HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 CS Telecommunications Carriers of Last Resort
SPONSOR(S): Murzin
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	16 Y, 0 N, w/CS	Cater	Holt
2) Business Regulation Committee	14 Y, 0 N	Watson	Liepshutz
3) Civil Justice Committee		Blalock	Bond
4) Commerce Council			
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.

This bill requires a LEC, with COLR obligations, to give timely notice to the PSC when circumstances exist that prevent or impede it from providing basic local exchange telecommunications service (basic service) to the occupants of building or development. 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 provision of service on the party.

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 does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides an exemption to a local exchange telecommunications company 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.

B. EFFECT OF PROPOSED CHANGES:

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[1] 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[2] 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.[3]

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 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.

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[1] 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.
[2] 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.
[3] S. 25-4.066, F.A.C., Availability of Service.

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 project;
- 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;
- Restricts or limits a LEC's access to the property or enters into an agreement with a communications service provider that restricts or limits an LEC's access to the property or grants incentives or rewards to such owner or developer contingent upon such restriction or limitation; or
- Restricts or limits the types of services that may be provided by a LEC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by a LEC.

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 LEFC 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 the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.[4]

C. SECTION DIRECTORY:

Section 1 creates s. 364.025(6), F.S., related to carrier of last resort obligations for telecommunications carriers.

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

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:

None.

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.

[4] 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.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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.