

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817

Telecommunications Carriers of Last Resort

SPONSOR(S): Murzin

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	_____	Cater	Holt
2) Business Regulation Committee	_____	_____	_____
3) Civil Justice Committee	_____	_____	_____
4) Commerce Council	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 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 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.

HB 817 amends s. 364.025, F.S., to provide that an Eligible Telecommunications Carrier, with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential multitenant buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants. Federal law delegates to the states authority to define the term “eligible telecommunications carrier. In s. 364.10, F.S., the term “eligible telecommunications carrier” means a telecommunications company, as defined by s. 364.02, F.S.¹, pursuant to 47 C.F.R. s. 54.201.

The bill also requires an ETC, 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 multitenant building or development.

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

¹ “Telecommunications company” includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term “telecommunications company” does not include:

- (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;
- (d) A facsimile transmission service;
- (e) A private computer data network company not offering service to the public for hire;
- (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522; or
- (g) An intrastate interexchange telecommunications company.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill provides an exemption to an Eligible Telecommunications Carrier, 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 multitenant building or development.

B. EFFECT OF PROPOSED CHANGES:

Background

Currently, s. 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 service² 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 companies³ 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.⁴

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.

The local exchange telecommunications company’s (LECs) carrier-of-last-resort (COLR) obligation in s. 364.025(1), F.S. is not tied to the eligible telecommunications carrier (ETC) status addressed in s. 364.10(2), F.S. Section 364.10(2) requires carriers with ETC status to also “provide a Lifeline Assistance Program to eligible residential subscribers.”⁵ While all LECs are currently ETCs; not all ETCs are LECs. Some competitive carriers have been given ETC status by the PSC and some wireless carriers have been issued ETC status in Florida by the Federal Communications Commission; however, these carriers do not have COLR obligations.

Local exchange telecommunications companies with COLR obligations have encountered situations in multitenant 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.

² 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.

³ 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.

⁴ S. 25-4.066, F.A.C., Availability of Service.

⁵ The Lifeline Assistance Program is a program to provide low-cost telephone service to low-income residential customers.

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 multitenant 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.

Proposed Changes

HB 817 amends s. 364.025, F.S., to provide an exemption to Eligible Telecommunications Carriers, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential multitenant 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:

1. "owner or developer" as the owner or developer of a multitenant 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.
2. "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.
3. "communications service" as defined for this section and applied to multitenant business or residential properties, includes, but is not limited to voice telecommunications service or voice replacement service, VoIP, broadband service, data service, information service, and cable service. This definition is more expansive than the definition of "service" more generally applicable under ch. 364, F.S., which specifically excludes broadband and VoIP.⁶

Under the bill, criteria are established whereby an ETC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multitenant 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 ETC, 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 ETC;
- 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 ETC, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Restricts or limits an ETC's access to the property or enters into an agreement with a communications service provider that restricts or limits an ETC's access to the property or

⁶ See specifically s. 364.02(13), F.S.
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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 an ETC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by an ETC.

The bill also requires an ETC, 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 multitenant building or development.

Nothing in the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.⁷

Two primary concerns have been raised about the intent of the bill:

1. As the term “communications service” is defined in the bill, an ETC, with COLR obligations, would be relieved of its obligations, if an owner or developer of a multitenant property arranges, for example, for a cable television carrier to provide service to its occupants. The problem occurs when the cable provider does not have the ability or intent to offer voice services to the occupants also. Under the criteria, the occupants could be without voice services or voice alternative service, i.e. VoIP, because the COLR has no obligation to serve those customer.
2. While the bill addresses an exemption to the ETC’s obligation to provide basic service to an end-use customer in a multitenant environment, if the criteria exist, it does not address the ETC’s responsibility to provide distribution facilities to locations where it has been relieved of its COLR obligation. PSC rules⁸ provide for availability of service requirements, such as having facilities in place for “realistically anticipated customer demands for basic local telecommunications service” The problem occurs when an owner or developer of a multitenant environment contracts with a telecommunications provider, not the ETC (LEC), for provision of telecommunications services, anticipating the availability of sufficient distribution facilities. However, the ETC (LEC) no longer would have an obligation to serve those end-use customers it is unclear whether sufficient distribution facilities or capacity to interconnect would exist.

C. SECTION DIRECTORY:

Section 1 Creates s. 364.025, F.S., related to carrier of last resort obligations for telecommunications carriers.

Section 2 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:

None

⁷ 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.

⁸ Rule 25-4.066, F.A.C.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may prevent COLR's from investing in facilities to multitenant locations where the owner or developer prevents them from providing service.

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:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES