Eric Fryson

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Sent: Friday, October 19, 2012 12:00 PM
To: Filings@psc.state.fl.us
Cc: Masterton, Susan S; Sherr, Adam
Subject: 090538 QCC Addendum to Motion for Official Recognition
Attachments: 090538 QCC Addendum to Motion for Official Recognition 10-19-12.pdf

Filed on Behalf of: Susan S. Masterton
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Docket No. 090538

Title of filing: QCC Addendum to Motion for Official Recognition

Filed on behalf of: CenturyLink

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Description: QCC Addendum to Motion for Official Recognition

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CenturyLink™

October 19, 2012

VIA ELECTRONIC FILING
Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 090538-TP - Amended Complaint of QWEST COMMUNICATIONS COMPANY, LLC, Against TW TELECOM OF FLORIDA, L.P., GRANITE TELECOMMUNICATIONS, LLC, BULLSEYE TELECOM, INC., ERNEST COMMUNICATIONS, INC., FLATEL, INC., NAVIGATOR TELECOMMUNICATIONS, LLC, AND JOHN DOES 1 THROUGH 50, for unlawful discrimination

Dear Ms. Cole:

Enclosed is Qwest Communications Company, LLC, d/b/a CenturyLink QCC's Addendum to Motion for Official Recognition, which we ask that you file in the captioned docket.

Copies are being served upon the parties in this docket pursuant to the attached certificate of service.

Sincerely,

/s/ Susan S. Masterton
Susan S. Masterton

Enclosures

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CERTIFICATE OF SERVICE
DOCKET NO. 090538-TP

I hereby certify that a true and correct copy of the foregoing has been served upon the following by electronic mail delivery and/or U.S. Mail this 19th day of October, 2012.

Florida Public Service Commission Theresa Tan Office of General Counsel 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 ltan@psc.state.fl.us	Division of Regulatory Analysis Jessica Miller Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399 JEMiller@psc.state.fl.us
Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, GA 30092-6511 lhaag@ernestgroup.com	Flatel, Inc. c/o Adriana Solar Executive Center, Suite 100 2300 Palm Beach Lakes Blvd. West Palm Beach, FL 33409-3307 asolar@flatel.net
BullsEye Telecom, Inc. David Bailey 25925 Telegraph Road, Suite 210 Southfield, MI 48033-2527 dbailey@bullseyetelecom.com	Gunster, Yoakley & Stewart, P.A. Matthew J. Feil 215 South Monroe Street, Suite 601 Tallahassee, FL 32301 mfeil@gunster.com † ***Confidential Documents provided in accordance with signed Protective Agreement***
Navigator Telecommunications, LLC David Stotelmyer 8525 Riverwood Park Drive North Little Rock, AR 72113	Klein Law Group Andrew M. Klein/Allen C. Zoracki 1250 Connecticut Ave. NW, Suite 200 Washington, DC 20036 AKlein@kleinlawPLLC.com azoracki@kleinlawpllc.com † ***Confidential Documents provided in accordance with signed Protective Agreement***
	TW Telecom of Florida L.P. Carolyn Ridley 2078 Quail Run Drive Bowling Green, KY 42104 Carolyn.Ridley@twtelecom.com

/s/ Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); tw telecom of florida, l.p.; Broadwing Communications, LLC; BullsEye Telecom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; and John Does 1 through 50, for unlawful discrimination.	DOCKET NO. 090538-TP DATED: October 19, 2012

QWEST COMMUNICATIONS COMPANY, LLC'S ADDENDUM TO MOTION FOR OFFICIAL RECOGNITION

Qwest Communications Company, LLC, d/b/a CenturyLink QCC ("QCC"), pursuant to Rule 28-106.213, Florida Administrative Code, and Sections 90. 201, 90.202 and 90.203, Florida Statutes, hereby submits this Addendum to its Motion for Official Recognition filed in this docket on October 18, 2012 and requests that the Commission take official recognition of the following:

Federal Communications Commission Orders

1. *In the Matter of Offshore Telephone Company v. South Central Bell Telephone Company and AT&T,* Memorandum Opinion and Order, 2 FCC Rcd 4546 (Aug. 7, 1987).

Other State Commission Decisions

2. *Qwest Communications Corporation and Qwest Interprise America, Inc. v. Pacific Bell Telephone Company dba SBC California,* D. 06-08-006, 2006 Cal. PUC LEXIS 302 (Aug. 24, 2006).

Records of the Florida Legislature

3. QCC requests official recognition of the following records of the Florida Legislature, copies of which are attached to this Addendum:

a. The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 1524, dated March 29, 2011,. prepared by the Professional Staff of the Commerce and Tourism Committee.

b. The Florida Senate Bill Analysis and Fiscal Impact Statement for CS/CS/SB 1524, dated April 11, 2011, prepared by the Professional Staff of the Budget Committee

c. House of Representatives Staff Analysis for CS/CS/HB 1231, dated 4/15/2011 prepared by staff of the House of Representatives.

d. Final Bill Analysis for CS/CS/HB 1231, prepared by staff of the House of Representatives.

4. In accordance with Section 90.201, F.S., the Commission must take notice of, among other things, the "public statutory law" of the Florida Legislature. QCC understands that to encompass the Florida Statutes as they currently exist as well as the statutes as they may have existed during the time period that is relevant to QCC's Complaint, specifically including the current and past provisions of ch. 364. F.S.

RESPECTFULLY SUBMITTED on this 19th day of October, 2012.

/s/ Susan S. Masterton
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ATTORNEYS FOR QWEST COMMUNICATIONS
COMPANY, LLC D/B/A CENTURYLINK QCC

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: CS/CS/SB 1524

INTRODUCER: Commerce and Tourism Committee, Communications, Energy, and Public Utilities Committee, and Senator Simmons

SUBJECT: Telecommunications

DATE: March 29, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Hrdlicka	Cooper	CM	**Fav/CS**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

Speaking broadly, the effect of the bill is to:

- Complete retail deregulation of wireline telecommunication services by repealing the statutes that:
  - require price regulation;
  - require companies to provide a flat-rate pricing option for basic local telecommunications service;
  - prohibit charging any price other than that in the scheduled rate tariff; and
  - authorize the Public Service Commission to engage in specified consumer protection activities.
- Maintain the role of the Public Service Commission in resolving wholesale disputes between service providers.

The bill substantially amends the following sections of the Florida Statutes: 364.01, 364.011, 364.012, 364.0135, 364.02, 364.04, 364.10, 364.16, 364.163, 364.183, 364.33, 364.335, 364.3375, 364.385, 364.386, 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5).

It also repeals the following sections of the Florida Statutes: 364.025, 364.0251, 364.0252, 364.051, 364.052, 364.057, 364.058, 364.059, 364.06, 364.063, 364.07, 364.08, 364.15, 364.161, 364.162, 364.185, 364.19, 364.27, 364.337, 364.3376, 364.3381, 364.3382, 364.339, 364.345, 364.37, 364.501, 364.503, 364.506, 364.507, 364.508, 364.515, 364.516, 364.601, 364.602, 364.603, and 364.604.

II. Present Situation:

Chapter 364, F.S., provides for regulation of wireline telecommunications companies. Deregulation of the industry began in Florida in 1995. At that time, wireline voice communication services were only being offered by the incumbent local exchange companies. New providers could enter the market by three methods: a purchase and resale of a portion of an incumbent's systems and services; a lease of some of these systems; or construction of their own systems. With deregulation, various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each incumbent, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

Still, little competition developed until improvements in technology allowed the transmission of different types of communications services (voice, video, and data) on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only one form of communication service, either voice, video (cable), or data (internet). With this convergence, additional statutory changes were necessary, notably further deregulation of wireline voice communication and changes to its rate structure, the creation of a state system for obtaining a franchise for video services to replace local franchises, and the deletion or repeal of provisions that became obsolete or unnecessary.

III. Effect of Proposed Changes:

Speaking broadly, the effect of the bill is to:
- Complete retail deregulation of wireline telecommunication services by repealing the statutes that: require price regulation; require companies to provide a flat-rate pricing option for basic local telecommunications service; prohibit charging any price other than that in the scheduled rate tariff; and authorize the Public Service Commission (PSC) to engage in specified consumer protection activities.
- Maintain the role of the PSC in resolving wholesale disputes between service providers.

Section 1 names the act the "Regulatory Reform Act."

Section 2 amends s. 364.01, F.S., to delete language directing the PSC to exercise its exclusive jurisdiction to:
- Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

- Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.
- Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.
- Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
- Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.
- Eliminate any rules or regulations which will delay or impair the transition to competition.
- Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
- Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
- Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 3 amends s. 364.011, F.S., which provides exclusions from PSC jurisdiction. The bill adds to the list of exempt services both basic services and nonbasic services, including comparable services offered by any telecommunications company. Basic service is voice-grade, single-line, flat-rate residential local exchange service that provides 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 includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.[1] Nonbasic service is any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement, or a network access service. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.[2]

Section 4 amends s. 364.012, F.S., to change the term local exchange carrier to local exchange telecommunications company, presumably to distinguish telecommunications companies from other voice service providers.

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[1] s. 364.02(1), F.S.
[2] s. 364.02(10), F.S.

Section 5 amends s. 364.0135, F.S., to create a definition for the term "sustainable adoption" of broadband services, meaning the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

Section 6 amends s. 364.02, F.S., on definitions to:

- delete from the list of services included in the definition of "basic local telecommunications service" the providing an alphabetical directory listing;
- delete the definitions of the term "monopoly service";
- delete the existing definition of the term "VoIP" and replace it with a detailed definition of a system that enables real-time, two-way voice communications using Internet Protocol, using a broadband connection, and permitting users generally to place and receive calls on the public switched telephone network; and
- exclude from the definition of "telecommunications company" an operator services provider.

Section 7 repeals s. 364.025, F.S., which provides for universal service, 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." To provide this level of service, each local exchange telecommunications company[3] was required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory until January 1, 2009. This "carrier-of-last-resort" obligation has now expired by the terms of the statute.

Section 8 repeals s. 364.0251, F.S., which requires, as a part of deregulation, that by January 1, 1996, all companies providing local exchange telecommunications services provide information on competition to their customers in the form of a bill insert.

Section 9 repeals s. 364.0252, F.S., which requires the PSC to inform consumers of their rights as customers of competitive telecommunications services and to assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. The PSC is authorized to require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers, including informing consumers concerning the availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

Section 10 amends s. 364.04, F.S., on rate schedules. The current statute requires every telecommunications company to publish its rates and tolls through electronic or physical means. The bill retains this requirement and adds that the PSC has no jurisdiction over the content, form, or format of the schedule. The bill also provides that the section does not apply to rates, terms, and conditions established pursuant to federal law on interconnections. Finally, it provides that

[3] The term "local exchange telecommunications company" is defined to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995. s. 364.02(8), F.S. Basically, this means all wireline telephone companies certificated, or authorized to act in this state, prior to deregulation.

chapter 364 does not prohibit a telecommunications company from: contracting for different rates; offering services not included in the published schedule; or meeting competitive offerings.

Section 11 repeals s. 364.051, F.S., which provides for price regulation. The current statute provides that all local exchange telecommunications companies are subject to this price regulation, notwithstanding any other provisions of the chapter.

Basic Service

The statute requires a flat-rate pricing option for basic local telecommunications service. A company may, with 30 days' notice, adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent, upon specified conditions being met. These conditions are: 1) if it is determined that the level of competition justifies the elimination of price caps in an exchange served by a company with less than 3 million basic local telecommunications service access lines in service, or 2) at the end of 5 years for any company. If any company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature for that elimination.

In addition to this method for increasing prices, any company that believes circumstances have changed substantially enough to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase. The commission may grant the petition only after a compelling showing of changed circumstances.

Nonbasic service

Each company may set or change the rate for each of its nonbasic services on 1 day's notice. The price increase for any nonbasic service category cannot not exceed 6 percent within a 12-month period until there is another entity providing local telecommunications service in that exchange area; at that time, the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period, and the rate is presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, cannot be increased by more than the amount allowed for basic service.

The statute also provides the commission with continuing regulatory oversight of nonbasic services for purposes of preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.

Section 12 repeals s. 364.052, F.S., which provides for regulation of small local exchange telecommunications companies, which is defined as a local exchange telecommunications company certificated by the commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on that date.

The statute requires the commission to adopt streamlined procedures for regulating these companies that minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters. The commission can establish only those procedures that are cost-justified and are in the public interest so that universal service may be promoted.

These companies remained under rate of return regulation; however, the statute provides that a company may, at any time after January 1, 1996, elect to be subject to the price regulation statute discussed above, s. 364.051, F.S. (also repealed by the bill).

Any competitive local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. However, if a small local exchange telecommunications company elects to be subject to price regulation, or if it provides cable television programming services, a certificated competitive local exchange company may provide services within the territory of the electing company.

Section 13 repeals s. 364.057, F.S., which allows the commission to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.

Section 14 repeals s. 364.058, F.S., which authorizes the commission to conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction, upon petition or its own motion. The section also requires the commission to implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues.

Section 15 repeals s. 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.

Section 16 repeals s. 364.06, F.S., which provides that when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.

Section 17 repeals s. 364.063, F.S., which requires that the commission put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. The PSC must also, within that 20-day period, mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.

Section 18 repeals s. 364.07, F.S., which requires every telecommunications company to file with the commission a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. The statute also authorizes the PSC to review, and disapprove, contracts for joint provision of intrastate interexchange service.

Section 19 repeals s. 364.08, F.S., which makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time.

Section 20 amends s. 364.10, F.S., to delete an existing prohibition against undue advantage or preference. It also deletes an existing prohibition against increasing the residential basic local telecommunications service rate, as authorized by s. 364.164, F.S, of any local exchange telecommunications company customer receiving Lifeline benefits until: the local exchange telecommunications company reaches parity as defined in s. 364.164(5), F.S., until the customer no longer qualifies for the Lifeline benefits, or unless otherwise determined by the commission upon petition by a local exchange telecommunications company. Section 364.164, F.S., was repealed in 2007.

Section 21 repeals s. 364.15, F.S., which authorizes the PSC to order that repairs, improvements, changes, additions, or extensions be made in the manner to be specified in the order when it finds that these repairs or improvements to, or changes in, any telecommunications facility ought reasonably to be made, or that any additions or extensions should reasonably be made to any telecommunications facility, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services.

Section 22 amends s. 364.16, F.S., on connection of lines and number portability.

Current law

The statute currently authorizes the PSC to require line connections and transfer of telecommunications service when it finds that such connections between any two or more local exchange telecommunications companies can reasonably be made and efficient service obtained and that such connections are necessary.

Each competitive local exchange telecommunications company must provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the PSC to determine the prices or terms. Each local exchange telecommunications company must provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162.

The statute also requires that temporary means of achieving telephone number portability be established no later than January 1, 1996. Each local exchange service provider must make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards.

Proposed changes

The bill preserves the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

It deletes all other provisions on access, except to poles, and replaces them with the following. Upon request, the PSC is required to arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections. The PSC has the authority to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, local interconnection, unbundling, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation. However, this section does not confer jurisdiction on the commission for matters that are exempt from commission jurisdiction under ss. 364.011 and 364.013, F.S. Additionally, it specifically provides for competitive local exchange telecommunications companies to interconnect with local exchange telecommunications companies.

The bill prohibits a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for the terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If any telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

The PSC is directed to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service which must: be consistent with the Telecommunications Act of 1996; provide for specific verification methodologies; provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge; allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules; provide remedies for violations of the rules; and allow for the imposition of other penalties available under this chapter. The commission must resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission must determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies which must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission is required to make its determination within 120 days after a petition is filed or a motion is made. The commission must adopt rules to administer these requirements.

Section 23 repeals s. 364.161, F.S., which requires each local exchange telecommunications company, upon request, to unbundle all of its network elements, the network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities, and sell those elements for resale to the extent technically and economically feasible. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 24 repeals s. 364.162, F.S., which allows a competitive local exchange telecommunications company 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 25 amends s. 364.163, F.S., to make conforming changes.

Section 26 amends s. 364.183, F.S., to delete existing PSC authority to have access to certain types of records of a local exchange telecommunications company's affiliated companies, including its parent company, and to require a telecommunications company to file records, reports or other data and to retain such information for a designated period of time.

Section 27 repeals s. 364.185, F.S., which authorizes the PSC to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.

Section 28 repeals s. 364.19, F.S., which authorizes the PSC to regulate the terms of telecommunications service contracts between telecommunications companies and their patrons through use of reasonable rules.

Section 29 repeals s. 364.27, F.S., which requires the PSC to investigate all interstate rates, fares, and charges for or in relation to the transmission of messages or conversations where any act relating to the transmission of messages or conversations takes place within this state and when it appears to violate The Communications Act of 1934.

Section 30 amends s. 364.33, F.S., on certificates of necessity. Currently, except for a transfer of a certificate of necessity from one person to another or to the parent or affiliate of a certificated person as provided in this section, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior PSC approval. A certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an affiliate, and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate without prior approval of the commission by giving 60 days' written notice of the transfer or change of control to the commission and affected customers.

The bill changes this to prohibit any person from providing telecommunications services to the public without a certificate of necessity or a certificate of authority. It also prohibits the PSC from issuing any new certificates after July 1, 2011, but provides that existing certificates remain valid. A certificate may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

Section 31 amends s. 364.335, F.S., on application for a certificate of necessity. Current law requires each applicant for a certificate to:

- Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.
- File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.
- File the application fee required by the commission in an amount not to exceed $500.
- Submit an affidavit that the applicant has given proper notice of its application.

If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the commission may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

The bill deletes all of the current language about the information an applicant is to provide the commission and replaces it with:

- The applicant's official name and, if different, any name under which the applicant will do business.
- The street address of the principal place of business of the applicant.
- The federal employer identification number or the Department of State's document number.
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed.
- Information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

It requires that the commission grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

The bill also deletes all current provisions on hearings.

Section 32 repeals s. 364.337, F.S., which provides for certification of a competitive local exchange telecommunications company prior to January 1, 1996. It also requires that a competitive local exchange telecommunications company provide a flat-rate pricing option for basic local telecommunications services and that the service include access to operator services, "911" services, and relay services for the hearing impaired.

