

RADEY | THOMAS | YON | CLARK

Attorneys & Counselors at Law

POST OFFICE BOX 10967 (32302)
301 SOUTH BRONOUGH STREET, SUITE 200
TALLAHASSEE, FLORIDA 32301
www.radeylaw.com

850-425-6654 phone
850-425-6694 fax

KAREN ASHER-COHEN	CHRISTOPHER B. LUNNY
DONNA E. BLANTON	ELIZABETH McARTHUR
SUSAN F. CLARK	STEPHEN K. McDANIEL
EDWARD B. COLE	TRAVIS L. MILLER
BERT L. COMBS	JOHN RADEY
THOMAS A. CRABB	LISA C. SCOLES
TONI A. EGAN	HARRY O. THOMAS
JEFFREY L. FREHN	DAVID A. YON

March 14, 2008

lscoles@radeylaw.com

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COMMISSION
CLERK

Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Joint Petition to Initiate Rulemaking*

Dear Ms. Cole:

Enclosed please find an original and fifteen copies of the Joint Petition to Initiate Rulemaking, including Attachments A through E, on behalf of Verizon Florida LLC; BellSouth Telecommunications, Inc. d/b/a AT&T Florida; Embarq Florida, Inc.; Quincy Telephone Company d/b/a TDS Telecom; and Windstream Florida, Inc., to be filed in a new docket.

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Thank you for your assistance in this matter.

Sincerely,

Lisa C. Scoles

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Verizon Florida LLC,)
BellSouth Telecommunications, Inc. d/b/a)
AT&T Florida, Embarq Florida, Inc.,)
Quincy Telephone Company d/b/a TDS)
Telecom and Windstream Florida, Inc.)
to initiate rulemaking to reflect the)
changed telecommunications market)
_____)

Docket No. 080159

Filed: March 14, 2008

JOINT PETITION TO INITIATE RULEMAKING

I. INTRODUCTION

In accordance with Section 120.54(7), Florida Statutes (“F.S.”), and Rules 28-103.006 and 25-22.017(2), Florida Administrative Code (“F.A.C.”), Verizon Florida LLC (“Verizon”), BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T”), Embarq Florida, Inc. (“Embarq”), Quincy Telephone Company d/b/a TDS Telecom (“TDS”) and Windstream Florida, Inc. (“Windstream”) (collectively the “Joint Telecommunications Companies”) together submit this Joint Petition to request that the Florida Public Service Commission (“FPSC” or “Commission”) initiate rulemaking to amend and repeal rules in Chapter 25-4, F.A.C., amend rules in Chapter 25-9, F.A.C., and adopt a new rule in Chapter 25-24, F.A.C., in order to update the Commission’s rules to reflect Florida’s highly competitive telecommunications market.

Florida’s robust telecommunications market has given consumers more choice, innovative technologies, and new services. In response, consumers have embraced competition and are choosing new forms of telecommunications services in large and increasing numbers. In the future, consumers will be better served by a regulatory environment that fosters continued investment in infrastructure and further development of technological innovations, while still preserving important consumer safeguards.

Many of the Commission’s current rules, adopted at a time when there was only one provider of local service or modified before the explosion in the use of wireless, cable telephony,

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and Voice over Internet Protocol (“VoIP”), are no longer warranted in today’s competitive environment. Consumers benefit when providers concentrate on meeting their customers’ needs rather than on complying with outdated rules and regulations left over from a time when little competition existed.

This Joint Petition seeks rule updates to encourage continued competition in telecommunications in Florida. This Joint Petition does not seek to eliminate all regulation of the Joint Telecommunications Companies; instead, it seeks to simplify and clarify the Commission’s telecommunications rules by revising existing rules and adding a new rule to reflect changes in Florida’s telecommunications industry, and by eliminating those rules that are obsolete or add little to statutory provisions. This Joint Petition does not propose any changes to customers’ protections such as Lifeline and the handling of consumer complaints. In support of this Joint Petition, the Joint Telecommunications Companies state:

1. The Joint Telecommunications Companies’ principal places of business are:

Verizon Florida LLC
One Tampa City Center
201 N. Franklin Street
37th Floor
Tampa, FL 33602

BellSouth Telecommunications, Inc.
d/b/a AT&T Florida
675 W. Peachtree St., NE, Suite 4500
Atlanta, GA 30375

Embarq Florida, Inc.
555 Lake Border Drive
Apopka, FL 32703-5815

TDS Telecom/Quincy Telephone
107 W. Franklin Street
Quincy, FL 32351

Windstream Florida, Inc.
4001 Rodney Parham Road
Mailstop: 1170, B1F03-53A
Little Rock, AR 72212

2. Pleadings and process may be served upon the following:

Dulaney L. O'Roark III
Verizon Florida LLC
One Tampa City Center
201 N. Franklin Street
37th Floor
Tampa, FL 33602

E. Earl Edenfield, Jr.
Tracy Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
BellSouth Telecommunications, Inc.
d/b/a AT&T Florida
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Susan S. Masterton
Embarq Florida, Inc.
Senior Counsel
1313 Blairstone Road
Mailstop: FLTLHO0201
Tallahassee, FL 32301

