

## **COMMUNICATIONS**

### **HB 79 — Communications Services**

by Rep. Mack and others (CS/SB 1078 by Criminal Justice Committee and Senator Atwater)

The bill expands the current statute on theft of cable television video programming to cover any communication transmitted by any means except for voice transmission over telephone landlines.

The bill broadens the offense of intercepting or receiving communications services and modifies its elements. The offense, as amended, prohibits a person from knowingly intercepting, receiving, decrypting, disrupting, transmitting, retransmitting, or acquiring access to any communications service without the express authorization of the cable operator or other communications service provider as stated in a contract or otherwise, with the intent to defraud either of them, or knowingly assist others in doing those acts with the intent to defraud either of them. The bill broadens the offense of assisting by including the sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of any device for the purpose of committing these unlawful acts and by adding similar language relating to devices for the purpose of defeating or circumventing any technology, device, or software used to protect communications services from these unlawful acts.

The bill amends current provisions on possession of equipment used for theft of cable services and on advertising such equipment for sale to include the new terminology of communications device and the offense of assisting in using such equipment in commission of these crimes.

Violation of these provisions, theft, possession, or advertising for sale, is a first degree misdemeanor. The bill makes it a third degree felony to commit these unlawful acts willfully and for purposes of financial gain.

As to criminal penalties, the bill:

- Provides that all fines are to be imposed for each communications device and for each day a defendant is in violation of this section.
- Requires restitution as an additional penalty.
- Authorizes a court to order a convicted defendant to forfeit any communications device in the defendant's possession or control which was involved in the violation for which the defendant was convicted.

As to civil remedies, the bill:

- Authorizes the court to impound any communications device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation and to grant other equitable relief, including the imposition of a constructive trust, as the court considers reasonable and necessary.
- Authorizes the court to order the remedial modification or destruction of any communication device or other device used in a violation which is in the custody and control of the violator.
- Includes in actual damages the retail value of all communications services to which the violator had unauthorized access and the retail value of any communications service illegally available to each person to whom the violator directly or indirectly provided a communications device.
- Provides that the current statutory damages may be applied to each device.
- Makes the discretionary increase in damages of up to \$50,000 for each violation apply to any case where the court finds that the violation was committed willfully and for purposes of financial gain, and to each communications device involved in the action and for each day the defendant was in violation of the section.

The bill provides that it is not to be construed to impose any criminal or civil liability upon any state or local law enforcement agency; any state or local agency, municipality, or authority; or any communications service provider unless such entity is acting knowingly and with intent to defraud a communications services provider.

The bill provides that a person that manufactures, produces, assembles, designs, sells, distributes, licenses, or develops a multipurpose device does not violate the bill by doing so unless the person is acting knowingly and with intent to defraud a communications service provider and the multipurpose device meets specified conditions.

The bill provides that it does not require that the design of, or design and selection of parts, software code, or components for, a communications device provide for a response to any particular technology, device, or software, or any component or part thereof, used by the provider, owner, or licensee of any communications service or of any data, audio or video programs, or transmissions to protect any of them from unauthorized receipt, acquisition, interception, access, decryption, disclosure, communication, transmission, or retransmission.

If approved by the Governor, these provisions take effect October 1, 2003.

*Vote: Senate 40-0; House 119-0*

## **CS/SB 654 — Telecommunications**

by Communication and Public Utilities Committee and Senator Haridopolos

The committee substitute delegates to the Florida Public Service Commission authority to reduce to parity in a revenue neutral manner intrastate network access charges paid by long distance providers to local exchange telecommunications companies (LECs) upon certain conditions. The LECs must petition the commission, who may not approve the petition unless:

- Current support for basic local telecommunications services that is preventing the development of more competitive options for the benefit of residential customers is removed.
- Market entry is enhanced.
- Switched network access rates reach parity in two to four years.
- The reduction is revenue neutral.

The terms “parity,” “revenue neutral,” and “intrastate switched network access rate” are defined. The term “parity” means that the larger LEC’s intrastate switched network access rate is equal to its interstate switched network access rate as of January 1, 2003. (Those rates are approximately as follows: BellSouth - \$.0098, Verizon - \$.0157, and Sprint - \$.0140.) For smaller LECs, the rate is set at \$.08. The term “intrastate switched network access rate” means the composite of the originating and terminating network access rate for carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching. The term “revenue neutral” means that the total revenue within the revenue category remains the same before and after the local exchange telecommunications company implements any rate adjustments. The revenue category includes basic local telecommunications rates and intrastate switched network access charges.

The bill provides for commission oversight of the deregulation of LEC service quality standards and treatment of basic services. In addition, the unnecessary regulation of the provision of voice over Internet protocol (VOIP) is found not to be in the public interest. The providers of intrastate interexchange telecommunications service are exempt from further regulation; however, such providers remain subject to certain taxation, penalty, and consumer protection regulations. Local governments are prohibited from regulating certain terms and conditions relating to the provision of broadband and information services.

Finally, the bill provides for new qualifying criteria for Lifeline Assistance a credit of up to \$13 for basic local telecommunications service. Persons having an income of 125 percent or less of the federal poverty income guidelines may automatically qualify for this subsidy. Local exchange telecommunications companies are to provide promotional information in the form of pamphlets, brochures, and other materials to state agencies that provide benefits to eligible

customers. The commission must report each year to the Legislature on the number of customers enrolled in Lifeline and the effectiveness of any promotional programs.