Section 33 amends s. 364.3375, F.S, to delete existing a provision allowing a pay telephone provider to charge a rate equivalent to the local coin rate of the local exchange telecommunications company and a provision prohibiting a pay telephone provider from obtaining services from an operator service provider unless the operator service provider has obtained a certificate of public convenience and necessity.

Section 34 repeals s. 364.3376, F.S., which provides for operator services. It prohibits providing operator services without first obtaining a certificate of public convenience and necessity. All intrastate operator service providers are subject to the jurisdiction of the PSC, must render services pursuant to price schedules, and must meet prescribed requirements.

Section 35 repeals s. 364.3381, F.S., which prohibits cross-subsidization, the selling of nonbasic telecommunications service at below cost by use of subsidization from rates paid by customers of basic services.

Section 36 repeals s. 364.3382, F.S., which requires a local exchange telecommunications company to advise each residential customer of the least-cost service available to a residential customer when the customer initially requests service and to annually advise each residential customer of the price of each service option selected by that customer.

Section 37 repeals s. 364.339, F.S., which provides the PSC with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

Section 38 repeals s. 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time. It also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the commission that the proposed sale, assignment, or transfer is in the public interest and the approval of the commission.

Section 39 repeals s. 364.37, F.S., which authorizes the PSC to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.

Section 40 amends s. 364.385, F.S., to delete all references to the effects of the original deregulation act on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.

Section 41 amends s. 364.386, F.S., to make conforming changes.

Section 42 repeals s. 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.

Section 43 repeals s. 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General.

Section 44-48 repeal ss. 364.506-.516, F.S.

Section 364.506, F.S., titles these sections, which make up Part II of chapter 364, the Education Facilities Infrastructure Improvement Act.

Section 364.507, F.S, provides legislative findings and intent.

Section 364.508, F.S., provides definitions.

Section 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997.

Section 364.516, F.S., provides for penalties.

Sections 49-52 repeal ss. 364.601-.604, F.S.

Section 364.601, F.S., titles these sections, which make up Part III of Chapter 364, the Telecommunications Consumer Protection Act.

Section 364.602, F.S., provides definitions.

Section 364.603, F.S., requires the PSC to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service.

Section 364.604, F.S., establishes requirements for the content of a customer's bill; provides that a customer is not liable for any charges for telecommunications or information services that the customer did not order or that were not provided; requires every billing party to provide a free blocking option to a customer to block 900 or 976 telephone calls; and prohibits a billing party from disconnecting a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

Sections 53-60 amend ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

Section 61 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Wireline telecommunication customers will no longer be protected by PSC economic regulation, but may benefit from greater competition among intermodal service providers.

They also will no longer have a statutory right to a flat-rate pricing option for basic local telecommunications service and may be forced to choose a more expensive option, more extensive option, or one that is both.

C. Government Sector Impact:

Section 364.336, F.S., provides for telecommunications regulatory assessment fees (RAF). Each telecommunications company licensed or operating under chapter 364 must pay to the PSC every 6 months a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The commission is required to establish and assess a minimum fee in an amount up to $1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and must, to the extent practicable, be related to the cost of regulating that type of company. Given that it will no longer be engaged in economic regulation of the retail wireline telecommunications industry or in related consumer protection, the PSC will have to reassess these RAF fees. Given the remaining level of authority, the appropriate amount for RAF fees is uncertain; however, absent sufficient fees, a source for funding the wholesale dispute resolution duties is uncertain.

Any other fiscal impacts on the PSC are unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 29, 2011:
The CS makes several technical changes, including:
- Adding specificity to the exclusion of nonbasic service from PSC jurisdiction to include "comparable services";
- Removing a reference to "pole attachment rates" as an example of a barrier to entry;
- Removing a proposed repeal to s. 364.015, F.S., which authorizes the PSC to obtain an injunction to enforce its rules and orders;
- Adding a provision to state that a competitive local exchange company can interconnect with another local company to transmit and route voice traffic between both companies regardless of the technology used and directs the PSC to give the competitive local exchange company all substantive and procedural rights available under the law; and
- Restoring language that was inadvertently deleted from the paragraph, which addressed employee personal information that is considered to be "proprietary confidential business information" and exempt from public records.

CS by Communications, Energy, and Public Utilities on March 21, 2011:
The committee substitute: retains PSC authority to recover travel costs; retains definitions relating to operator services; and retains the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

B. Amendments:

None.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Committee

BILL: CS/CS/SB 1524

INTRODUCER: Commerce and Tourism Committee; Communications, Energy, and Public Utilities Committee; and Senator Simmons

SUBJECT: Telecommunications

DATE: April 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Fav/CS**
2.	Hrdlicka	Cooper	CM	**Fav/CS**
3.	Pigott	Meyer, C.	BC	**Favorable**
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS........................ [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

This bill provides for the retail deregulation of wireline telecommunication services by repealing the statutes that:

- Require price regulation.
- Require companies to provide a flat-rate pricing option for basic local telecommunications service.
- Prohibit charging any price other than that in the scheduled rate tariff.
- Authorize the Public Service Commission (commission) to engage in specified consumer protection activities.
- Maintain the role of the commission in resolving wholesale disputes between service providers.

The bill substantially amends the following sections of the Florida Statutes: 364.01, 364.011, 364.012, 364.0135, 364.02, 364.04, 364.10, 364.16, 364.163, 364.183, 364.33, 364.335, 364.3375, 364.385, 364.386, 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5).

The bill repeals the following sections of the Florida Statutes: 364.025, 364.0251, 364.0252, 364.051, 364.052, 364.057, 364.058, 364.059, 364.06, 364.063, 364.07, 364.08, 364.15, 364.161, 364.162, 364.185, 364.19, 364.27, 364.337, 364.3376, 364.3381, 364.3382, 364.339, 364.345, 364.37, 364.501, 364.503, 364.506, 364.507, 364.508, 364.515, 364.516, 364.601, 364.602, 364.603, and 364.604.

II. Present Situation:

Chapter 364, F.S., provides for regulation of wireline telecommunications companies.

Local Exchange Telecommunications Service

Section 364.02, F.S., defines "basic local telecommunications service," or basic service, as voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual-tone multi-frequency 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,[1] the term includes any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995. "Nonbasic service" is defined as any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement, or a network access service. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.

Universal Service

Section 364.025, F.S., provides for universal service, 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." To provide this level of service, each local exchange telecommunications company was required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory until January 1, 2009. This "carrier-of-last-resort" obligation has now expired by the terms of the statute.

Price Regulation of Local Exchange Telecommunications Companies

Section 364.051, F.S., provides for price regulation of local exchange telecommunications companies.

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[1] Section 364.02(8), F.S., defines the term "local exchange telecommunications company" to mean any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995. Basically, this means all wireline telephone companies certificated, or authorized to act in this state, prior to deregulation.

Basic Service

The statute requires a flat-rate pricing option for basic local telecommunications service. A company may, with 30 days' notice, adjust its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent, upon specified conditions being met. These conditions are: 1) if it is determined that the level of competition justifies the elimination of price caps in an exchange served by a company with less than 3 million basic local telecommunications service access lines in service, or 2) at the end of 5 years for any company. If any company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation, the company may petition the Legislature for that elimination.

In addition to this method for increasing prices, any company that believes circumstances have changed substantially enough to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase. The commission may grant the petition only after a compelling showing of changed circumstances.

Nonbasic service

Each company may set or change the rate for each of its nonbasic services on one day's notice. The price increase for any nonbasic service category cannot not exceed 6 percent within a 12-month period until there is another entity providing local telecommunications service in that exchange area; at that time, the price for any nonbasic service category may be increased in an amount not to exceed 10 percent within a 12-month period, and the rate is presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, cannot be increased by more than the amount allowed for basic service.

The statute also provides the commission with continuing regulatory oversight of nonbasic services for purposes of preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service must cover the direct costs of providing the service.

Small Local Exchange Telecommunications Companies

Section 364.052, F.S., provides for regulation of small local exchange telecommunications companies, defined as a local exchange telecommunications company certified by the commission prior to July 1, 1995, which had fewer than 100,000 access lines in service on that date. The statute requires the commission to adopt streamlined procedures for regulating these companies that minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports, and other matters. The commission is authorized to establish only those procedures that are cost-justified and are in the public interest, so that universal service may be promoted.

These companies remain under rate of return regulation. However, the statute provides that a company may, at any time after January 1, 1996, elect to be subject to the price regulation provided in s. 364.051, F.S.

Any competitive local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. However, if a small local exchange telecommunications company elects to be subject to price regulation, or if it provides cable television programming services, a certificated competitive local exchange company may provide services within the territory of the electing company.

Connection of Lines and Number Portability

Section 364.16, F.S., relating to connection of lines and number portability, authorizes the commission to require line connections and transfer of telecommunications service when it finds that such connections between any two or more local exchange telecommunications companies can reasonably be made and efficient service obtained and that such connections are necessary.

Each competitive local exchange telecommunications company must provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the commission to determine the prices or terms. Each local exchange telecommunications company must provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162, F.S.

The statute also requires that temporary means of achieving telephone number portability be established no later than January 1, 1996. Each local exchange service provider must make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards.

Certificate of Necessity

Section 364.33, F.S., relating to certificates of necessity, provides that, with certain exceptions, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior commission approval. Section 364.335, F.S., relating to application for a certificate of necessity, requires each applicant for a certificate to do the following.

- Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.

- File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.
- File the application fee required by the commission in an amount not to exceed $500.
- Submit an affidavit that the applicant has given proper notice of its application.

If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the commission may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

Deregulation

Deregulation of the wireline telecommunications industry began in Florida in 1995. At that time, wireline voice communication services were only being offered by the incumbent local exchange companies. New providers could enter the market by three methods: a purchase and resale of a portion of an incumbent's systems and services; a lease of some of these systems; or construction of their own systems. With deregulation, various statutory protections were enacted for consumers and new market entrants, including requirements for a universal service fund, the carrier-of-last-resort obligation of each incumbent, and a rate structure that encourages competition while protecting all parties. As the market developed, changes were made to these and other statutes to provide further encouragement for competition and to continue or expand protections.

In spite of these changes, little competition developed until improvements in technology allowed the transmission of different types of communications services (voice, video, and data) on one delivery system. As these technologies converged, service providers began to offer bundled services, providing all three types of communications services to a customer on one network, with one contract and one price. This became the standard industry practice for providers that had traditionally provided only one form of communication service, either voice, video (cable), or data (Internet). With this convergence, additional statutory changes became necessary, notably further deregulation of wireline voice communication and changes to its rate structure, the creation of a state system for obtaining a franchise for video services to replace local franchises, and the deletion or repeal of provisions that became obsolete or unnecessary.

III. Effect of Proposed Changes:

Section 1 names the act the "Regulatory Reform Act."

Section 2 amends s. 364.01, F.S., to delete language directing the Public Service Commission to exercise its exclusive jurisdiction to:

- Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.
- Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

- Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.
- Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
- Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.
- Eliminate any rules or regulations which will delay or impair the transition to competition.
- Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
- Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
- Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 3 amends s. 364.011, F.S., which provides exclusions for certain telecommunications services from commission jurisdiction. The bill adds to the list of exempt services both basic services and nonbasic services, including comparable services offered by any telecommunications company.

Section 4 amends s. 364.012, F.S., to change the term local exchange carrier to local exchange telecommunications company, presumably to distinguish telecommunications companies from other voice service providers.

Section 5 amends s. 364.0135, F.S., to create a definition for the term "sustainable adoption" of broadband services, meaning the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy.

Section 6 amends s. 364.02, F.S., providing definitions, to:

- Delete from the list of services included in the definition of "basic local telecommunications service" the providing an alphabetical directory listing.
- Delete the definitions of the term "monopoly service."
- Delete the existing definition of the term "VoIP" and replace it with a detailed definition of a system that enables real-time, two-way voice communications using Internet Protocol, using a broadband connection, and permitting users generally to place and receive calls on the public switched telephone network.
- Exclude from the definition of "telecommunications company" an operator services provider.

Section 7 repeals s. 364.025, F.S., relating to universal service.

Section 8 repeals s. 364.0251, F.S., which requires, as a part of deregulation, that by January 1, 1996, all companies providing local exchange telecommunications services provide information on competition to their customers in the form of a bill insert.

Section 9 repeals s. 364.0252, F.S., which requires the commission to inform consumers of their rights as customers of competitive telecommunications services and to assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company. This statute also authorizes the commission to require all telecommunications companies providing local or long distance telecommunications services to develop and provide information to customers, including informing consumers of availability of the Lifeline and Link-Up Programs for low-income households and alerting consumers to how they can avoid having their service changed or unauthorized charges added to their telephone bills.

Section 10 amends s. 364.04, F.S., which requires every telecommunications company to publish its rates and tolls through electronic or physical means. The bill specifies that the commission has no jurisdiction over the content, form, or format of the schedule. The bill also provides that the section does not apply to rates, terms, and conditions established pursuant to federal law on interconnections. Finally, it provides that ch. 364, F.S., does not prohibit a telecommunications company from: contracting for different rates; offering services not included in the published schedule; or meeting competitive offerings.

Section 11 repeals s. 364.051, F.S., which provides for price regulation of local exchange telecommunications companies.

Section 12 repeals s. 364.052, F.S., which provides for regulation of small local exchange telecommunications companies.

Section 13 repeals s. 364.057, F.S., which allows the commission to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.

Section 14 repeals s. 364.058, F.S., which authorizes the commission to conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction, upon petition or its own motion. This statute also requires the commission to implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies.

Section 15 repeals s. 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.

Section 16 repeals s. 364.06, F.S., which provides that, when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and that, if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.

Section 17 repeals s. 364.063, F.S., which requires that the commission put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. This statutes also requires the commission to mail, within that 20-day period, a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.

Section 18 repeals s. 364.07, F.S., which requires every telecommunications company to file with the commission a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. The statute also authorizes the commission to review and to disapprove contracts for joint provision of intrastate interexchange service.

Section 19 repeals s. 364.08, F.S., which makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time.

Section 20 amends s. 364.10, F.S., to delete an existing prohibition against undue advantage or preference. It also deletes an existing prohibition against increasing the residential basic local telecommunications service rate, as authorized by s. 364.164, F.S, of any local exchange telecommunications company customer receiving Lifeline benefits, under certain conditions. Section 364.164, F.S., was repealed in 2007.

Section 21 repeals s. 364.15, F.S., which authorizes the commission to order that repairs, improvements, changes, additions, or extensions be made in any telecommunications facility when it finds that these changes ought reasonably to be made, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services.

Section 22 amends s. 364.16, F.S., relating to connection of lines and number portability. The bill preserves the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms. It deletes all other existing provisions on access, except to poles, and replaces them with the following provisions.

- Upon request, the commission is required to arbitrate and enforce interconnection agreements pursuant to 47 U.S.C. ss. 251 and 252 and the Federal Communications Commission's orders and regulations implementing those sections.
- The commission is authorized to resolve disputes among carriers concerning violations of this chapter and under the authority conferred by federal law to resolve such disputes, including, but not limited to, federal law addressing resale of services, local interconnection, unbundling, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation.
- However, this section does not confer jurisdiction on the commission for matters that are exempt from commission jurisdiction under ss. 364.011 and 364.013, F.S.

Additionally, the bill specifically provides for competitive local exchange telecommunications companies to interconnect with local exchange telecommunications companies.

The bill prohibits a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply through a local interconnection arrangement without paying the appropriate charges for the terminating access service. Any party having a substantial interest may petition the commission for an investigation of any suspected violation of this subsection. If any telecommunications company knowingly violates this subsection, the commission has jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

The commission is directed to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service which must:

- Be consistent with the Telecommunications Act of 1996.
- Provide for specific verification methodologies.
- Provide for the notification to subscribers of the ability to freeze the subscriber's choice of carriers at no charge.
- Allow for a subscriber's change to be considered valid if verification was performed consistent with commission rules.
- Provide remedies for violations of the rules.
- Allow for the imposition of other penalties available under this chapter.

The commission must resolve on an expedited basis any complaints of anticompetitive behavior concerning a local preferred carrier freeze. The telecommunications company that is asserting the existence of a local preferred carrier freeze has the burden of proving through competent evidence that the subscriber did in fact request the freeze.

Upon petition, the commission may conduct a limited or expedited proceeding to consider and act upon any matter under this section. The commission must determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. The commission must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies which must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The commission may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the commission is required to make its determination within 120 days after a petition is filed or a motion is made. The commission must adopt rules to administer these requirements.

Section 23 repeals s. 364.161, F.S., which requires each local exchange telecommunications company, upon request, to unbundle all of its network elements, the network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities, and sell those elements for resale to the extent technically and economically feasible. Under the bill, this will now be addressed in s. 364.16, F.S.

Section 24 repeals s. 364.162, F.S., which allows a competitive local exchange telecommunications company 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. Under the bill, these provisions are addressed in s. 364.16, F.S.

Section 25 amends s. 364.163, F.S., to make conforming changes.

Section 26 amends s. 364.183, F.S., to delete existing commission authority to have access to certain types of records of a local exchange telecommunications company's affiliated companies, including its parent company, and to require a telecommunications company to file records, reports, or other data and to retain such information for a designated period of time.

Section 27 repeals s. 364.185, F.S., which authorizes the commission to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.

Section 28 repeals s. 364.19, F.S., which authorizes the commission to regulate the terms of telecommunications service contracts between telecommunications companies and their patrons through use of reasonable rules.

Section 29 repeals s. 364.27, F.S., which requires the commission to investigate all interstate rates, fares, and charges for or in relation to the transmission of messages or conversations where any act relating to the transmission of messages or conversations takes place within this state and when it appears to violate The Communications Act of 1934.

Section 30 amends s. 364.33, F.S., relating to certificates of necessity, to prohibit any person from providing telecommunications services to the public without a certificate of necessity or a certificate of authority. The bill prohibits the commission from issuing any new certificates after July 1, 2011, but provides that existing certificates remain valid. A certificate may be transferred to the holder's parent company or an affiliate or another person holding a certificate of necessity or authority, its parent company, or an affiliate without prior approval of the commission by giving written notice of the transfer to the commission within 60 days after the completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

Section 31 amends s. 364.335, F.S., relating to application for a certificate of necessity, to replace provisions relating to the information an applicant is required to provide the commission with the following information requirements.

