the property has no intention to arrange for communication service for another provider. The bill allows the LEC to recover from the developer, reasonable costs in excess of the LECs costs if it had initially provided service.

The bill also speaks to price regulation of nonbasic telecommunications services. It 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.

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 of 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.

Except as otherwise expressly provided, this act shall take effect July 1, 2006.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0817g.CC.doc

**DATE:** 4/13/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides an exemption to a local exchange telecommunications company (LEC) with carrier-of-last resort (COLR) obligations, when circumstances exist that prevented or impeded it from providing basic service to the occupants of a business or residential multi-tenant building or development. The bill also revises requirements for LECs to have the same regulatory treatment of services as competitive providers, instead of filing tariffs at the Public Service Commission (PSC)

#### B. EFFECT OF PROPOSED CHANGES:

##### **Carrier-of Last Resort**

##### **Background**

Section 364.025(1), F.S., provides that, “[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service<sup>1</sup> within a reasonable time period to any person requesting such service within the company’s territory.” This provision is generally referred to as the “carrier-of-last-resort” obligation under which local exchange telecommunications companies<sup>2</sup> have always operated. PSC rules provide availability of service requirements such as having facilities in place for “realistically anticipated customer demands for basic local telecommunications service” and timeframes for service requests to be fulfilled.<sup>3</sup>

The current law does not provide for waiver of the COLR obligations. However, s. 364.01(4)(f), F.S., provides the PSC with authority to eliminate rules and regulations that delay or impair the transition to competition.

Local exchange telecommunications companies with COLR obligations have encountered situations in multi-tenant structures and developments that have prevented or impeded them from providing basic service to the occupants (end-use customers). Either before or after a LEC begins provisioning activities to serve these end-use customers, the property owner either enters into an exclusive arrangement with another carrier and prohibits the COLR from installing facilities and/or providing service, or the property owner enters into an agreement with another communications provider where the property owner collects money from the tenants to cover the cost of the alternative communications services. However, the LEC still has its COLR obligation; and when these situations have occurred, the LEC has notified the PSC of these “locked out” situations.

On December 16, 2005, BellSouth Telecommunications, Inc., a COLR, petitioned the PSC for Waiver of Rules 25-4.066 and 25-4.067, F.A.C. and Petition to Initiate Rulemaking (Petition). BellSouth seeks relief relate to service installation intervals and line extension cost recovery which have been established, in part, to implement its COLR obligation. BellSouth’s rulemaking request is to permit a

---

<sup>1</sup> Section 364.02(1), F.S., defines “basic local telecommunications service” as voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as “911,” all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

<sup>2</sup> Section 364.02(8), F.S., defines “local exchange telecommunications company” as any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

<sup>3</sup> S. 25-4.066, F.A.C., Availability of Service.

waiver of the rules relating only to multi-tenant establishments and subdivisions where owners or developers have sought to limit the ability of COLRs to serve the occupants of such locations. The PSC has not ruled on the Petition.

### **Effect of Bill**

This bill amends s. 364.025, F.S., to provide an exemption to local exchange telecommunications companies, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential buildings or developments, when circumstances exist that prevented or impeded them from connecting with the occupants. The bill provides definitions and establishes criteria under which the exemption is applicable.

The bill defines the following terms:

- “Owner or developer” as the owner or developer of a multi-tenant business or residential property, any condominium association or homeowners’ association thereof, or any other person or entity having ownership in or control over the property.
- “Communications service provider” includes any person or entity providing communications services or allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
- “Communications service” means voice service or voice replacement service.

This bill establishes criteria whereby a LEC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multi-tenant business or residential property (including, but not limited to, apartments, condominiums, subdivisions, office buildings or office parks), when the owner or developer:

- Permits only one communications service provider, not the LEC, to install its communications service-related facilities or equipment 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, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Enters into an agreement with a communications service provider that grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the LECs access to the property.

This bill also requires a LEC, with COLR obligations, to give timely notice to the PSC when the above circumstances exist and prevent or impede it from providing basic service to the occupants of a business or residential multi-tenant building or development.

If a LEC is not automatically relieved of its COLR obligation, it may seek a waiver of this obligation from the PSC for good cause based on facts and circumstances of provisioning services to the multi-tenant property. When the COLR petitions the PSC it shall provide notice to the building owner or developer. The PSC has 90 days to act on the petition, and shall implement this paragraph through rulemaking.

If the condition for which the LEC is relieved of its COLR obligation ceases to exist, and the property’s owner or developer provides a written request to the LEC to make service available to customers at the property, and the owner has not arranged and does not intend to arrange with another communications service provider to make service available to customers at the property, the COLR obligation again applies to the LEC, however the LEC may recover from the owner or developer a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire the facilities

to serve the customers initially. Additionally, the COLR shall have a reasonable period of time following the request to make arrangements for service availability. If the conditions that allow the LEC to be relieved of its COLR obligation again exist on a property, the LEC is then again relieved of its COLR obligation.

Nothing in this section of bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.<sup>4</sup>

### **Price Regulation of Nonbasic Service**

Section 364.051(5) (a)-(b) reads 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

---

<sup>4</sup> Section 364.011, F.S., provides for exemptions from the PSC's jurisdiction and s. 364.013, provides that broadband and VoIP services are free from state regulation except as delineated in ch. 364, F.S., or in federal law.

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.

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 of 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.

C. SECTION DIRECTORY:

- Section 1      Creates s. 364.025(6), F.S., related to carrier of last resort obligations for telecommunications carriers.
  
- Section 2      Amends s. 364.051(5)(6) and (7), F.S., relating to price regulation
  
- Section 3      Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The PSC may see lower administrative costs as a result of the LECs 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 receive a reduction in costs as a result of not being required to file tariffs with the PSC concerning rate changes for nonbasic service.

D. FISCAL COMMENTS:

None

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to implement the paragraph relating to waivers through rulemaking.

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, to have 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 nonbasic services.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. This amendment:

- Changed all references "eligible telecommunications carrier" to the more appropriate "local exchange telecommunication company."
- Narrowed the definition of "communications service."
- Removed a circumstance where companies would be relieved of the COLR obligation where the owner or developer restricts or limits the type of service the COLR can provide.
- Added a provision allowing LECs to petition the PSC for a waiver of the COLR obligation.
- Added a provision for after a COLR is relieved of its obligation, it would again have the COLR obligation.

This bill was then reported favorably with a CS.

On March 30, 2006, the Business Regulation Committee adopted one amendment. This amendment clarified that a COLR is automatically relieved of its obligation when the COLR's access is specifically limited by an agreement between a property owner and a competing carrier. This bill was then reported favorably with a CS.

On April 11, 2006, the Commerce Council adopted one amendment. This amendment incorporated a portion of HB 1191 CS and does the following:

- 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 changes its prices for nonbasic services on only one day's notice and to publicly publish its pricelists rather than file tariffs with the PSC.

The bill was then reported favorably as a council substitute.