If approved by the Governor, these provisions take effect immediately.

*Vote: Senate 27-12; House 93-20*

## **HB 1307 — Emergency Communications**

by Rep. Mayfield and others (CS/CS/SB 1450 by Comprehensive Planning Committee; Communications and Public Utilities Committee; and Senator Bennett)

The bill provides for facilitation of implementation of 911 service. These provisions are to apply notwithstanding any law or local ordinance to the contrary.

Collocation of any antennae and related equipment to service the antennae on an existing above-ground structure is exempt from land development regulation, provided the height of the existing facility is not increased. Construction of the new facility is subject to local building regulations and any existing permits. The bill does not relieve the permit holder or owner of the existing facility of compliance with any applicable condition or requirement of a permit, agreement, or land development regulation, including any aesthetic requirement, or law.

Local governments are prohibited from requiring wireless companies to provide evidence of compliance with federal regulations, but are permitted to require evidence of proper federal licensure.

A local government is required to act on a properly completed application for a permit for collocation of a wireless facility within 45 business days after the date the properly completed application is submitted in accordance with applicable government application procedures, provided that the permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements, and local building regulations.

A local government is required to act on a properly completed application for a permit for the siting of a new wireless facility within 90 business days after the date the properly completed application is submitted in accordance with applicable government application procedures, provided that the permit complies with applicable federal regulations and applicable local zoning or land development regulations, including any aesthetic requirements, and local building regulations.

The local government must notify the applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and submitted. This determination is not to be deemed approval of the

application. The notification must set forth any deficiencies which, if cured, would make the application properly completed.

If a local government fails to act within the prescribed timeframes on a properly completed application which has been properly submitted, the permit is deemed automatically approved. To be effective, a waiver of the specified timeframes must be voluntarily agreed upon by the applicant and the local government. A local government may request a waiver but may not require one, except that, with respect to a specific permit, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the local government.

Any additional facilities needed at a secured equipment compound at an existing site are deemed a permitted use or activity. Local building and land development regulation, including aesthetic requirements, apply.

The Department of Management Services and the Department of Transportation are required to negotiate leases of state-owned property for siting of wireless facilities. Lease fees are required to be reasonable and to reflect the market rate for use of state-owned property.

Any wireless telephone service provider may report to the E911 wireless board no later than September 1, 2003, the specific locations or general areas within a county or municipality where unreasonable delays have occurred in locating wireless facilities necessary to provide the needed coverage to comply with federal Phase II E911 requirements. The provider must also provide this information to the specifically identified county or municipality by this date. If the board receives any report that unreasonable delays have occurred, it is to establish a subcommittee no later than September 30, 2003, to develop a balanced approach between the ability of wireless providers to site facilities necessary to comply with federal Phase II E911 requirements using the providers own equipment and the desire of local governments to zone and regulate land uses to achieve public welfare goals. If a subcommittee is established, it is to develop recommendations for the board and any specifically identified local government to consider regarding actions to be taken for compliance with federal Phase II E911 requirements, and the board is to include these recommendations in its annual report to the Governor and Legislature.

The bill also provides specific authority to impose the monthly wireless 911 surcharge on prepaid wireless telephone services, to provide for collection of the surcharge, and to define related terms. For prepaid wireless telephone service, the 50 cent monthly wireless 911 surcharge is collected only from each wireless service customer that has a sufficient positive balance as of the last day of each month. As direct billing may not be possible, the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid subscriber's account.

The bill also gives new authority to the board of directors of the Wireless 911 Board to:

- Provide coordination, support, and technical assistance to counties to promote the deployment of advanced 911 and E911 systems in the state.
- Provide coordination and support for educational opportunities related to 911 issues for the 911 community in this state.
- Act as an advocate for issues related to 911 system functions, features, and operations to improve the delivery of 911 services to the residents of and visitors to this state.
- Coordinate input from this state at national forums and associations, to ensure that policies related to 911 systems and services are consistent with the policies of the 911 community in this state.
- Work cooperatively with the system director to enhance the state of 911 services in this state and to provide unified leadership for all 911 issues through planning and coordination.

After July 1, 2004, the board may secure services of an accounting firm by specified means or may hire accounting staff.

The bill also authorizes the Board to use its funding to cover costs and expenses of exercising the new authority discussed above.

Finally, the bill requires that all private branch exchanges constructed after January 1, 2004, be capable of providing automatic location identification. A private branch exchange is a private telephone system that is connected to the public switched telephone system. Automatic location identification means the automatic display at the public safety agency that receives 911 calls of the caller's telephone number, the address or location of the telephone, and supplementary emergency services information.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 39-0; House 113-5*

## **SB 2178 — Digital Divide Trust Fund**

by Senators Crist and Klein

The bill creates the Digital Divide Trust Fund within the State Technology Office for the purpose of receiving and disbursing funds to pay part or all of the costs of facilitating design and implementation of one or more programs provided for in s. 445.049, F.S. The trust fund is to be administered by the Digital Divide Council and may receive funding from sources such as, but not limited to, appropriations from the state and gifts, donations, and matching contributions

from other public agencies and private persons and entities. The trust fund is terminated July 1, 2007, unless terminated sooner, and must be reviewed before its scheduled termination.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 39-0; House 114-0*