- The applicant's official name and, if different, any name under which the applicant will do business.
- The street address of the principal place of business of the applicant.
- The federal employer identification number or the Department of State's document number.
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed.

- Information demonstrating the applicant's managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The bill requires that the commission grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law.

The bill also deletes all current provisions relating to hearings.

Section 32 repeals s. 364.337, F.S., which provides for certification of a competitive local exchange telecommunications company prior to January 1, 1996. The statute also requires that a competitive local exchange telecommunications company provide a flat-rate pricing option for basic local telecommunications services and that the service include access to operator services, "911" services, and relay services for the hearing impaired.

Section 33 amends s. 364.3375, F.S., to delete a provision allowing a pay telephone provider to charge a rate equivalent to the local coin rate of the local exchange telecommunications company and a provision prohibiting a pay telephone provider from obtaining services from an operator service provider unless the operator service provider has obtained a certificate of public convenience and necessity.

Section 34 repeals s. 364.3376, F.S., which provides for operator services. The statute prohibits providing operator services without first obtaining a certificate of public convenience and necessity. The statute provides that all intrastate operator service providers are subject to the jurisdiction of the commission, must render services pursuant to price schedules, and must meet prescribed requirements.

Section 35 repeals s. 364.3381, F.S., which prohibits cross-subsidization, which is the sale of nonbasic telecommunications service below cost by use of subsidization from rates paid by customers of basic services.

Section 36 repeals s. 364.3382, F.S., which requires a local exchange telecommunications company to advise each residential customer of the least-cost service available to a residential customer when the customer initially requests service and to annually advise each residential customer of the price of each service option selected by that customer.

Section 37 repeals s. 364.339, F.S., which provides the commission with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.

Section 38 repeals s. 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time.

The statute also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the commission that the proposed sale, assignment, or transfer is in the public interest and the approval of the commission.

Section 39 repeals s. 364.37, F.S., which authorizes the commission to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.

Section 40 amends s. 364.385, F.S., to delete all references to the effects of the original deregulation act on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.

Section 41 amends s. 364.386, F.S., to make conforming changes.

Section 42 repeals s. 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.

Section 43 repeals s. 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the commission and the Department of Legal Affairs of the Office of the Attorney General.

Sections 44 through 48 repeals ss. 364.506 through 364.516, F.S. Section 364.506, F.S., titles these sections, which make up Part II of chapter 364, the Education Facilities Infrastructure Improvement Act. Section 364.507, F.S, provides legislative findings and intent. Section 364.508, F.S., provides definitions. Section 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997. Section 364.516, F.S., provides for penalties.

Sections 49 through 52 repeals ss. 364.601 through 364.604, F.S. Section 364.601, F.S., titles these sections, which make up Part III of Chapter 364, the Telecommunications Consumer Protection Act. Section 364.602, F.S., provides definitions. Section 364.603, F.S., requires the commission to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service. Section 364.604, F.S., establishes requirements for the content of a customer's bill; provides that a customer is not liable for any charges for telecommunications or information services that the customer did not order or that were not provided; requires every billing party to provide a free blocking option to a customer to block 900 or 976 telephone calls; and prohibits a billing party from disconnecting a customer's Lifeline local service if the charges, taxes, and fees applicable to basic local exchange telecommunications service are paid.

Sections 53 through 60 amends ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

Section 61 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Wireline telecommunication customers will no longer be protected by the Public Service Commission economic regulation, but may benefit from greater competition among intermodal service providers. Customers also will no longer have a statutory right to a flat-rate pricing option for basic local telecommunications service.

C. Government Sector Impact:

Section 364.336, F.S., provides for telecommunications regulatory assessment fees (RAF). Every six months, each telecommunications company licensed or operating under ch. 364, F.S., must pay to the Public Service Commission a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The commission is required to establish and assess a minimum fee in an amount up to $1,000. The minimum amount may vary depending on the type of service provided by the telecommunications company, and must, to the extent practicable, be related to the cost of regulating that type of company.

This bill provides that the commission will no longer be engaged in economic regulation of the retail wireline telecommunications industry or in related consumer protection. As a result, the commission will have to reassess the amount of RAF collected and, consequently, a staffing reduction as follows.

	FY 11-12		FY 12-13		FY 13-14	
	FTE	**TF Savings**	**FTE**	**TF Savings**	**FTE**	**TF Savings**
	(11.0)		(13.0)		(13.0)	
Recurring		($703,659)		($807,378)		($807,378)
Nonrecurring		($42,296)		($7,796)		$0
Total	**(11.0)**	**($745,955)**	**(13.0)**	**($815,174)**	**(13.0)**	**($807,378)**

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 29, 2011:
The CS makes several technical changes, including:

- Adding specificity to the exclusion of nonbasic service from PSC jurisdiction to include "comparable services";
- Removing a reference to "pole attachment rates" as an example of a barrier to entry;
- Removing a proposed repeal to s. 364.015, F.S., which authorizes the PSC to obtain an injunction to enforce its rules and orders;
- Adding a provision to state that a competitive local exchange company can interconnect with another local company to transmit and route voice traffic between both companies regardless of the technology used and directs the PSC to give the competitive local exchange company all substantive and procedural rights available under the law; and
- Restoring language that was inadvertently deleted from the paragraph, which addressed employee personal information that is considered to be "proprietary confidential business information" and exempt from public records.

CS by Communications, Energy, and Public Utilities on March 21, 2011:
The committee substitute: retains PSC authority to recover travel costs; retains definitions relating to operator services; and retains the current requirement that all providers have access to local telephone numbering resources and assignments on equitable terms.

B. Amendments:

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1231 Telecommunications
SPONSOR(S): Energy & Utilities Subcommittee, Horner and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Whittier	Collins
2) Appropriations Committee	23 Y, 0 N	Dykes	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida's regulatory framework for local telephone service, or "local exchange service," is codified in Chapter 364, F.S. This chapter establishes the Public Service Commission's ("PSC") jurisdiction to regulate telecommunication services.

In 1995, the Legislature opened local telephone markets to competition on January 1, 1996. The 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, making it subject to price caps on basic service and nonbasic service. This law retained the PSC's jurisdiction over service quality issues and granted it new authority to address consumer issues in the transition to a sufficiently competitive market. After changes to the law in 2009, local exchange companies remain subject to the price regulation scheme adopted in 1995, with slight modifications to the caps, though only basic service is now subject to service quality oversight by the PSC. According to the PSC, approximately four percent of local service customers are considered basic service customers now.

The bill substantially repeals and amends several sections of Chapter 364, F.S., to do the following:

- Remove the PSC's regulatory oversight of basic local telecommunications service and nonbasic service, including service quality and price regulation.
- Remove the PSC's regulatory oversight of intrastate interexchange services, operator services, and shared tenant services.
- Remove the PSC's authority to provide certain consumer education materials and to adopt rules concerning certain billing practices.
- Promote the adoption of broadband services without the need for government subsidies.
- Consolidate existing provisions related to the PSC's oversight of carrier-to-carrier relationships for purposes of ensuring fair and effective competition among telecommunications service providers.
- Replace the requirement that telecommunications service providers obtain from the PSC a certificate of necessity with a requirement that such providers obtain from the PSC a certificate of authority to provide service and establish the criteria for obtaining such a certificate.
- Remove rate caps on pay telephone services.
- Delete obsolete language and make conforming changes.

The bill will allow for a reduction in expenditures for the PSC as a result of removing several components of the PSC's regulatory oversight of telecommunications services. Specifically, the PSC estimates elimination of 11 FTE positions in FY 2011-2012 and an additional 2 FTE positions in FY 2012-2013, with a corresponding budget reduction of $745,955 in FY 2011-2012, and $807,378 thereafter. (HB 5001, House proposed General Appropriations Act for Fiscal Year 2011-2012, includes a reduction of 27 FTE positions and $2 million for administrative efficiencies that are unrelated to this bill.) In addition, a reduction of regulatory assessment fees to fund PSC regulation of telecommunications companies and services may be necessary to reflect reduced regulatory costs. The bill will reduce regulatory requirements imposed upon local exchange companies and competitive local exchange companies, which will likely lead to reduced regulatory compliance costs and a more competitively neutral regulatory scheme.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulatory History and Current Law

Florida's regulatory framework for local telephone service, or "local exchange service," is codified in Chapter 364, F.S. This chapter establishes the Public Service Commission's ("PSC") jurisdiction to regulate telecommunication services.

In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996.[1] Specifically, the Legislature found that:

> . . . the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications services, encourage technological innovation, and encourage investment in telecommunications infrastructure.

The law sought to establish a competitive market by granting competitive local exchange companies ("CLECs") access to the existing telecommunications network. This was accomplished by requiring: (1) interconnection between incumbent and competitive local exchange service providers; and (2) unbundling and resale of incumbents' network features, functions, and capabilities on terms negotiated by the parties or, absent agreement, by the PSC.[2] The law did not impose any form of rate regulation on these new market entrants but did grant the PSC authority to set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.[3] The law required incumbent local exchange companies ("ILECs") to serve as carriers-of-last-resort.[4]

In addition, the 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, effective the later of January 1, 1996, or when a competitive company received a certificate to provide local exchange service in the incumbent's service territory.[5] Under price regulation, the law capped an ILEC's rates for basic local telecommunications service (defined as flat-rate, single-line residential service) for three to five years depending on the number of lines served by the company. Upon expiration of the applicable price cap period, the law permitted the ILEC to adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent.[6] The law provided greater pricing flexibility for non-basic services (defined as anything other than basic services) by allowing price increases of up to 6% in a 12-month period until a competitive provider began serving in an exchange area, at which time the price for any nonbasic service could be increased up to 20% in a 12-month period. The law contained provisions to prevent anti-competitive pricing[7] and maintained the PSC's authority to oversee service quality.

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[1] Ch. 95-403, L.O.F.
[2] Sections 14-16, ch. 95-403, L.O.F.
[3] *Id.* In addition, the law provided the PSC oversight with respect to these services to ensure "the fair treatment of all telecommunications providers in the telecommunications marketplace."
[4] Section 7, ch. 95-403, L.O.F.
[5] Sections 9-10, ch. 95-403, L.O.F.
[6] Section 9, ch. 95-403, L.O.F.
[7] *Id.*

Since that time, the Legislature has amended Chapter 364, F.S., on several occasions, most notably:

- In 2003, the Tele-Competition Innovation and Infrastructure Act,[8] among other things, provided a mechanism to remove the support for ILECs' basic local service rates provided by intrastate access fees.[9] The law permitted an ILEC, upon PSC approval, to raise basic service rates and offset the increased revenues with a reduction in revenues attributed to reduced intrastate access fees.[10] This arrangement often is referred to as "rate rebalancing." Pursuant to this law, the PSC granted rate rebalancing requests made by BellSouth (now AT&T), Verizon, and Embarq, allowing for stepped changes – increases in basic service rates and decreases in intrastate access fees – over a period of three to four years.[11]

- In 2007, after some of the stepped rate changes authorized by the PSC had become effective, the Legislature halted any further changes. As part of the Consumer Choice Act of 2007, the Legislature terminated the rate rebalancing scheme created in the 2003 law and held rates for basic service and network access service at the levels in effect immediately prior to July 1, 2007.[12] The law permitted changes to these basic service rates pursuant to the price regulation scheme adopted in 1995; that is, an ILEC could adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent.

- In 2009, the Consumer Choice and Protection Act[13] made several changes to the regulatory framework for telecommunications services. Among other things, the law changed the definitions of basic service and nonbasic service and removed the PSC's jurisdiction to address service quality issues for nonbasic service. Basic service was redefined to include only flat-rate, single-line residential service. Business class service and multi-line residential service were no longer identified as basic services. Nonbasic service was redefined to include basic service combined with any nonbasic service or unregulated service. Thus, under the law, customers who received flat-rate residential service in combination with features like call waiting or caller ID, or other services like broadband or video, were no longer considered to be basic service customers.

  The 2009 law reduced the allowed price increases for nonbasic services to a maximum of 10% in a 12-month period, for exchange areas with at least one competitive provider. Further, the law extended the existing basic service price cap to those services reclassified by the law from basic to nonbasic service. The law did not modify the price caps for basic service.

Today, incumbent local exchange carriers remain subject to the price regulation scheme adopted in 1995, as modified in 2009. Only basic service is subject to service quality oversight by the PSC. As of January 1, 2009, ILECs are no longer required to serve as carriers-of-last-resort under Florida law.[14] Although this state requirement has expired, ILECs remain subject to a similar requirement under federal law.[15]

Competitive local exchange carriers remain subject to minimal PSC regulation. A CLEC offering basic local services must provide an option for flat-rate pricing for those services. Basic local service

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[8] Ch. 2003-32, L.O.F.

[9] Section 15, ch. 2003-32, L.O.F. Intrastate access fees (referred to as "intrastate switched network access rates" in the law) are the rates charged by a local exchange company for other telecommunications companies to originate and terminate intrastate traffic on its network. *Intrastate* access fees have historically been higher than similar fees charged for originating and terminating *interstate* traffic and have supported rates for basic service.

[10] *Id.*

[11] PSC Order No. PSC-03-1469-FOF-TL, issued December 24, 2003, upheld in Crist v. Jaber, 908 So.2d 426 (Fla. 2005). The PSC denied Alltel Florida, Inc.'s (now Windstream) petition pursuant to this statute. PSC Order No. PSC-06-0036-FOF-TL, issued January 10, 2006.

[12] Sections 10, 12, and 13, ch. 2007-29, L.O.F.

[13] Ch. 2009- 226, L.O.F.

[14] Section 364.025, F.S. (2010)

[15] Florida Public Service Commission presentation to the Florida House of Representatives Committee on Utilities & Telecommunications, December 13, 2007, "Telecommunications Carrier-Of-Last-Resort Obligation."

provided by a CLEC must include access to operator services, '911' services, and relay services for the hearing impaired.[16] In addition, the PSC may set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.[17]

In addition to local exchange service, Chapter 364, F.S., establishes regulatory oversight for other telecommunications services, including operator services, shared tenant services, and pay telephone services. Further, the law provides the PSC jurisdiction to address wholesale issues between telecommunications service providers, oversee implementation of the Lifeline program in Florida, review certain mergers and acquisitions involving ILECs, certificate certain service providers wishing to do business in Florida, adopt rules to prevent the unauthorized change of a customer's telecommunications service, and address numbering issues and billing complaints.

Florida does not regulate the rates and service quality associated with certain types of telecommunications services. In 2005, the Legislature explicitly exempted intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-Internet-protocol ("VoIP") services, and wireless telecommunications services from PSC oversight, to the extent such oversight is not authorized by federal law.[18] In 2009, the Legislature re-emphasized these exemptions.

Status of Competition

On August 1, 2008, the PSC issued its Report on the Status of Competition in the Telecommunications Industry as of December 31, 2007 ("2008 Competition Report"). In the 2008 Competition Report, the PSC found that while service provided by ILECs was still the leading telecommunications choice for Florida households, cable telephony, wireless, and VoIP were gaining mainstream acceptance as alternatives.[19]

On August 1, 2010, the PSC issued its Report on the Status of Competition in the Telecommunications Industry as of December 31, 2009 ("2010 Competition Report"). In the 2010 Competition Report, the PSC found:

> Florida's communications market continues to exhibit competitive characteristics. Estimates of wireless-only households have increased from prior years, and in the most recent reporting period, Florida cable companies expanded the number of VoIP customers served. These facts, coupled with continued residential access line losses by ILECs, suggest an active market for voice communications services in many areas of Florida.[20]

In the 2010 Competition Report, the PSC notes that since 2001, traditional wireline access lines for both ILECs and CLECs have declined 38 percent, from 12 million in 2001 to 7.5 million in December 2009. Residential access line losses account for 4.3 million of this total, and business access line losses comprise the remainder. The report attributes the decline in residential access lines primarily to the increase of wireless-only households and VoIP services in lieu of traditional wireline service. The report also attributes a portion of the decline to recent economic conditions. Further, the report suggests that bundled pricing packages and the influence of services such as broadband, video, and mobility on the selection of a voice service provider are contributing to the decline.[21]

According to the PSC's competition report, at least one CLEC reported providing wireline residential service in 232 of Florida's 277 exchange areas, and at least one CLEC reported providing wireline

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[16] Section 364.337 (2), F.S. (2010)
[17] Section 364.337(5), F.S. (2010)
[18] Section 11, ch. 2005-132, L.O.F.
[19] *2008 Competition Report*, p. 9.
[20] *2010 Competition Report*, p. 5.
[21] *2010 Competition Report*, p. 23.

business service in 255 of the 277 exchanges.[22] Because wireless and VoIP service providers are not subject to PSC jurisdiction, the PSC is unable to compel providers of these services to submit market data for purposes of its report. Thus, wireless and/or VoIP providers may be offering residential or business service in those exchanges where no CLEC reported providing wireline service.

Proposed Changes

The bill substantially repeals and amends several sections of Chapter 364, F.S., to do the following:

- Remove the PSC's regulatory oversight of basic local telecommunications service and nonbasic service, including service quality and price regulation.
- Remove the PSC's regulatory oversight of intrastate interexchange services, operator services, and shared tenant services.
- Remove the PSC's authority to provide certain consumer education materials and to adopt rules concerning certain billing practices.
- Promote the adoption of broadband services without the need for government subsidies.
- Consolidate existing provisions related to the PSC's oversight of carrier-to-carrier relationships for purposes of ensuring fair and effective competition among telecommunications service providers.
- Replace the requirement that telecommunications service providers obtain from the PSC a certificate of necessity with a requirement that such providers obtain from the PSC a certificate of authority to provide service and establish the criteria for obtaining such a certificate.
- Remove rate caps on pay telephone services.
- Delete obsolete language and make conforming changes.

Each of these items is discussed in greater detail below.

Legislative Intent

Present Situation

In the 1995 law opening local exchange service markets to competition, the Legislature indicated its intent to transition from monopoly provision of such service in Florida to a competitive market, stating:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce.[23]

In that law, the Legislature went on to state its intent with respect to the PSC's exercise of jurisdiction over telecommunications matters. As modified by that law, the current statement of intent reads:

[22] *2010 Competition Report*, Appendix C.
[23] Ch. 2003-32, L.O.F.

The commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

(c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

(d) Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.

(e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.

(f) Eliminate any rules or regulations which will delay or impair the transition to competition.

(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.[24]

This intent language is reflected in s. 364.01, F.S.

<u>Effect of Proposed Changes</u>

The bill removes most of the legislative intent language identified above, but retains and amends one sentence from the existing language. The amended statement now reads:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and has provided customers with freedom of choice, encouraged the introduction of new telecommunications service, encouraged technological innovation, and encouraged investment in telecommunications infrastructure.

The bill's changes to the legislative intent language in s. 364.01, F.S., suggest that the transition to a sufficiently competitive market has been achieved. The changes also appear to reflect the bill's removal of the PSC's remaining regulatory oversight of local exchange service. Further, the current language in s. 364.01, F.S., that expresses intent to ensure that all providers of telecommunications services are treated fairly, is transferred to a separate section of law that expresses the PSC's authority to certain disputes among telecommunications service providers.

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[24] *Id.*

Definitions

Present Situation

Section 364.02, F.S., provides definitions applicable to Chapter 364. Among other terms, this section defines the following:

- "Basic local telecommunications service" is defined in subsection (1). Pursuant to that definition, basic service must include, among other things, an alphabetical directory listing (i.e., a phone book).
- "Monopoly service" is defined in subsection (9)
- "VoIP" is defined in subsection (14) as "voice-over-Internet protocol as that term is defined in federal law."

Effect of Proposed Changes

The bill amends the definition of basic local telecommunications service by removing the provision of an alphabetical directory listing as an element of basic service. Thus, a company could chose to continue offering directory listings, to offer directory listings for a separate charge, or not to offer directory listings at all. Listings could also be obtained online.

The bill removes the definition of the term "monopoly service." Because the bill strikes all instances of the term "monopoly service," a definition for the term appears unnecessary.

The bill amends the definition of "VoIP" by deleting the general reference to federal law and replacing it with a more detailed definition that closely tracks federal law.

Retail Services Subject to PSC Regulation

Present Situation

Local Exchange Service Provided by an ILEC

Local exchange service provided by an ILEC is divided into two categories: basic and nonbasic. "Basic local telecommunications service" (or "basic service") is defined in s. 364.02(1), F.S., as voice-grade, single-line, flat-rate residential local exchange service.[25] "Nonbasic service" is defined in s. 364.02(10), F.S., as any telecommunications service provided by a local exchange telecommunications company other than basic telecommunications service, a local interconnection service as described in section 364.16, F.S., or a network access service as described in section 364.163, F.S. In addition, any combination of basic service along with a nonbasic service or unregulated service is nonbasic service.[26]

Pricing for basic service is governed by s. 364.051(2), F.S., which provides that the price for basic service may only be increased once in any 12 month period by an amount not to exceed the change in inflation[27] less one percent. In addition, a flat-rate pricing option for basic local service is required and mandatory measured service (e.g., per minute pricing) for basic local service may not be imposed.

Pricing and terms for nonbasic service are governed by s. 364.051(5), F.S. Prices for nonbasic services are limited to increases of 6 percent in any 12 month period when no competitor is present and 10 percent in any 12 month period if there is a competitor providing local telephone service. The

[25]Under s. 366.02(1), F.S., basic local telecommunications service must provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing (i.e., touchtone), and access to emergency services such as "911," all locally available interexchange (i.e., long distance) companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

[26] Section 366.02(9), F.S.

[27] Inflation for the purpose of the section is measured by change in the Gross Domestic Product Fixed 1987 Weights Price Index.

price for any service that was treated as basic service before July 1, 2009, may not be increased by more than the amount allowed for basic service. A flat-rate pricing option for multi-line business local exchange service is required and mandatory measured service for multi-line business local exchange service may not be imposed.

Under s. 364.15, F.S., the PSC, upon complaint or on its own motion, may direct a local service provider to make repairs, improvements, changes, additions, or extensions to its facilities used in the provision of basic service. The PSC does not have authority to direct local service providers to take such actions with respect to facilities used in the provision of nonbasic service. Because many of the same facilities are used to provide both basic and nonbasic service, it appears that the PSC's authority in this regard extends to most of the facilities of local service providers.

Special Provisions for Small ILECs

Current law provides special procedures for the regulation of small local exchange companies in s. 364.052, F.S. Small local exchange companies are defined as ILECs that had fewer than 100,000 access lines in service on July 1, 1995.[28] Pursuant to this law, the PSC has adopted less stringent reporting requirements for small ILECs.

Local Exchange Service Provided by a CLEC

Competitive local exchange companies are subject to minimal PSC regulation pursuant to s. 364.337, F.S. A CLEC offering basic local services must provide an option for flat-rate pricing for those services. Basic local service provided by a CLEC must include access to operator services, '911' services, and relay services for the hearing impaired. In addition, the PSC may set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.

Intrastate Interexchange Service

Section 364.02(14), F.S., defines the term "Telecommunications company." This subsection exempts intrastate interexchange telecommunications companies[29] from the definition but specifies other provisions of law that apply to such companies, including:

- Section 364.04, F.S., requiring the publication of rate schedules.
- Section 364.10(3)(a) and (d), F.S., requiring the publication of schedules providing each company's current Lifeline benefits and exemptions.
- Section 364.163, F.S., prohibiting such companies from instituting any intrastate connection fee or any similarly named fee.
- Section 364.285, F.S., authorizing the PSC to impose certain penalties upon entities subject to its jurisdiction.
- Section 364.501, F.S., requiring each telecommunications company with underground fiber optic facilities to operate, or be a member of, a one-call cable location notification system.
- Section 364.603, F.S., related to the unauthorized changing of a subscriber's telecommunications service.
- Section 364.604, F.S., providing requirements with respect to billing practices.

This subsection also requires that intrastate interexchange telecommunications companies provide the PSC with current contact information as deemed necessary by the PSC.

Pay Telephone Service

Section 364.3375, F.S., provides that a person, except for an ILEC, wishing to provide pay telephone service must first obtain a certificate of public convenience and necessity from the PSC. In addition,

[28] Section 364.052(1), F.S.

[29] "Intrastate interexchange telecommunications companies" are defined in s. 364.02(7), F.S., as entities that provide intrastate interexchange telecommunications service, known more simply as intrastate long distance service.

this section limits a pay telephone service provider's maximum rate for local coin calls to a rate equivalent to the local coin rate of the ILEC in that serving that area. Further, this section provides that a pay telephone provider shall not obtain services from an operator service provider unless such operator service provider has obtained a certificate of public convenience and necessity from the PSC.

Operator Service

Section 364.3376, F.S., provides that a person, except for an ILEC, wishing to provide operator service must first obtain a certificate of public convenience and necessity from the PSC. All intrastate operator service providers are subject to the PSC's jurisdiction and must render operator services pursuant to schedules published or filed as required by s. 364.04. Current law imposes specific operational and billing requirements upon operator service providers and grants the PSC authority to adopt requirements for the provision of operator services. Further, the law prohibits an operator service provider from blocking or preventing an end user's access to the end user's operator service provider of choice. To help enforce this prohibition, the law requires the PSC to conduct random, no-notice compliance investigations of operator services providers and call aggregators operating within the state.

Shared Tenant Service

Section 364.339, F.S., provides the PSC with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company. Shared tenant service arrangements can occur, for example, in large commercial buildings or complexes. Other shared tenant facilities include airports and some local government arrangements. A person wishing to provide shared tenant service must first obtain a certificate of public convenience and necessity from the PSC.

Services Exempt from PSC Jurisdiction

Under s. 364.011, F.S., the following services are exempt from oversight by the PSC, except to the extent specified in Chapter 364, F.S., or specifically authorized by federal law: intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-Internet-protocol ("VoIP") services, and wireless telecommunications services.

<u>Effect of Proposed Changes</u>

The bill amends s. 364.011, F.S., to add the following services to the list of services exempt from PSC jurisdiction:

- Basic service
- Nonbasic service
- Operator service

Further, the bill repeals ss. 364.051, 364.052, and 364.337, F.S., eliminating the price regulation caps for basic and nonbasic service offered by any ILEC and eliminating the requirements that a flat-rate pricing option for basic service be offered by any local exchange company and a flat-rate pricing option for multi-line business service be offered by an ILEC. Simply put, the bill removes all regulation of prices for local exchange service.

The bill also repeals s. 364.15, F.S., thus eliminating the PSC's authority to compel repairs for purposes of securing adequate service or facilities for basic service. As a result, the PSC would not regulate the service quality for any local exchange company.

The bill does not require that a local exchange company provide basic service.

The bill amends s. 364.02(14), F.S., to remove the requirement that intrastate interexchange telecommunications companies be subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.501, 364.603, and 364.604, F.S. In addition, the bill eliminates the requirement that these companies provide the PSC with current contact information as deemed necessary by the PSC. The effect of these changes is to remove the PSC's limited jurisdiction over these companies.

The bill amends s. 364.3375, F.S., to replace the requirement that pay telephone service providers obtain a certificate of public convenience and necessity with a requirement that such service providers obtain a certificate of authority, which is discussed in greater detail below. Further, the bill eliminates the rate cap applicable to pay telephone service providers.

The bill repeals s. 364.3376, F.S., thus eliminating PSC oversight of operator services and removing any statutory operational and billing requirements from those providers.

The bill repeals s. 364.339, F.S., thus eliminating the PSC's jurisdiction over shared tenant services.

The bill removes the exception to PSC jurisdiction over exempt services in instances where such jurisdiction is specifically authorized by federal law. According to the PSC, it has relied upon this exception as the basis for its authority to designate wireless carriers in Florida as "eligible telecommunications carriers," or "ETCs," for purposes of receiving support from the federal universal service fund (USF). The USF supports Lifeline and Link-up programs for low-income customers and expansion of service into high-cost areas. The PSC asserts that without state authority to designate wireless ETCs in Florida, that authority would default to the Federal Communications Commission.

Universal Service

<u>Present Situation</u>

Section 364.025, F.S., establishes the concept of universal service in Florida law, stating:

> For the purposes of this section, the term "universal service" means 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. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives.

The law required ILECs to serve as "carriers-of-last-resort" during this transition period, furnishing basic service within a reasonable time period to any person requesting the service within the company's service territory. This requirement expired on January 1, 2009. The law required the PSC to adopt an interim universal service mechanism for a transitional period not to exceed January 1, 2009, and required that the Legislature to establish a permanent mechanism by that time. To date, no permanent state universal service mechanism has been adopted.

Federal law identifies the goals of universal service as: promoting the availability of quality services at just, reasonable and affordable rates for all consumers; increasing nationwide access to advanced telecommunications services; advancing the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas; increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities; and providing equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs.[30] The Federal Communications Commission (FCC) established four programs to meet these goals: the High-Cost program; the Low-Income program; the Schools and Libraries program; and the Rural Health Care program. These programs are funded by the federal Universal Service Fund. Telecommunications providers must contribute to the fund through an assessment on their interstate and international revenues.

Effect of Proposed Changes

The bill repeals s. 364.025, F.S. Most of the section appears to be obsolete, as the carrier-of-last-resort obligation has expired and the date for establishing a permanent universal service mechanism has passed.

It is not clear whether a state definition of universal service is necessary. Currently, there is no explicit authority granted to the PSC to create an intrastate universal service fund. Further, a statutory obligation to provide telecommunications service in the state does not exist, but, according to the PSC, it is unclear whether there are areas in the state where only a single provider is available or where no providers are available. In addition, the federal Universal Service Fund is currently under review by the FCC for potential reform. In its review, the FCC has sought comments on whether priority for future Universal Service Fund support could be based on whether states have intrastate universal service funds.

Certification of Service Providers

Present Situation

Section 364.33, F.S., provides that, in general, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior PSC approval. This approval comes through a certificate of necessity granted by the PSC. However, a certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an affiliate, and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate without prior approval of the commission.

Section 364.335, F.S., establishes the information required from each applicant for a certificate of necessity, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for. Further, an applicant must file with the PSC schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service. An application fee may required by the PSC in an amount not to exceed $500. The applicant must also submit an affidavit that it has given proper notice of its application. If the PSC grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the PSC may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

Section 364.337, F.S., requires that CLECs and intrastate interexchange telecommunications service providers obtain a certificate of authority from the PSC. The PSC will grant a certificate of authority upon a showing that an applicant has sufficient technical, financial, and managerial capability to provide the service in the geographic area it proposes to serve. Section 364.3375, F.S., requires that pay telephone service providers obtain a certificate of public convenience and necessity from the PSC.

[30] http://www.fcc.gov/wcb/tapd/universal_service/

Effect of Proposed Changes

The bill amends s. 364.33, F.S., to provide that either a certificate of necessity or a certificate of authority is required to provide telecommunications service to the public in Florida.[31] The bill provides that the PSC shall cease to provide certificates of necessity after July 1, 2011, though existing certificates of necessity would remain valid. The bill provides that the transfer of a certificate of necessity or authority from the certificate holder's parent company or affiliate or to another person holding a certificate, or its parent company or affiliate, may occur without prior approval of the PSC, provided that notice of the transfer is provided to the PSC within 60 days after completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

The bill also amends s. 364.335, F.S., to establish the process and requirement for obtaining a certificate of authority to provide telecommunications service to the public in Florida. The bill deletes the application requirements for a certificate of necessity. The bill requires that an applicant for a certificate of authority provide certain identifying information, including: the applicant's official name and, if different, any name under which the applicant will do business; the street address of the principal place of business of the applicant; the federal employer identification number or the Department of State's document number; and the name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed. The bill requires that the applicant submit information demonstrating its managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The bill provides that the PSC shall grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law, and may terminate its certificate by providing notice to the PSC.

The bill repeals s. 364.337, F.S. CLECs would still be required to obtain a certificate of authority from the PSC, subject to the amended requirements of s. 364.335, F.S., as discussed above.[32] Likewise, pay telephone service providers would be required to obtain certificates of authority subject to these amended requirements.

Competitive Pricing / Consumer Education and Assistance

Present Situation

Section 364.04, F.S., requires every telecommunications company to publish its rates and tolls through electronic or physical means. Section 364.08, F.S., makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time. Section 364.10(1), F.S., prohibits a telecommunications

[31] The term "service" is defined in s. 364.02, F.S., which states that the term is to be construed in the broadest sense, but expressly excludes broadband and VoIP service. Absent any defining or limiting language to identify the types of companies or services that do or do not require certification (other than broadband and VoIP service), the bill appears to require certification for all telecommunications services provided in Florida. It is not clear, though, that this result is intended, as it would require certification for services that are not currently certificated.

[32] Since at least 2005, when intrastate interexchange telecommunications services were made exempt from PSC oversight, regulatory practice with respect to intrastate interexchange telecommunications companies has been to require registration, rather than certification, with the PSC. As noted in the previous footnote, absent any defining or limiting language to identify the types of companies or services that do or do not require certification (other than broadband and VoIP service), the bill appears to require certification for all telecommunications services provided in Florida, which would include intrastate interexchange telecommunications companies.

company from making or giving any undue or unreasonable preference or advantage to any person or locality, or to subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

In addition, chapter 364, F.S., contains several provisions related to consumer education, assistance, and protection, in particular the following:

- Section 364.0251, F.S., was established in 1995 to facilitate the transition from a regulated monopoly system to a competitive market for local exchange service through consumer education.
- Section 364.0252, F.S., was established in 1998 to require the PSC to "expand its current consumer information program to inform consumers of their rights as customers of competitive telecommunications services and . . . assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company." In addition, this section emphasizes informing consumers concerning the availability of the Lifeline and Link-Up Programs.
- Section 364.3382, F.S., requires local exchange companies to disclose to residential customers the lowest cost option when service is requested and to advise customers annually of the price of each service option they have selected.
- Section 364.603, F.S., grants the PSC authority to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service ("slamming") and to resolve complaints of anticompetitive behavior concerning a local preferred carrier freeze.
- Section 364.604, F.S., directs companies to provide detailed bills and a toll-free number that must be answered by a customer service representative or a voice response unit; provides that a customer is not liable for any charges for services that the customer did not order ("cramming"); and grants the PSC authority to develop implementing rules.
- Section 364.19, F.S., grants the PSC authority to regulate the terms of contracts between a telecommunications company and its customers.
- Section 364.27, F.S., authorizes the PSC to investigate interstate rates, fares, charges, classifications, or rules of practice of message transfer that take place in the state and that the PSC views as excessive or discriminatory, and to provide its findings to the FCC.

<u>Effect of Proposed Changes</u>

The bill amends s. 364.04, F.S., to expressly provide that the PSC has no jurisdiction over the content or form of published rate schedules and to allow telecommunications companies to enter into contracts establishing rates and charges that differ from its published schedules or to offer service not included in its schedules or to meet competitive offerings with respect to specific geographic markets and customers. The bill repeals ss. 364.10(1), F.S. and s. 364.08, F.S. The effect of these changes, taken together, is to reflect the bill's repeal of any rate regulation over local exchange service and to allow telecommunications companies the flexibility to offer competitively priced services.

The bill repeals s. 364.0251, F.S. Because this provision was established in 1995 to educate consumers concerning the transition from a regulated monopoly system to a competitive market for local exchange service, this provision may be obsolete.

The bill also repeals s. 364.0252, F.S., thus removing the PSC's authority to assist customers in resolving billing and service disputes with those companies and services it regulates. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats disputes involving companies and services currently regulated by the PSC on par with disputes involving unregulated companies and services. Under Section 364.01(3), F.S., communications activities not regulated by the PSC remain subject to Florida's generally applicable business regulation and deceptive trade practices and consumer protection laws. Customers who can no longer resolve complaints through the PSC may be able to use the non-binding dispute resolution process generally available through the Department of Agriculture and Consumer Services. Unresolved complaints may require judicial action to resolve.

In addition, by repealing s. 364.0252, F.S., the bill appears to remove the PSC's authority to continue its efforts to inform customers of the availability of Lifeline and Link-Up programs, which include the publication and distribution of printed materials and the organization and conduct of outreach events. Under Section 364.10(3)(g)1., F.S., the PSC, in a cooperative effort with other state agencies, the Office of Public Counsel, and telecommunications companies that provide Lifeline services, can assist in developing procedures to promote participation in these programs.

The bill repeals s. 364.3382, F.S., thus eliminating the requirement that local exchange companies disclose to residential customers the lowest cost option when service is requested and advise customers annually of the price of each service option they have selected. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats customer relations for companies and services currently regulated by the PSC on par with customer relations for unregulated companies and services.

The bill repeals s. 364.603, F.S., but creates an identical provision in s. 364.16, F.S. Thus, the PSC will continue to have authority to adopt rules and resolve complaints regarding the unauthorized changing of a subscriber's telecommunications service, referred to as "slamming".

The bill repeals s. 364.604, F.S., thus eliminating the requirement that billing parties provide detailed bills and a toll-free number that must be answered by a customer service representative or a voice response unit and removing the provision stating that a customer is not liable for any charges for services that the customer did not order, ("cramming"). The bill also removes the requirement in this section that billing parties provide a free blocking option to a customer to block 900 or 976 telephone calls.

The bill repeals s. 364.19, F.S., thus removing the PSC's authority to regulate the terms of contracts between a telecommunications company and its customers. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats customer relations for companies and services currently regulated by the PSC on par with customer relations for unregulated companies and services. The PSC anticipates that service contracts may take on greater importance in the wireline market, similar to their prevalence in the wireless market.

The bill repeals s. 364.27, F.S., thus removing the PSC's authority to investigate interstate rates, fares, charges, classifications, or rules of practice of message transfer that take place in the state and that the PSC views as excessive or discriminatory. The PSC indicates that it has not conducted investigations of interstate rates in recent memory.

Competitive Market Oversight

Present Situation

Chapter 364, F.S., directs the PSC to promote competition. In addition, it grants the PSC authority to resolve disputes among telecommunications service providers for various purposes. As noted above, s. 364.01(4)(g), F.S., states the Legislature's intent that the PSC ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

Section 364.16, F.S., gives the PSC authority to ensure that, where possible, a telecommunications company provides local interconnection and access to any other telecommunications company. Section 364.161, F.S., requires each ILEC to unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider for resale to the extent technically and economically feasible. Section 364.162, F.S., provides procedures for the negotiation and regulatory review of agreements for interconnection and resale. Section 364.163, F.S., states that a local exchange telecommunications company must file tariffs for any network access services it offers.

Section 364.058, F.S., authorizes the PSC to conduct limited proceedings to consider any matter within its jurisdiction and requires that the PSC implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies.

Section 364.3381, F.S., prohibits an ILEC from subsidizing nonbasic service with revenues received for basic service. It also gives the PSC continuing oversight over cross-subsidization, predatory pricing, and other similar anticompetitive behaviors.

Section 364.386, F.S., directs the PSC to collect data from local exchange service providers for use in preparing an annual report to the Legislature on the status of competition in the telecommunications industry and a detailed exposition of the following:

- The overall impact of local exchange telecommunications competition on the continued availability of universal service.
- The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.
- The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.
- The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.
- What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand.
- Any other information and recommendations which may be in the public interest.

Effect of Proposed Changes

The bill rewrites section 364.16, F.S., relating to local interconnection, unbundling, and resale. The bill repeals ss. 364.161, 364.162, and 364.3381, F.S., and consolidates the relevant portions of those sections. The bill describes the PSC's authority to oversee carrier-to-carrier relationships and to prevent anticompetitive behavior, including, but not limited to, the resale of services, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation. It also authorizes the PSC to arbitrate and enforce interconnection agreements in accordance with 47 U.S.C. ss. 251 and 252 and applicable orders and rules of the FCC.

In addition, the bill incorporates into s. 364.16, F.S., provisions substantially similar to those in existing s. 364.603, F.S. (related to the unauthorized changing of a customer's telecommunications service) and s. 364.058, F.S. (related to limited and expedited proceedings for disputes between companies). Accordingly, the bill repeals ss. 364.058 and 364.603, F.S.

The bill amends s. 364.386, F.S., to modify what the PSC is required to address in its annual competition report to the Legislature. First, the bill removes the requirement that the PSC address the overall impact of local exchange telecommunications competition on the availability of universal service. Second, the bill requires the PSC to address the overall impact of competition, rather than price regulation, on the maintenance of reasonably affordable and reliable high-quality telecommunications services. Third, the bill replaces the requirement that the PSC provide suggestions for what other services should be included in the definition of basic local service with a requirement to include a listing and short description of any carrier disputes.

In addition, the bill limits the quantitative portion of the PSC's data requests for purposes of the annual competition report prepared pursuant to s. 364.386, F.S. Specifically, the bill limits the data that must be provided to the PSC to a copy of the FCC Form 477 that was filed with the FCC which contains Florida specific data. The language requires the Commission to accept similar information if the Form 477 is not available and deletes the requirement for companies to file data by exchange. According to the PSC, the lack of exchange level access line data will restrict its ability to identify competitive impacts on a regional or locality basis and also the ability of the report to identify areas of the state that may not have competitive options.

Miscellaneous Provisions

Present Situation

A number of provisions in Chapter 364, F.S., relate generally to the PSC's regulatory oversight of telecommunications service. These provisions, excluding those already discussed in this analysis, include the following:

- Section 364.015, F.S., which authorizes the PSC to petition the circuit court for an injunction against violations of PSC orders or rules in connection with the impairment of a telecommunications company's operations or service.
- Section 364.016, F.S., which authorizes the PSC to assess a telecommunications company for reasonable travel costs associated with reviewing the records of the telecommunications company and its affiliates when such records are kept out of state.
- Section 364.057, F.S., which allows the PSC to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.
- Section 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.
- Section 364.06, F.S., which provides that when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.
- Section 364.063, F.S., which requires that the PSC put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. The PSC must also, within that 20-day period, mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.
- Section 364.07, F.S., which requires every telecommunications company to file with the PSC a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. This section also authorizes the PSC to review, and disapprove, contracts for joint provision of intrastate interexchange service.
- Section 364.16(4), F.S., which requires, for purposes of assuring that consumers have access to different local exchange service providers without having to give up the consumer's existing local telephone number, that all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines. This subsection also requires the establishment of temporary number portability by January 1, 1996, and permanent portability as soon as possible after development of national standards, with the PSC resolving disputes over rates, terms, and conditions for such arrangements.
- Section 364.183, F.S., which grants the PSC authority to have access to certain types of records of a local exchange telecommunications company and its affiliated companies, including its parent company, and to require a telecommunications company to file records, reports or other data and to retain such information for a designated period of time.
- Section 364.185, F.S., which authorizes the PSC to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.
- Section 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time. It also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a determination by the PSC that the proposed sale, assignment, or transfer is in the public interest and the approval of the PSC.

- Section 364.37, F.S., which authorizes the PSC to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.
- Section 364.385, F.S., which provides savings clauses related to the effects of the law that opened local service to competition in 1995 on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.
- Section 364.501, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.
- Section 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General.
- Sections 364.506 - 364.516, F.S., make up the Education Facilities Infrastructure Improvement Act. Section 364.506, F.S., titles these sections; s. 364.507, F.S, provides legislative findings and intent; s. 364.508, F.S., provides definitions; s. 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997; and s. 364.516, F.S., provides for penalties.

<u>Effect of Proposed Changes</u>

The bill repeals the following sections of Chapter 364, F.S., which are made unnecessary or obsolete by provisions of the bill that remove the PSC's existing regulatory oversight: ss. 364.057; 364.06; 364.063; 364.07; 364.185; 364.345; and 364.385(1), (2), and (3).

The bill repeals s. 364.059, F.S. This section is no longer operative and is obsolete.

The bill repeals s. 364.015, F.S., removing the PSC's ability to seek injunctive relief relating to enforcement matters.

The bill amends s. 364.016, F.S., removing the PSC's ability to assess a telecommunications company's affiliates for reasonable travel costs associated with reviewing the affiliates' records when such records are kept out of state.

The bill repeals obsolete provisions of s. 364.16(4), F.S., related to establishing temporary number portability. The bill retains the PSC's authority under this subsection to oversee numbering issues, such as area code exhaustion and number assignment in accordance with national guidelines.

The bill amends s. 364.183(1), F.S., to remove the PSC's access to affiliate or parent company records of a local exchange company. Access to such records was relevant in a rate base regulatory structure to prevent cross-subsidization. According to the PSC, such access is no longer relevant under the bill. The bill also amends this subsection to eliminate the PSC's authority to compel a carrier to submit records in a form specified by the PSC and to retain information for a designated period of time. According to the PSC, absent this authority, it would be unable to obtaining data needed to produce its annual competition report in a format that facilitates compilation. Further, the PSC asserts that it relies upon this provision in its oversight duties relating to interconnection matters and Lifeline. As an example, the PSC notes that when carriers lodge complaints or request new services of a local exchange telecommunications carrier, the PSC may require the carrier to provide periodic records or reports of various activities for a finite period.

The bill repeals s. 364.37, F.S., removing the PSC's authority to address controversies over service territories. The PSC states that it has not addressed any service territory disputes relating to telecommunications companies in recent memory. The repeal of this section appears to reflect the general transition from a regulated monopoly environment, with defined service territories, to an open, competitive market.

The bill repeals s. 364.501, F.S. The repeal of this section will likely have no effect because the Sunshine State One-Call of Florida program created under chapter 556, F.S., requires the participation of "any person who furnishes or transports materials or services by means of an underground facility."

The bill repeals s. 364.503, F.S., thus eliminating the requirement that 60-day notice be provided to the PSC and the Department of Legal Affairs for certain mergers and acquisitions between local exchange telecommunications companies and cable television companies.

The bill repeals ss. 364.506 - 364.516, F.S., which make up the Education Facilities Infrastructure Improvement Act. Under this act, an eligible facility, or a group of eligible facilities based on geographic proximity, may submit, no later than July 1, 1997, a technology-needs request to the Department of Management Services.

Broadband Adoption

Present Situation

In 2009, the Legislature created s. 364.0135, F.S., to promote the deployment and adoption of broadband Internet service throughout Florida through a coordinated statewide effort. The law authorizes the Department of Management Services to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations for mapping and deployment of broadband Internet services in the state. The American Recovery and Reinvestment Act of 2009 provided $7.2 billion for broadband mapping and deployment, and the law allows DMS to draw down these federal funds to help establish universal broadband in the state.

The law requires funds received by DMS for this purpose to be focused on expanding broadband in rural, unserved, and underserved communities through grant programs. The department is charged with conducting a needs assessment of broadband and developing maps that identify unserved areas, underserved areas, and broadband transmission speeds in the state. Under the law, priority for grants is provided to projects that:

- Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community organizations.
- Encourage investments in primarily unserved areas to provide consumers a choice of broadband service.
- Work toward establishing affordable and sustainable broadband service in the state.
- Facilitate the development of applications, programs, and services, including telework, telemedicine, and e-learning that increase the usage and demand for broadband services.

Effect of Proposed Changes

The bill amends the intent of s. 364.0135, F.S., to promoting "sustainable adoption" of broadband Internet service, which is defined in the bill as "the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy."

In establishing the priority of projects for purposes of awarding grants, the bill removes from the priority list those projects that "encourage investment in primarily unserved areas to give consumers a choice of more than one broadband Internet service provider." In its place, the bill establishes as a priority those projects that "encourage sustainable adoption of broadband in primarily unserved areas by removing barriers to entry, such as unreasonably high pole-attachment rates." It is not clear who would determine whether pole-attachment rates are unreasonably high for purposes of awarding grants or how such grants would be used to address pole-attachment rates as a barrier to entry. According to the PSC, the Federal Communications Commission is the default authority over pole attachment rates, terms, and conditions.

In addition, the bill replaces the requirement that the DMS collaborative conduct a needs assessment of broadband Internet service with a requirement that it monitor the adoption of such service.

Finally, the bill provides that any rule, contract, grant, or other activity undertaken by DMS must ensure that all entities are in compliance with applicable federal or state laws, rules, and regulations, including those applicable to private entities providing communications services for hire and the requirements of s. 350.81, F.S. (concerning communications services provided by government entities).

Conforming Changes

The bill amends ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

B. SECTION DIRECTORY:

Section 1. Creates the "Regulatory Reform Act."

Section 2. Amends s. 364.01, F.S., revising legislative intent with respect to the jurisdiction of the Florida Public Service Commission.

Section 3. Amends s. 364.011, F.S., providing that certain basic and nonbasic telecommunication services and operator services are exempt from the jurisdiction of the Public Service Commission.

Section 4. Amends s. 364.012, F.S., requiring local exchange telecommunications companies to provide unbundled access to network elements.

Section 5. Amends s. 364.0135, F.S., providing legislative intent relating to the sustainable adoption of broadband Internet service; providing a definition of "sustainable adoption" as it relates to broadband Internet services; removing obsolete legislative intent; authorizing the Department of Management Services to work collaboratively with, and to receive staffing support and other resources from, Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to encourage sustainable adoption of broadband Internet services; authorizing the department to adopt rules.

Section 6. Repeals s. 364.015, F.S., relating to injunctive relief.

Section 7. Amends s. 364.016, F.S., relating to travel costs of the commission.

Section 8. Amends s. 364.02, F.S., removing the definition for "monopoly service" and adding a definition for "VoIP."

Section 9. Repeals s. 364.025, F.S., relating to uniform telecommunications service.

Section 10. Repeals s. 364.0251, F.S., relating to a telecommunications consumer information program.

Section 11. Repeals s. 364.0252, F.S., relating to the expansion of consumer information programs.

Section 12. Amends s. 364.04, F.S., providing that the commission has no jurisdiction over the content, form, or format of rate schedules published by a telecommunications company; providing that a telecommunications company may undertake certain activities.

__Section 13.__ Repeals s. 364.051, F.S., relating to price regulation.

__Section 14.__ Repeals s. 364.052, F.S., relating to regulatory methods for small local exchange telecommunications companies.

__Section 15.__ Repeals s. 364.057, F.S., relating to experimental and transitional rates.

__Section 16.__ Repeals s. 364.058, F.S., relating to limited proceedings.

__Section 17.__ Repeals s. 364.059, F.S., relating to procedures for seeking a stay of proceedings.

__Section 18.__ Repeals s. 364.06, F.S., relating to joint rates, tolls, and contracts.

__Section 19.__ Repeals s. 364.063, F.S., relating to rate adjustment orders.

__Section 20.__ Repeals s. 364.07, F.S., relating to intrastate interexchange service contracts.

__Section 21.__ Repeals s. 364.08, F.S., relating to unlawful charges against consumers.

__Section 22.__ Amends s. 364.10, F.S., removing obsolete provisions; requiring an eligible telecommunications carrier to provide a Lifeline Assistance Plan to qualified residential subscribers.

__Section 23.__ Repeals s. 364.15, F.S., relating to repairs, improvements, and additions to telecommunication facilities.

__Section 24.__ Amends s. 364.16, F.S., relating to interconnection, unbundling, and resale of telecommunication services; requiring the commission to, upon request, arbitrate and enforce interconnection agreements; prohibiting a telecommunications company from knowingly delivering traffic for which terminating access service charges would otherwise apply; authorizing the commission to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service; removing obsolete provisions relating to local exchange telecommunications companies.

__Section 25.__ Repeals s. 364.161, F.S., relating to unbundling and resale of telecommunication services

__Section 26.__ Repeals s. 364.162, F.S., relating to negotiated prices for interconnection services.

__Section 27.__ Amends s. 364.163, F.S., conforming provisions to changes made by the act.

__Section 28.__ Amends s. 364.183, F.S., revising provisions relating to access of the commission to certain records of a telecommunications company.

__Section 29.__ Repeals s. 364.185, F.S., relating to relating to powers of the commission to investigate and inspect any premises of a telecommunications company.

__Section 30.__ Repeals s. 364.19, F.S., relating to regulation of telecommunication contracts.

__Section 31.__ Repeals s. 364.27, F.S., relating to powers and duties as to interstate rates.

__Section 32.__ Amends s. 364.33, F.S., relating to the certificate of authority; prohibiting a person from providing any telecommunications service to the public without a certificate of necessity or a certificate of authority issued by the commission; providing that, after a specified date, the commission will no longer issue certificates of necessity.

__Section 33.__ Amends s. 364.335, F.S., requiring an applicant to provide certain information when applying for a certificate of authority; describing the criteria necessary to be granted a certificate of authority; authorizing a telecommunications company to terminate a certificate of authority.

Section 34. Repeals s. 364.337, F.S., relating to competitive local exchange companies.

Section 35. Amends s. 364.3375, F.S., relating to pay telephone service providers; requiring pay telephone providers to obtain a certificate of authority from the commission.

Section 36. Repeals s. 364.3376, F.S., relating to operator services.

Section 37. Repeals s. 364.3381, F.S., relating to cross-subsidization.

Section 38. Repeals s. 364.3382, F.S., relating to cost disclosures.

Section 39. Repeals s. 364.339, F.S., relating to shared tenant services.

Section 40. Repeals s. 364.345, F.S., relating to certificates for territories served.

Section 41. Repeals s. 364.37, F.S., relating to powers of the commission relating to service territories.

Section 42. Amends s. 364.385, F.S., removing obsolete provisions relating to saving clauses.

Section 43. Amends s. 364.386, F.S., revising the content to be included in the report to be filed with the Legislature.

Section 44. Repeals s. 364.501, F.S., relating to the prevention of damages to underground telecommunication facilities.

Section 45. Repeals s. 364.503, F.S., relating to mergers or acquisitions.

Section 46. Repeals s. 364.506, F.S., relating to a short title for education facilities.

Section 47. Repeals s. 364.507, F.S., relating to legislative intent for advanced telecommunication services to eligible facilities.

Section 48. Repeals s. 364.508, F.S., relating to definitions.

Section 49. Repeals s. 364.515, F.S., relating to infrastructure investments.

Section 50. Repeals s. 364.516, F.S., relating to penalties for failing to provide advanced telecommunication services.

Section 51. Repeals s. 364.601, F.S., relating to the short title for telecommunication consumer protections.

Section 52. Repeals s. 364.602, F.S., relating to definitions.

Section 53. Repeals s. 364.603, F.S., relating to the methodology for protecting consumers for changing telecommunication providers.

Section 54. Repeals s. 364.604, F.S., relating to billing procedures to inform and protect the consumer.

Section 55. Amends s. 196.012, F.S., revising cross-references to conform to changes made by the act.

Section 56. Amends s. 199.183, F.S., revising cross-references to conform to changes made by the act.

<u>Section 57.</u> Amends s. 212.08, F.S., revising cross-references to conform to changes made by the act.

<u>Section 58.</u> Amends s. 290.007, F.S., revising cross-references to conform to changes made by the act.

<u>Section 59.</u> Amends s. 350.0605, F.S., revising cross-references to conform to changes made by the act.

<u>Section 60.</u> Amends s. 364.105, F.S., revising cross-references to conform to changes made by the act.

<u>Section 61.</u> Amends s. 364.32, F.S., revising cross-references to conform to changes made by the act.

<u>Section 62.</u> Amends s. 489.103, F.S., revising cross-references to conform to changes made by the act.

<u>Section 63.</u> Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Public Service Commission ("PSC") indicates that its regulatory assessment fees will decline by about $1.2 million due to the loss of such revenues from intrastate interexchange companies. Further, the PSC indicates that revenue from incumbent local exchange companies is projected to decline by over 13% for FY 2011-2012.

   See "Fiscal Comments" section.

2. Expenditures:

   The bill will allow for a reduction in expenditures for the PSC as a result of removing several components of the PSC's regulatory oversight of telecommunications services. Specifically, the PSC estimates elimination of 11 FTE positions in FY 2011-2012 and an additional 2 FTE positions in FY 2012-2013, with a corresponding budget reduction of $745,955 in FY 2011-2012, and $807,378 thereafter. (HB 5001, House proposed General Appropriations Act for Fiscal Year 2011-2012, includes a reduction of 27 FTE positions and $2 million for administrative efficiencies that are unrelated to this bill.)

   See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce regulatory requirements imposed upon local exchange companies and competitive local exchange companies. As a result, these companies will likely benefit from reduced regulatory compliance costs. Further, the bill should create a more competitively neutral regulatory scheme for these companies as compared to competing providers of telecommunications services, such as cable, wireless, and broadband service.

D. FISCAL COMMENTS:

Section 350.113(3), F.S., provides that each regulated company under the Public Service Commission's ("PSC") jurisdiction shall pay to the PSC a fee based upon the gross operating revenues. To the extent practicable, the fee must be related to the cost of regulating such type of regulated company. Similarly, s. 364.336, F.S., provides that each telecommunications company licensed or operating under ch. 364, F.S., shall pay a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The PSC, by rule, must assess a minimum fee in an amount up to $1,000 for telecommunications companies. The minimum amount may vary depending on the type of service provided by the telecommunications company, and shall, to the extent practicable, be related to the cost of regulating such type of company. These fees are deposited into the Florida Public Service Regulatory Trust Fund, which is used to fund the operation of the PSC in the performance of the various functions and duties required of it by law.

Currently, pursuant to Rule 25-4.0161, Florida Administrative Code, the PSC has set a regulatory assessment fee for telecommunications companies in the amount of 0.0020 of gross operating revenues derived from intrastate business (less any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers). In addition, the rule establishes minimum annual regulatory assessment fees for the various types of service providers as follows: Incumbent Local Exchange Companies – $1,000; pay telephone service provider – $100; shared tenant service provider – $100; interexchange company – $700; alternative access vendor – $600; Competitive Local Exchange Companies – $600.

Because the bill removes the PSC's regulatory authority over certain matters, a reduction of some or all of these fees may be necessary to reflect reduced regulatory costs.

According to the PSC, its current budget for telecommunications for FY 2011-2012 is approximately $6.4 million. This amount includes both direct and indirect costs associated with telecommunications as well as an allocation of fixed costs, such as rent. The PSC indicates that at the close of FY 2009-2010, approximately 52 FTEs were directly assigned to telecommunications. Using February 2011 information, the PSC indicates that approximately 50 FTEs are directly assigned to telecommunications.

If the bill is passed, the PSC expects that rulemaking will be necessary to evaluate the revenue and cost levels associated with its modified responsibilities under the statute.

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, or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 364.33, F.S., to provide that either a certificate of necessity or a certificate of authority is required to provide telecommunications service to the public in Florida. The term "service" is defined in s. 364.02, F.S., which states that the term is to be construed in the broadest sense, but expressly excludes broadband and VoIP service. Absent any defining or limiting language to identify the types of companies or services that do or do not require certification (other than broadband and VoIP service), the bill appears to require certification for all telecommunications services provided in Florida. It is not clear, though, that this result is intended, as it would require certification for services that are not currently certificated.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Energy & Utilities Subcommittee of the State Affairs Committee adopted amendments to HB 1231 that have been incorporated into the committee substitute that is the subject of this analysis. These amendments:

- Restore the authority of the PSC, under s. 364.16, F.S., to assess a telecommunications company for reasonable travel costs to examine the company's records that are kept out of state.
- Restore the definitions for "operator service" and "operator service providers" in s. 364.02, F.S.
- Restore the authority of the PSC, under s. 364.16, F.S., to oversee numbering issues, such as area code exhaustion and number assignment in accordance with national guidelines.
- Restore the existing public records exemption for employee personnel information in s. 364.183(3)(f), F.S.
- Conformed provisions to reflect the bill's removal of regulation for operator service.

FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1231

FINAL HOUSE FLOOR ACTION:
110 Y's 4 N's

SPONSOR: Reps. Horner, Williams, A., and others

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/SB 1524

SUMMARY ANALYSIS

CS/CS/HB 1231 passed the House on April 20, 2011. The bill was approved by the Governor on May 5, 2011, chapter 2011-36, Laws of Florida, and becomes effective July 1, 2011. The bill revises statutory provisions governing the regulation of telecommunications services.

Florida's regulatory framework for local telephone service, or "local exchange service," is codified in Chapter 364, F.S. This chapter establishes the Public Service Commission's ("PSC") jurisdiction to regulate telecommunications services.

In 1995, the Legislature opened local telephone markets to competition on January 1, 1996. The 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, making it subject to price caps on basic service and nonbasic service. This law retained the PSC's jurisdiction over service quality issues and granted it new authority to address consumer issues in the transition to a sufficiently competitive market. After changes to the law in 2009, local exchange companies remain subject to the price-regulation scheme adopted in 1995, with slight modifications to the caps, though only basic service is now subject to service quality oversight by the PSC. According to the PSC, approximately four percent of local service customers are considered basic service customers now.

The bill repeals and substantially amends several sections of Chapter 364, F.S., to do the following:

- Remove the PSC's regulatory oversight of basic local telecommunications service and nonbasic service, including service quality and price regulation.
- Remove the PSC's regulatory oversight of intrastate interexchange services, operator services, and shared tenant services.
- Remove the PSC's authority to provide certain consumer education materials and to adopt rules concerning certain billing practices.
- Promote the adoption of broadband services without the need for government subsidies.
- Consolidate existing provisions related to the PSC's oversight of carrier-to-carrier relationships for purposes of ensuring fair and effective competition among telecommunications service providers.
- Replace the requirement that telecommunications service providers obtain from the PSC a certificate of necessity with a requirement that such providers obtain from the PSC a certificate of authority to provide service and establish the criteria for obtaining such a certificate.
- Remove rate caps on pay telephone services.
- Delete obsolete language and make conforming changes.

The bill will allow for a reduction in expenditures for the PSC as a result of removing several components of the PSC's regulatory oversight of telecommunications services. Specifically, the PSC estimates elimination of 11 FTE positions in FY 2011-2012 and an additional 2 FTE positions in FY 2012-2013, with a corresponding budget reduction of $746,955 in FY 2011-2012, and $807,378 thereafter. The bill requires the PSC, through rulemaking, to reduce the regulatory assessment fees used to fund PSC regulation of telecommunications companies and services to reflect reduced regulatory costs. The bill will reduce regulatory requirements imposed upon local exchange companies and competitive local exchange companies, which will likely lead to reduced regulatory compliance costs and a more competitively neutral regulatory scheme.

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

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Regulatory History and Current Law

Florida's regulatory framework for local telephone service, or "local exchange service," is codified in Chapter 364, F.S. This chapter establishes the Public Service Commission's ("PSC") jurisdiction to regulate telecommunication services.

In 1995, the Legislature found that competition for the provision of local exchange service would be in the public interest and opened local telephone markets to competition on January 1, 1996.[1] Specifically, the Legislature found that:

> . . . the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications services, encourage technological innovation, and encourage investment in telecommunications infrastructure.

The law sought to establish a competitive market by granting competitive local exchange companies ("CLECs") access to the existing telecommunications network. This was accomplished by requiring: (1) interconnection between incumbent and competitive local exchange service providers; and (2) unbundling and resale of incumbents' network features, functions, and capabilities on terms negotiated by the parties or, absent agreement, by the PSC.[2] The law did not impose any form of rate regulation on these new market entrants but did grant the PSC authority to set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.[3] The law required incumbent local exchange companies ("ILECs") to serve as carriers-of-last-resort.[4]

In addition, the 1995 law allowed an incumbent local exchange company to elect "price regulation" instead of traditional rate-of-return regulation, effective the later of January 1, 1996, or when a competitive company received a certificate to provide local exchange service in the incumbent's service territory.[5] Under price regulation, the law capped an ILEC's rates for basic local telecommunications service (defined as flat-rate, single-line residential service) for three to five years depending on the number of lines served by the company. Upon expiration of the applicable price cap period, the law permitted the ILEC to adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent.[6] The law provided greater pricing flexibility for non-basic services (defined as anything other than basic services) by allowing price increases of up to 6% in a 12-month period until a competitive provider began serving in an exchange area, at which time the price for any nonbasic service

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[1] Ch. 95-403, L.O.F.
[2] Sections 14-16, ch. 95-403, L.O.F.
[3] *Id.* In addition, the law provided the PSC oversight with respect to these services to ensure "the fair treatment of all telecommunications providers in the telecommunications marketplace."
[4] Section 7, ch. 95-403, L.O.F.
[5] Sections 9-10, ch. 95-403, L.O.F.
[6] Section 9, ch. 95-403, L.O.F.

could be increased up to 20% in a 12-month period. The law contained provisions to prevent anti-competitive pricing[7] and maintained the PSC's authority to oversee service quality.

Since that time, the Legislature has amended Chapter 364, F.S., on several occasions, most notably:

- In 2003, the Tele-Competition Innovation and Infrastructure Act,[8] among other things, provided a mechanism to remove the support for ILECs' basic local service rates provided by intrastate access fees.[9] The law permitted an ILEC, upon PSC approval, to raise basic service rates and offset the increased revenues with a reduction in revenues attributed to reduced intrastate access fees.[10] This arrangement often is referred to as "rate rebalancing." Pursuant to this law, the PSC granted rate rebalancing requests made by BellSouth (now AT&T), Verizon, and Embarq, allowing for stepped changes – increases in basic service rates and decreases in intrastate access fees – over a period of three to four years.[11]

- In 2007, after some of the stepped rate changes authorized by the PSC had become effective, the Legislature halted any further changes. As part of the Consumer Choice Act of 2007, the Legislature terminated the rate rebalancing scheme created in the 2003 law and held rates for basic service and network access service at the levels in effect immediately prior to July 1, 2007.[12] The law permitted changes to these basic service rates pursuant to the price regulation scheme adopted in 1995; that is, an ILEC could adjust its basic service rates once in any twelve-month period in an amount no more than the change in inflation less 1 percent.

- In 2009, the Consumer Choice and Protection Act[13] made several changes to the regulatory framework for telecommunications services. Among other things, the law changed the definitions of basic service and nonbasic service and removed the PSC's jurisdiction to address service quality issues for nonbasic service. Basic service was redefined to include only flat-rate, single-line residential service. Business class service and multi-line residential service were no longer identified as basic services. Nonbasic service was redefined to include basic service combined with any nonbasic service or unregulated service. Thus, under the law, customers who received flat-rate residential service in combination with features like call waiting or caller ID, or other services like broadband or video, were no longer considered to be basic service customers.

  The 2009 law reduced the allowed price increases for nonbasic services to a maximum of 10% in a 12-month period, for exchange areas with at least one competitive provider. Further, the law extended the existing basic service price cap to those services

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[7] *Id.*
[8] Ch. 2003-32, L.O.F.
[9] Section 15, ch. 2003-32, L.O.F. Intrastate access fees (referred to as "intrastate switched network access rates" in the law) are the rates charged by a local exchange company for other telecommunications companies to originate and terminate intrastate traffic on its network. *Intrastate* access fees have historically been higher than similar fees charged for originating and terminating *interstate* traffic and have supported rates for basic service.
[10] *Id.*
[11] PSC Order No. PSC-03-1469-FOF-TL, issued December 24, 2003, upheld in Crist v. Jaber, 908 So.2d 426 (Fla. 2005). The PSC denied Alltel Florida, Inc.'s (now Windstream) petition pursuant to this statute. PSC Order No. PSC-06-0036-FOF-TL, issued January 10, 2006.
[12] Sections 10, 12, and 13, ch. 2007-29, L.O.F.
[13] Ch. 2009- 226, L.O.F.

reclassified by the law from basic to nonbasic service. The law did not modify the price caps for basic service.

Today, incumbent local exchange carriers remain subject to the price regulation scheme adopted in 1995, as modified in 2009. Only basic service is subject to service quality oversight by the PSC. *As of January 1, 2009, ILECs are no longer required to serve as carriers-of-last-resort under Florida law.*[14] Although this state requirement has expired, ILECs remain subject to a similar requirement under federal law.[15]

Competitive local exchange carriers remain subject to minimal PSC regulation. A CLEC offering basic local services must provide an option for flat-rate pricing for those services. Basic local service provided by a CLEC must include access to operator services, '911' services, and relay services for the hearing impaired.[16] In addition, the PSC may set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.[17]

In addition to local exchange service, Chapter 364, F.S., establishes regulatory oversight for other telecommunications services, including operator services, shared tenant services, and pay telephone services. Further, the law provides the PSC jurisdiction to address wholesale issues between telecommunications service providers, oversee implementation of the Lifeline program in Florida, review certain mergers and acquisitions involving ILECs, certificate certain service providers wishing to do business in Florida, adopt rules to prevent the unauthorized change of a customer's telecommunications service, and address numbering issues and billing complaints.

Florida does not regulate the rates and service quality associated with certain types of telecommunications services. In 2005, the Legislature explicitly exempted intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-internet-protocol ("VoIP") services, and wireless telecommunications services from PSC oversight, to the extent such oversight is not authorized by federal law.[18] In 2009, the Legislature re-emphasized these exemptions.

Status of Competition

On August 1, 2008, the PSC issued its Report on the Status of Competition in the Telecommunications Industry as of December 31, 2007 ("2008 Competition Report"). In the 2008 Competition Report, the PSC found that while service provided by ILECs was still the leading telecommunications choice for Florida households, cable telephony, wireless, and VoIP were gaining mainstream acceptance as alternatives.[19]

On August 1, 2010, the PSC issued its Report on the Status of Competition in the Telecommunications Industry as of December 31, 2009 ("2010 Competition Report"). In the 2010 Competition Report, the PSC found:

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[14] Section 364.025, F.S. (2010)
[15] Florida Public Service Commission presentation to the Florida House of Representatives Committee on Utilities & Telecommunications, December 13, 2007, "Telecommunications Carrier-Of-Last-Resort Obligation."
[16] Section 364.337 (2), F.S. (2010)
[17] Section 364.337(5), F.S. (2010)
[18] Section 11, ch. 2005-132, L.O.F.
[19] *2008 Competition Report*, p. 9.

> Florida's communications market continues to exhibit competitive characteristics. Estimates of wireless-only households have increased from prior years, and in the most recent reporting period, Florida cable companies expanded the number of VoIP customers served. These facts, coupled with continued residential access line losses by ILECs, suggest an active market for voice communications services in many areas of Florida.[20]

In the 2010 Competition Report, the PSC notes that since 2001, traditional wireline access lines for both ILECs and CLECs have declined 38 percent, from 12 million in 2001 to 7.5 million in December 2009. Residential access line losses account for 4.3 million of this total, and business access line losses comprise the remainder. The report attributes the decline in residential access lines primarily to the increase of wireless-only households and VoIP services in lieu of traditional wireline service. The report also attributes a portion of the decline to recent economic conditions. Further, the report suggests that bundled pricing packages and the influence of services such as broadband, video, and mobility on the selection of a voice service provider are contributing to the decline.[21]

According to the PSC's competition report, at least one CLEC reported providing wireline residential service in 232 of Florida's 277 exchange areas, and at least one CLEC reported providing wireline business service in 256 of the 277 exchanges.[22] Because wireless and VoIP service providers are not subject to PSC jurisdiction, the PSC is unable to compel providers of these services to submit market data for purposes of its report. Thus, wireless and/or VoIP providers may be offering residential or business service in those exchanges where no CLEC reported providing wireline service.

<u>Proposed Changes</u>

The bill substantially repeals and amends several sections of Chapter 364, F.S., to do the following:

- Remove the PSC's regulatory oversight of basic local telecommunications service and nonbasic service, including service quality and price regulation.
- Remove the PSC's regulatory oversight of intrastate interexchange services, operator services, and shared tenant services.
- Remove the PSC's authority to provide certain consumer education materials and to adopt rules concerning certain billing practices.
- Promote the adoption of broadband services without the need for government subsidies.
- Consolidate existing provisions related to the PSC's oversight of carrier-to-carrier relationships for purposes of ensuring fair and effective competition among telecommunications service providers.
- Replace the requirement that telecommunications service providers obtain from the PSC a certificate of necessity with a requirement that such providers obtain from the PSC a certificate of authority to provide service and establish the criteria for obtaining such a certificate.
- Remove rate caps on pay telephone services.
- Delete obsolete language and make conforming changes.

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[20] *2010 Competition Report*, p. 5.
[21] *2010 Competition Report*, p. 23.
[22] *2010 Competition Report*, Appendix C.

Each of these items is discussed in greater detail below.

Legislative Intent

<u>Present Situation</u>

In the 1995 law opening local exchange service markets to competition, the Legislature indicated its intent to transition from monopoly provision of such service in Florida to a competitive market, stating:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce.[23]

In that law, the Legislature went on to state its intent with respect to the PSC's exercise of jurisdiction over telecommunications matters. As modified by that law, the current statement of intent reads:

> The commission shall exercise its exclusive jurisdiction in order to:
> (a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices.
> (b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.
> (c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.
> (d) Promote competition by encouraging innovation and investment in telecommunications markets and by allowing a transitional period in which new and emerging technologies are subject to a reduced level of regulatory oversight.
> (e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.

[23] Ch. 2003-32, L.O.F.

(f) Eliminate any rules or regulations which will delay or impair the transition to competition.
(g) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.
(h) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.
(i) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.[34]

This intent language is reflected in s. 364.01, F.S.

Effect of Proposed Changes

The bill removes most of the legislative intent language identified above, but retains and amends one sentence from the existing language. The amended statement now reads:

> The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and has provided customers with freedom of choice, encouraged the introduction of new telecommunications service, encouraged technological innovation, and encouraged investment in telecommunications infrastructure.

The bill's changes to the legislative intent language in s. 364.01, F.S., suggest that the transition to a sufficiently competitive market has been achieved. The changes also appear to reflect the bill's removal of the PSC's remaining regulatory oversight of local exchange service. Further, the current language in s. 364.01, F.S., that expresses intent to ensure that all providers of telecommunications services are treated fairly, is transferred to a separate section of law that expresses the PSC's authority to certain disputes among telecommunications service providers.

Definitions

Present Situation

Section 364.02, F.S., provides definitions applicable to Chapter 364. Among other terms, this section defines the following:

- "Basic local telecommunications service" is defined in subsection (1). Pursuant to that definition, basic service must include, among other things, an alphabetical directory listing (i.e., a phone book).
- "Monopoly service" is defined in subsection (9)
- "VoIP" is defined in subsection (14) as "voice-over-Internet protocol as that term is defined in federal law."

[34] *Id.*

Effect of Proposed Changes

The bill amends the definition of basic local telecommunications service by removing the provision of an alphabetical directory listing as an element of basic service. Thus, a company could chose to continue offering directory listings, to offer directory listings for a separate charge, or not to offer directory listings at all. Listings could also be obtained online.
The bill removes the definition of the term "monopoly service." Because the bill strikes all instances of the term "monopoly service," a definition for the term appears unnecessary.

The bill amends the definition of "VoIP" by deleting the general reference to federal law and replacing it with a more detailed definition that closely tracks federal law.

Retail Services Subject to PSC Regulation

Present Situation

Local Exchange Service Provided by an ILEC

Local exchange service provided by an ILEC is divided into two categories: basic and nonbasic. "Basic local telecommunications service" (or "basic service") is defined in s. 364.02(1), F.S., as voice-grade, single-line, flat-rate residential local exchange service.[25] "Nonbasic service" is defined in s. 364.02(10), F.S., as any telecommunications service provided by a local exchange telecommunications company other than basic telecommunications service, a local interconnection service as described in section 364.16, F.S., or a network access service as described in section 364.163, F.S. In addition, any combination of basic service along with a nonbasic service or unregulated service is nonbasic service.[26]

Pricing for basic service is governed by s. 364.051(2), F.S., which provides that the price for basic service may only be increased once in any 12 month period by an amount not to exceed the change in inflation[27] less one percent. In addition, a flat-rate pricing option for basic local service is required and mandatory measured service (e.g., per minute pricing) for basic local service may not be imposed.

Pricing and terms for nonbasic service are governed by s. 364.051(5), F.S. Prices for nonbasic services are limited to increases of 6 percent in any 12 month period when no competitor is present and 10 percent in any 12 month period if there is a competitor providing local telephone service. The price for any service that was treated as basic service before July 1, 2009, may not be increased by more than the amount allowed for basic service. A flat-rate pricing option for multi-line business local exchange service is required and mandatory measured service for multi-line business local exchange service may not be imposed.

Under s. 364.15, F.S., the PSC, upon complaint or on its own motion, may direct a local service provider to make repairs, improvements, changes, additions, or extensions to its facilities used

[25] Under s. 366.02(1), F.S., basic local telecommunications service must provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing (i.e., touchtone), and access to emergency services such as "911," all locally available interexchange (i.e., long distance) companies, directory assistance, operator services, relay services, and an alphabetical directory listing.
[26] Section 366.02(9), F.S.
[27] Inflation for the purpose of the section is measured by change in the Gross Domestic Product Fixed 1987 Weights Price Index.

in the provision of basic service. The PSC does not have authority to direct local service providers to take such actions with respect to facilities used in the provision of nonbasic service. Because many of the same facilities are used to provide both basic and nonbasic service, it appears that the PSC's authority in this regard extends to most of the facilities of local service providers.

Special Provisions for Small ILECs

Current law provides special procedures for the regulation of small local exchange companies in s. 364.052, F.S. Small local exchange companies are defined as ILECs that had fewer than 100,000 access lines in service on July 1, 1995.[28] Pursuant to this law, the PSC has adopted less stringent reporting requirements for small ILECs.

Local Exchange Service Provided by a CLEC

Competitive local exchange companies are subject to minimal PSC regulation pursuant to s. 364.337, F.S. A CLEC offering basic local services must provide an option for flat-rate pricing for those services. Basic local service provided by a CLEC must include access to operator services, "911" services, and relay services for the hearing impaired. In addition, the PSC may set service quality criteria and resolve service complaints with regard to basic local exchange service offered by these companies.

Intrastate Interexchange Service

Section 364.02(14), F.S., defines the term "Telecommunications company." This subsection exempts intrastate interexchange telecommunications companies[29] from the definition but specifies other provisions of law that apply to such companies, including:

- Section 364.04, F.S., requiring the publication of rate schedules.
- Section 364.10(3)(a) and (d), F.S., requiring the publication of schedules providing each company's current Lifeline benefits and exemptions.
- Section 364.163, F.S., prohibiting such companies from instituting any intrastate connection fee or any similarly named fee.
- Section 364.285, F.S., authorizing the PSC to impose certain penalties upon entities subject to its jurisdiction.
- Section 364.501, F.S., requiring each telecommunications company with underground fiber optic facilities to operate, or be a member of, a one-call cable location notification system.
- Section 364.603, F.S., related to the unauthorized changing of a subscriber's telecommunications service.
- Section 364.604, F.S., providing requirements with respect to billing practices.

This subsection also requires that intrastate interexchange telecommunications companies provide the PSC with current contact information as deemed necessary by the PSC.

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[28] Section 364.052(1), F.S.

[29] "Intrastate interexchange telecommunications companies" are defined in s. 364.02(7), F.S., as entities that provide intrastate interexchange telecommunications service, known more simply as intrastate long distance service.

Pay Telephone Service

Section 364.3375, F.S., provides that a person, except for an ILEC, wishing to provide pay telephone service must first obtain a certificate of public convenience and necessity from the PSC. In addition, this section limits a pay telephone service provider's maximum rate for local coin calls to a rate equivalent to the local coin rate of the ILEC in that serving that area. Further, this section provides that a pay telephone provider shall not obtain services from an operator service provider unless such operator service provider has obtained a certificate of public convenience and necessity from the PSC.

Operator Service

Section 364.3376, F.S., provides that a person, except for an ILEC, wishing to provide operator service must first obtain a certificate of public convenience and necessity from the PSC. All intrastate operator service providers are subject to the PSC's jurisdiction and must render operator services pursuant to schedules published or filed as required by s. 364.04. Current law imposes specific operational and billing requirements upon operator service providers and grants the PSC authority to adopt requirements for the provision of operator services. Further, the law prohibits an operator service provider from blocking or preventing an end user's access to the end user's operator service provider of choice. To help enforce this prohibition, the law requires the PSC to conduct random, no-notice compliance investigations of operator services providers and call aggregators operating within the state.

Shared Tenant Service

Section 364.339, F.S., provides the PSC with exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company. Shared tenant service arrangements can occur, for example, in large commercial buildings or complexes. Other shared tenant facilities include airports and some local government arrangements. A person wishing to provide shared tenant service must first obtain a certificate of public convenience and necessity from the PSC.

Services Exempt from PSC Jurisdiction

Under s. 364.011, F.S., the following services are exempt from oversight by the PSC, except to the extent specified in Chapter 364, F.S., or specifically authorized by federal law: intrastate interexchange telecommunications services (i.e., intrastate long distance service), broadband services, voice-over-internet-protocol ("VoIP") services, and wireless telecommunications services.

Funding for Regulation of Telecommunications Service

Section 350.113(3), F.S., provides that each regulated company under the PSC's jurisdiction shall pay to the PSC a fee based upon the company's gross operating revenues. To the extent practicable, the fee must be related to the cost of regulating each type of regulated company.

Similarly, s. 364.336, F.S., provides that each telecommunications company licensed or operating under ch. 364, F.S., shall pay a fee that may not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. The PSC, by rule, must assess a minimum fee in an amount up to $1,000 for telecommunications companies. The minimum amount may vary depending on the type of service provided by the telecommunications company, and shall, to the extent practicable, be related to the cost of regulating such type of company. These fees are deposited into the Florida Public Service Regulatory Trust Fund, which is used to fund the operation of the PSC in the performance of the various functions and duties required of it by law.

Currently, pursuant to Rule 25-4.0161, Florida Administrative Code, the PSC has set a regulatory assessment fee for telecommunications companies in the amount of 0.0020 of gross operating revenues derived from intrastate business (less any amount paid to another telecommunications company for the use of any telecommunications network to provide service to its customers). In addition, the rule establishes minimum annual regulatory assessment fees for the various types of service providers as follows: Incumbent Local Exchange Companies – $1,000; pay telephone service provider – $100; shared tenant service provider – $100; interexchange company – $700; alternative access vendor – $600; Competitive Local Exchange Companies – $600.

Effect of Proposed Changes

The bill amends s. 364.011, F.S., to add the following services to the list of services exempt from PSC jurisdiction:

- Basic service
- Nonbasic services or comparable services offered by a telecommunications company
- Operator service

Further, the bill repeals ss. 364.051, 364.052, and 364.337, F.S., eliminating the price regulation caps for basic and nonbasic service offered by any ILEC and eliminating the requirements that a flat-rate pricing option for basic service be offered by any local exchange company and a flat-rate pricing option for multi-line business service be offered by an ILEC. Simply put, the bill removes all regulation of prices for local exchange service.

The bill also repeals s. 364.15, F.S., thus eliminating the PSC's authority to compel repairs for purposes of securing adequate service or facilities for basic service. As a result, the PSC would not regulate the service quality for any local exchange company.

The bill does not require that a local exchange company provide basic service.

The bill amends s. 364.02(14), F.S., to remove the requirement that intrastate interexchange telecommunications companies be subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285, 364.501, 364.603, and 364.604, F.S. In addition, the bill eliminates the requirement that these companies provide the PSC with current contact information as deemed necessary by the PSC. The effect of these changes is to remove the PSC's limited jurisdiction over these companies.

The bill amends s. 364.3375, F.S., to replace the requirement that pay telephone service providers obtain a certificate of public convenience and necessity with a requirement that such service providers obtain a certificate of authority, which is discussed in greater detail below. Further, the bill eliminates the rate cap applicable to pay telephone service providers.

The bill repeals s. 364.3376, F.S., thus eliminating PSC oversight of operator services and removing any statutory operational and billing requirements from those providers.

The bill repeals s. 364.339, F.S., thus eliminating the PSC's jurisdiction over shared tenant services.

The bill removes the exception to PSC jurisdiction over exempt services in instances where such jurisdiction is specifically authorized by federal law. According to the PSC, it has relied upon this exception as the basis for its authority to designate wireless carriers in Florida as "eligible telecommunications carriers," or "ETCs," for purposes of receiving support from the federal universal service fund (USF). The USF supports Lifeline and Link-up programs for low-income customers and expansion of service into high-cost areas. The PSC asserts that without state authority to designate wireless ETCs in Florida, that authority would default to the Federal Communications Commission.

The bill amends s. 364.336, F.S., to require the PSC, through rulemaking initiated by August 1, 2011, to reduce the regulatory assessment fees used to fund its regulation of telecommunications companies and services to reflect reduced regulatory costs. The reduced fees must be applied beginning with payments due in January 2012 on revenues for the preceding 6-month period. The PSC must consider the regulatory activities that are no longer required and the number of staff assigned to those activities, the number of staff necessary to carry out the reduced level of regulatory responsibilities, reductions in overhead, and reductions in direct and indirect costs. The bill requires the PSC to report to the Governor and the Legislature, on an annual basis beginning in January 2012, the results of its efforts to reduce the regulatory assessment fees.

Universal Service

<u>Present Situation</u>

Section 364.025, F.S., establishes the concept of universal service in Florida law, stating:

> For the purposes of this section, the term "universal service" means 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. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives.

The law required ILECs to serve as "carriers-of-last-resort" during this transition period, furnishing basic service within a reasonable time period to any person requesting the service within the company's service territory. This requirement expired on January 1, 2009. The law required the PSC to adopt an interim universal service mechanism for a transitional period not to exceed January 1, 2009, and required the Legislature to establish a permanent mechanism by that time. To date, no permanent state universal service mechanism has been adopted.

Federal law identifies the goals of universal service as: promoting the availability of quality services at just, reasonable and affordable rates for all consumers; increasing nationwide access to advanced telecommunications services; advancing the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas; increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities; and providing equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs.[38] The Federal Communications Commission (FCC) established four programs to meet these goals: the High-Cost program; the Low-Income program; the Schools and Libraries program; and the Rural Health Care program. These programs are funded by the federal Universal Service Fund. Telecommunications providers must contribute to the fund through an assessment on their interstate and international revenues.

<u>Effect of Proposed Changes</u>

The bill repeals s. 364.025, F.S. Most of the section appears to be obsolete, as the carrier-of-last-resort obligation has expired and the date for establishing a permanent universal service mechanism has passed.

It is not clear whether a state definition of universal service is necessary. Currently, there is no explicit authority granted to the PSC to create an intrastate universal service fund. Further, a statutory obligation to provide telecommunications service in the state does not exist, but, according to the PSC, it is unclear whether there are areas in the state where only a single provider is available or where no providers are available. In addition, the federal Universal Service Fund is currently under review by the FCC for potential reform. In its review, the FCC has sought comments on whether priority for future Universal Service Fund support could be based on whether states have intrastate universal service funds.

Certification of Service Providers

<u>Present Situation</u>

Section 364.33, F.S., provides that, in general, a person may not begin the construction or operation of any telecommunications facility for the purpose of providing telecommunications services to the public or acquire ownership or control in any facility in any manner without prior PSC approval. This approval comes through a certificate of necessity granted by the PSC. However, a certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an affiliate, and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate without prior approval of the commission.

Section 364.335, F.S., establishes the information required from each applicant for a certificate of necessity, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for. Further, an applicant must file with the PSC schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service. An application fee may required by the PSC in an amount not to exceed $500. The applicant must also submit an affidavit that it has given proper notice of its application. If the PSC grants the requested certificate, any person who would be substantially affected by the requested certification may,

[38] http://www.fcc.gov/wcb/tapd/universal_service/

within 21 days after the granting of such certificate, file a written objection requesting a hearing. Also, the PSC may hold a hearing on its own motion to determine whether the grant of a certificate is in the public interest.

Section 364.337, F.S., requires that CLECs and intrastate interexchange telecommunications service providers obtain a certificate of authority from the PSC. The PSC will grant a certificate of authority upon a showing that an applicant has sufficient technical, financial, and managerial capability to provide the service in the geographic area it proposes to serve. Section 364.3375, F.S., requires that pay telephone service providers obtain a certificate of public convenience and necessity from the PSC.

<u>Effect of Proposed Changes</u>

The bill amends s. 364.33, F.S., to provide that either a certificate of necessity or a certificate of authority is required to provide telecommunications service to the public in Florida.[31] The bill provides that the PSC shall cease to provide certificates of necessity after July 1, 2011, though existing certificates of necessity would remain valid. The bill provides that the transfer of a certificate of necessity or authority from the certificate holder's parent company or affiliate or to another person holding a certificate, or its parent company or affiliate, may occur without prior approval of the PSC, provided that notice of the transfer is provided to the PSC within 60 days after completion of the transfer. The transferee assumes the rights and obligations conferred by the certificate.

The bill also amends s. 364.335, F.S., to establish the process and requirement for obtaining a certificate of authority to provide telecommunications service to the public in Florida. The bill deletes the application requirements for a certificate of necessity. The bill requires that an applicant for a certificate of authority provide certain identifying information, including: the applicant's official name and, if different, any name under which the applicant will do business; the street address of the principal place of business of the applicant; the federal employer identification number or the Department of State's document number; and the name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person for the applicant to whom questions or concerns may be addressed. The bill requires that the applicant submit information demonstrating its managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The bill provides that the PSC shall grant a certificate of authority to provide telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. The applicant must ensure continued compliance with applicable business formation, registration, and taxation provisions of law, and may terminate its certificate by providing notice to the PSC.

The bill repeals s. 364.337, F.S. CLECs would still be required to obtain a certificate of authority from the PSC, subject to the amended requirements of s. 364.335, F.S., as discussed

[31] The term "service" is defined in s. 364.02, F.S., which states that the term is to be construed in the broadest sense, but expressly excludes broadband and VoIP service. Absent any defining or limiting language to identify the types of companies or services that do or do not require certification (other than broadband and VoIP service), the bill appears to require certification for all telecommunications services provided in Florida. It is not clear, though, that this result is intended, as it would require certification for services that are not currently certificated.

above.[32] Likewise, pay telephone service providers would be required to obtain certificates of authority subject to these amended requirements.

Competitive Pricing / Consumer Education and Assistance

<u>Present Situation</u>

Section 364.04, F.S., requires every telecommunications company to publish its rates and tolls through electronic or physical means. Section 364.08, F.S., makes it unlawful for a telecommunications company to charge any compensation other than the charge specified in its schedule on file or otherwise published and in effect at that time. Section 364.10(1), F.S., prohibits a telecommunications company from making or giving any undue or unreasonable preference or advantage to any person or locality, or to subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

In addition, chapter 364, F.S., contains several provisions related to consumer education, assistance, and protection, in particular the following:

- Section 364.0251, F.S., was established in 1995 to facilitate the transition from a regulated monopoly system to a competitive market for local exchange service through consumer education.
- Section 364.0252, F.S., was established in 1998 to require the PSC to "expand its current consumer information program to inform consumers of their rights as customers of competitive telecommunications services and . . . assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company." In addition, this section emphasizes informing consumers concerning the availability of the Lifeline and Link-Up Programs.
- Section 364.3382, F.S., requires local exchange companies to disclose to residential customers the lowest cost option when service is requested and to advise customers annually of the price of each service option they have selected.
- Section 364.603, F.S., grants the PSC authority to adopt rules to prevent the unauthorized changing of a subscriber's telecommunications service ("slamming") and to resolve complaints of anticompetitive behavior concerning a local preferred carrier freeze.
- Section 364.604, F.S., directs companies to provide detailed bills and a toll-free number that must be answered by a customer service representative or a voice response unit; provides that a customer is not liable for any charges for services that the customer did not order ("cramming"); and grants the PSC authority to develop implementing rules.
- Section 364.19, F.S., grants the PSC authority to regulate the terms of contracts between a telecommunications company and its customers.
- Section 364.27, F.S., authorizes the PSC to investigate interstate rates, fares, charges, classifications, or rules of practice of message transfer that take place in the state and that the PSC views as excessive or discriminatory, and to provide its findings to the FCC.

[32] Since at least 2005, when intrastate interexchange telecommunications services were made exempt from PSC oversight, regulatory practice with respect to intrastate interexchange telecommunications companies has been to require registration, rather than certification, with the PSC. As noted in the previous footnote, absent any defining or limiting language to identify the types of companies or services that do or do not require certification (other than broadband and VoIP service), the bill appears to require certification for all telecommunications services provided in Florida, which would include intrastate interexchange telecommunications companies.

Effect of Proposed Changes

The bill amends s. 364.04, F.S., to expressly provide that the PSC has no jurisdiction over the content or form of published rate schedules and to allow telecommunications companies to enter into contracts establishing rates and charges that differ from its published schedules or to offer service not included in its schedules or to meet competitive offerings with respect to specific geographic markets and customers. The bill repeals ss. 364.10(1), F.S. and s. 364.08, F.S. The effect of these changes, taken together, is to reflect the bill's repeal of any rate regulation over local exchange service and to allow telecommunications companies the flexibility to offer competitively priced services.

The bill repeals s. 364.0251, F.S. Because this provision was established in 1995 to educate consumers concerning the transition from a regulated monopoly system to a competitive market for local exchange service, this provision may be obsolete.

The bill also repeals s. 364.0252, F.S., thus removing the PSC's authority to assist customers in resolving billing and service disputes with those companies and services it regulates. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats disputes involving companies and services currently regulated by the PSC on par with disputes involving unregulated companies and services. Under Section 364.01(3), F.S., communications activities not regulated by the PSC remain subject to Florida's generally applicable business regulation and deceptive trade practices and consumer protection laws. Customers who can no longer resolve complaints through the PSC may be able to use the non-binding dispute resolution process generally available through the Department of Agriculture and Consumer Services. Unresolved complaints may require judicial action to resolve.

The bill amends s. 364.10, F.S., to add a provision granting the PSC authority to provide consumer education and information concerning the Lifeline and Link-Up programs. This provision appears to replace a similar provision removed by the repeal of s. 364.0252, F.S.

The bill repeals s. 364.3382, F.S., thus eliminating the requirement that local exchange companies disclose to residential customers the lowest cost option when service is requested and advise customers annually of the price of each service option they have selected. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats customer relations for companies and services currently regulated by the PSC on par with customer relations for unregulated companies and services.

The bill repeals s. 364.603, F.S., but creates an identical provision in s. 364.16, F.S. Thus, the PSC will continue to have authority to adopt rules and resolve complaints regarding the unauthorized changing of a subscriber's telecommunications service, referred to as "slamming".

The bill repeals s. 364.604, F.S., thus eliminating the requirement that billing parties provide detailed bills and a toll-free number that must be answered by a customer service representative or a voice response unit and removing the provision stating that a customer is not liable for any charges for services that the customer did not order, ("cramming"). The bill also removes the requirement in this section that billing parties provide a free blocking option to a customer to block 900 or 976 telephone calls.

The bill repeals s. 364.19, F.S., thus removing the PSC's authority to regulate the terms of contracts between a telecommunications company and its customers. This repeal appears to reflect the bill's removal of the PSC's regulatory authority over most retail services, as described above, and treats customer relations for companies and services currently regulated by the PSC on par with customer relations for unregulated companies and services. The PSC anticipates that service contracts may take on greater importance in the wireline market, similar to their prevalence in the wireless market.

The bill repeals s. 364.27, F.S., thus removing the PSC's authority to investigate interstate rates, fares, charges, classifications, or rules of practice of message transfer that take place in the state and that the PSC views as excessive or discriminatory. The PSC indicates that it has not conducted investigations of interstate rates in recent memory.

Competitive Market Oversight

Present Situation

Chapter 364, F.S., directs the PSC to promote competition. In addition, it grants the PSC authority to resolve disputes among telecommunications service providers for various purposes. As noted above, s. 364.01(4)(g), F.S., states the Legislature's intent that the PSC ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

Section 364.16, F.S., gives the PSC authority to ensure that, where possible, a telecommunications company provides local interconnection and access to any other telecommunications company. Section 364.161, F.S., requires each ILEC to unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider for resale to the extent technically and economically feasible. Section 364.162, F.S., provides procedures for the negotiation and regulatory review of agreements for interconnection and resale. Section 364.163, F.S., states that a local exchange telecommunications company must file tariffs for any network access services it offers.

Section 364.058, F.S., authorizes the PSC to conduct limited proceedings to consider any matter within its jurisdiction and requires that the PSC implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies.

Section 364.3381, F.S., prohibits an ILEC from subsidizing nonbasic service with revenues received for basic service. It also gives the PSC continuing oversight over cross-subsidization, predatory pricing, and other similar anticompetitive behaviors.

Section 364.386, F.S., directs the PSC to collect data from local exchange service providers for use in preparing an annual report to the Legislature on the status of competition in the telecommunications industry and a detailed exposition of the following:

- The overall impact of local exchange telecommunications competition on the continued availability of universal service.
- The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.
- The ability of consumers to obtain functionally equivalent services at comparable rates, terms, and conditions.

- The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.
- What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand.
- Any other information and recommendations which may be in the public interest.

Effect of Proposed Changes

The bill rewrites section 364.16, F.S., relating to local interconnection, unbundling, and resale. The bill repeals ss. 364.161, 364.162, and 364.3381, F.S., and consolidates the relevant portions of those sections. The bill describes the PSC's authority to oversee carrier-to-carrier relationships and to prevent anticompetitive behavior, including, but not limited to, the resale of services, number portability, dialing parity, access to rights of way, access to poles and conduits, and reciprocal compensation. It also authorizes the PSC to arbitrate and enforce interconnection agreements in accordance with 47 U.S.C. ss. 251 and 252 and applicable orders and rules of the FCC.

In addition, the bill incorporates into s. 364.16, F.S., provisions substantially similar to those in existing s. 364.603, F.S. (related to the unauthorized changing of a customer's telecommunications service) and s. 364.058, F.S. (related to limited and expedited proceedings for disputes between companies). Accordingly, the bill repeals ss. 364.058 and 364.603, F.S.

The bill amends s. 364.386, F.S., to modify what the PSC is required to address in its annual competition report to the Legislature. First, the bill removes the requirement that the PSC address the overall impact of local exchange telecommunications competition on the availability of universal service. Second, the bill requires the PSC to address the overall impact of competition, rather than price regulation, on the maintenance of reasonably affordable and reliable high-quality telecommunications services. Third, the bill replaces the requirement that the PSC provide suggestions for what other services should be included in the definition of basic local service with a requirement to include a listing and short description of any carrier disputes.

In addition, the bill limits the quantitative portion of the PSC's data requests for purposes of the annual competition report prepared pursuant to s. 364.386, F.S. Specifically, the bill limits the data that must be provided to the PSC to a copy of the FCC Form 477 that was filed with the FCC which contains Florida specific data. The language requires the Commission to accept similar information if the Form 477 is not available and deletes the requirement for companies to file data by exchange. According to the PSC, the lack of exchange level access line data will restrict its ability to identify competitive impacts on a regional or locality basis and also the ability of the report to identify areas of the state that may not have competitive options.

Miscellaneous Provisions

Present Situation

A number of provisions in Chapter 364, F.S., relate generally to the PSC's regulatory oversight of telecommunications service. These provisions, excluding those already discussed in this analysis, include the following:

- Section 364.015, F.S., which authorizes the PSC to petition the circuit court for an injunction against violations of PSC orders or rules in connection with the impairment of a telecommunications company's operations or service.
- Section 364.016, F.S., which authorizes the PSC to assess a telecommunications company for reasonable travel costs associated with reviewing the records of the telecommunications company and its affiliates when such records are kept out of state.
- Section 364.057, F.S., which allows the PSC to approve experimental or transitional rates it determines to be in the public interest for any telecommunications company to test marketing strategies.
- Section 364.059, F.S., which provides procedures for seeking a stay of the effective date of a price reduction for a basic local telecommunications service by a company that has elected to have its basic local telecommunications services treated the same as its nonbasic services.
- Section 364.06, F.S., which provides that when companies have agreed to joint rates, tolls, contracts, or charges, one company must file the rate tariff and if each of the others files sufficient evidence of concurrence, they do not have to file copies of the rate tariff.
- Section 364.063, F.S., which requires that the PSC put in writing any order adjusting general increases or reductions of the rates of a telecommunications company within 20 days after the official vote of the commission. The PSC must also, within that 20-day period, mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment.
- Section 364.07, F.S., which requires every telecommunications company to file with the PSC a copy of any contract with any other telecommunications company or with any other entity relating in any way to the construction, maintenance, or use of a telecommunications facility or service by, or rates and charges over and upon, any such telecommunications facility. This section also authorizes the PSC to review, and disapprove, contracts for joint provision of intrastate interexchange service.
- Section 364.16(4), F.S., which requires, for purposes of assuring that consumers have access to different local exchange service providers without having to give up the consumer's existing local telephone number, that all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines. This subsection also requires the establishment of temporary number portability by January 1, 1996, and permanent portability as soon as possible after development of national standards, with the PSC resolving disputes over rates, terms, and conditions for such arrangements.
- Section 364.183, F.S., which grants the PSC authority to have access to certain types of records of a local exchange telecommunications company and its affiliated companies, including its parent company, and to require a telecommunications company to file records, reports or other data and to retain such information for a designated period of time.
- Section 364.185, F.S., which authorizes the PSC to, during all reasonable hours, enter upon any premises occupied by any telecommunications company and set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations, and tests.
- Section 364.345, F.S., which requires each telecommunications company to provide adequate and efficient service to the territory described in its certificate within a reasonable time. It also prohibits, in general, a telecommunications company from selling, assigning, or transferring its certificate or any portion thereof without a

determination by the PSC that the proposed sale, assignment, or transfer is in the public interest and the approval of the PSC.

- Section 364.37, F.S., which authorizes the PSC to make any order and prescribe any terms and conditions that are just and reasonable if any person, in constructing or extending a telecommunications facility, unreasonably interferes or is about to unreasonably interfere with any telecommunications facility or service of any other person, or if a controversy arises between any two or more persons with respect to the territory professed to be served by each.
- Section 364.385, F.S., which provides savings clauses related to the effects of the law that opened local service to competition in 1995 on certificates, rates, proceedings, and orders prior to January 1, 1996, the effective date of that act.
- Section 364.601, F.S., which requires all telecommunications companies with underground fiber optic facilities to operate their own, or be a member of a, one-call cable location notification system providing telephone numbers which are to be called by excavating contractors and the general public for the purpose of notifying the telecommunications company of such person's intent to engage in excavating or any other similar work.
- Section 364.503, F.S., which requires a local exchange telecommunications company or a cable television company which is merging with or acquiring an ownership interest of greater than 5 percent in the other type of company to give 60 days' notice to the Florida Public Service Commission and the Department of Legal Affairs of the Office of the Attorney General.
- Sections 364.506 - 364.516, F.S., make up the Education Facilities Infrastructure Improvement Act. Section 364.506, F.S., titles these sections; s. 364.507, F.S. provides legislative findings and intent; s. 364.508, F.S., provides definitions; s. 364.515, F.S., provides for funding of advanced telecommunications services by submitting a technology-needs request to the Department of Management Services no later than July 1, 1997; and s. 364.516, F.S., provides for penalties.

Effect of Proposed Changes

The bill repeals the following sections of Chapter 364, F.S., which are made unnecessary or obsolete by provisions of the bill that remove the PSC's existing regulatory oversight: ss. 364.057; 364.06; 364.063; 364.07; 364.185; 364.345; and 364.385(1), (2), and (3).

The bill repeals s. 364.059, F.S. This section is no longer operative and is obsolete.

The bill repeals obsolete provisions of s. 364.16(4), F.S., related to establishing temporary number portability. The bill retains the PSC's authority under this subsection to oversee numbering issues, such as area code exhaustion and number assignment in accordance with national guidelines.

The bill amends s. 364.183(1), F.S., to remove the PSC's access to affiliate or parent company records of a local exchange company. Access to such records was relevant in a rate base regulatory structure to prevent cross-subsidization. According to the PSC, such access is no longer relevant under the bill.

The bill repeals s. 364.37, F.S., removing the PSC's authority to address controversies over service territories. The PSC states that it has not addressed any service territory disputes relating to telecommunications companies in recent memory. The repeal of this section appears to reflect the general transition from a regulated monopoly environment, with defined service territories, to an open, competitive market.

The bill repeals s. 364.501, F.S. The repeal of this section will likely have no effect because the Sunshine State One-Call of Florida program created under chapter 556, F.S., requires the participation of "any person who furnishes or transports materials or services by means of an underground facility."

The bill repeals s. 364.503, F.S., thus eliminating the requirement that 60-day notice be provided to the PSC and the Department of Legal Affairs for certain mergers and acquisitions between local exchange telecommunications companies and cable television companies.

The bill repeals ss. 364.506 - 364.516, F.S., which make up the Education Facilities Infrastructure Improvement Act. Under this act, an eligible facility, or a group of eligible facilities based on geographic proximity, may submit, no later than July 1, 1997, a technology-needs request to the Department of Management Services.

Broadband Adoption

Present Situation

In 2009, the Legislature created s. 364.0135, F.S., to promote the deployment and adoption of broadband Internet service throughout Florida through a coordinated statewide effort. The law authorizes the Department of Management Services to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations for mapping and deployment of broadband Internet services in the state. The American Recovery and Reinvestment Act of 2009 provided $7.2 billion for broadband mapping and deployment, and the law allows DMS to draw down these federal funds to help establish universal broadband in the state.

The law requires funds received by DMS for this purpose to be focused on expanding broadband in rural, unserved, and underserved communities through grant programs. The department is charged with conducting a needs assessment of broadband and developing maps that identify unserved areas, underserved areas, and broadband transmission speeds in the state. Under the law, priority for grants is provided to projects that:

- Provide access to broadband education, awareness, training, access, equipment, and support to libraries, schools, colleges and universities, health care providers, and community organizations.
- Encourage investments in primarily unserved areas to provide consumers a choice of broadband service.
- Work toward establishing affordable and sustainable broadband service in the state.
- Facilitate the development of applications, programs, and services, including telework, telemedicine, and e-learning that increase the usage and demand for broadband services.

Effect of Proposed Changes

The bill amends the intent of s. 364.0135, F.S., to promoting "sustainable adoption" of broadband Internet service, which is defined in the bill as "the ability for communications service providers to offer broadband services in all areas of the state by encouraging adoption and utilization levels that allow for these services to be offered in the free market absent the need for governmental subsidy."

In establishing the priority of projects for purposes of awarding grants, the bill removes from the priority list those projects that "encourage investment in primarily unserved areas to give consumers a choice of more than one broadband Internet service provider." In its place, the bill establishes as a priority those projects that "encourage sustainable adoption of broadband in primarily unserved areas by removing barriers to entry."

In addition, the bill replaces the requirement that the DMS collaborative conduct a needs assessment of broadband Internet service with a requirement that it monitor the adoption of such service.

Finally, the bill provides that any rule, contract, grant, or other activity undertaken by DMS must ensure that all entities are in compliance with applicable federal or state laws, rules, and regulations, including those applicable to private entities providing communications services for hire and the requirements of s. 350.81, F.S. (concerning communications services provided by government entities).

Conforming Changes

The bill amends ss. 196.012(6), 199.183(1)(b), 212.08(6), 290.007(8), 350.0605(3), 364.105, 364.32, and 489.103(5), F.S., to conform statutory cross-references.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. **Revenues:**

The bill exempts intrastate interexchange telecommunications companies from the regulatory assessment fee imposed by the Public Service Commission ("PSC"). On May 3, 2011, the Revenue Estimating Conference adopted a consensus estimate of an annual $1.1 million reduction in revenues to the state as a result of this exemption. Further, the PSC indicates that revenue from incumbent local exchange companies is projected to decline by over 13% for FY 2011-2012.

See "Fiscal Comments" section.

2. **Expenditures:**

The bill will allow for a reduction in expenditures for the PSC as a result of removing several components of the PSC's regulatory oversight of telecommunications services. Specifically, the PSC estimates elimination of 11 FTE positions in FY 2011-2012 and an additional 2 FTE positions in FY 2012-2013, with a corresponding budget reduction of $745,955 in FY 2011-2012, and $807,378 thereafter.

See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. **Revenues:**

   None

2. **Expenditures:**

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce regulatory requirements imposed upon local exchange companies and competitive local exchange companies. As a result, these companies will likely benefit from reduced regulatory compliance costs. Further, the bill should create a more competitively neutral regulatory scheme for these companies as compared to competing providers of telecommunications services, such as cable, wireless, and broadband service.

D. FISCAL COMMENTS:

The bill amends s. 364.336, F.S., to require the PSC, through rulemaking initiated by August 1, 2011, to reduce the regulatory assessment fees used to fund its regulation of telecommunications companies and services to reflect reduced regulatory costs. The reduced fees must be applied beginning with payments due in January 2012 on revenues for the preceding 6-month period. The PSC must consider the regulatory activities that are no longer required and the number of staff assigned to those activities, the number of staff necessary to carry out the reduced level of regulatory responsibilities, reductions in overhead, and reductions in direct and indirect costs.

According to the PSC, its current budget for telecommunications for FY 2011-2012 is approximately $6.4 million. This amount includes both direct and indirect costs associated with telecommunications as well as an allocation of fixed costs, such as rent. The PSC indicates that at the close of FY 2009-2010, approximately 62 FTEs were directly assigned to telecommunications. Using February 2011 information, the PSC indicates that approximately 50 FTEs are directly assigned to telecommunications.