Sandra A. Khazraee
Embarq Florida, Inc.
Regulatory Manager
1313 Blairstone Road
Mailstop: FLTLHO0201
Tallahassee, FL 32301

Thomas M. McCabe
TDS Telecom
1400 Village Square Boulevard
Suite 3 – Box 329
Tallahassee, FL 32312-1231

Jeff Handley
TDS Telecom
10025 Investment Drive, Suite 200
Knoxville, TN 37932

Bettye Willis
Cesar Caballero
Windstream Florida, Inc.
4001 Rodney Parham Rd
Mailstop: 1170, B1F03-53A
Little Rock, AR 72212

James L. White
Windstream Communications
4651 Salisbury Rd., Suite 151
Jacksonville, FL 32256

J. Jeffry Wahlen
Ausley & McMullen
P. O. Box 391
Tallahassee, FL 32302

3. The Joint Telecommunications Companies are local exchange companies lawfully doing business in Florida whose regulated operations are subject to the jurisdiction of this Commission pursuant to Chapter 364, F.S.

4. As part of its “exclusive jurisdiction” over telecommunications, the Commission has specific statutory authority to encourage competition through flexible regulatory treatment, elimination of rules or regulations that impair the transition to competition, and elimination of unnecessary regulations, as explained in detail below.

5. Therefore, the Joint Telecommunications Companies request that the Commission initiate rulemaking to adopt a new rule in Chapter 25-24, F.A.C., as reflected in **Attachment A**, explained in **Attachment B**, and described herein. They further request that the Commission, via rulemaking, amend and repeal rules in Chapter 25-4, F.A.C.; and amend rules in Chapter 25-9, F.A.C., as reflected in **Attachment C** and described herein. An affidavit from Dr. William E. Taylor and NERA’s March 2008 report on *Intermodal Competition in Florida Telecommunications* are provided as **Attachments D and E**, respectively.

II. OVERVIEW OF COMPETITION IN TELECOMMUNICATIONS¹

6. The State of Florida has a long-standing policy of promoting competition in the telecommunications industry. One year prior to the adoption of the Telecommunications Act of 1996, Florida adopted its own policy of promoting competition and found that:

[T]he 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.

Section 364.01(3), F.S. (2007).

7. The implementation of this policy by the Commission and the actions of the many and varied market participants have created a robustly competitive telecommunications market in Florida. The competitive market has, in turn, provided more choice for consumers, unleashed greater investment in infrastructure, and spurred many technological innovations and the introduction of new services.

8. Technological innovations have enabled intermodal telecommunications technologies to provide multiple competing services using several different platforms, resulting in increased choices for customers. These competing intermodal platforms now provide voice, video, and data services and include wireline, wireless, cable, satellite, and VoIP. Additionally, wireless fidelity (“WiFi”), wireless interoperability for microwave access (“WiMAX”) and broadband over power lines (“BPL”) are developing technologies with the potential for further competition and even more choices for consumers.

¹ Except as otherwise noted, all figures quoted in this Joint Petition are from NERA’s March 2008 report entitled *Intermodal Competition in Florida Telecommunications (Attachment E)*, the FPSC’s Division of Competitive Markets and Enforcement’s *Report on the Status of Competition in the Telecommunications Industry as of May 1, 2006*, or both.

9. As recently as 2001, U.S. households spent three times as much on residential wireline service as on wireless service.² It is now estimated that U.S. households spend more on wireless service than on traditional wireline residential service.³ Further, a recent Pew Internet Project survey found that 51% of those polled would find it “very hard to give up” their cell phones, compared to 40% for landlines.⁴ The number of wireless subscribers nationally grew by 12.7% in 2006.⁵

10. Many Americans, including Floridians, have replaced wireline service with wireless telephone service. Results from the Center for Disease Control’s National Health Interview Survey (“NHIS”) demonstrate this trend. The NHIS July – December 2006 results indicated 12.8% of American homes had only wireless telephone service during that time period. The NHIS January – June 2007 results indicated this figure had grown to 13.6% by the first half of 2007. NERA estimates this figure increased to 15.2% for July – December 2007. This trend is expected to continue throughout the country and in Florida.

11. Most Floridians also have access to VoIP and cable telephony as an alternative to their traditional wireline telephone service. NERA reports that cable systems pass 94% of the households in Florida and that virtually all (99.8%) of those homes passed have access to cable broadband service, which means they may obtain voice service from a VoIP provider. Moreover, 86% of the homes passed by cable may subscribe to cable telephony, which is providing vigorous competition to the incumbent carriers.

² Dibya Sarkar, *Cell Phone Spending Surpasses Land Lines*, Orlando Sentinel, Dec. 18, 2007.

³ *Id.*

⁴ John Mazor and Rita Delfiner, *Americans Would Never Cell Out*, New York Post, March 7, 2008.

⁵ *Local Telephone Competition: Status as of December 31, 2006*, Federal Communications Commission, Industry Analysis & Technology Division, Wireless Competition Bureau, Dec. 2007, at Table 14.

12. Many states have responded to similar developments by revisiting their regulatory frameworks and making necessary updates. For example, Alabama, Mississippi, Indiana, North Carolina, Virginia and Texas have all recently made regulatory changes. In its April 2007 report, the National Regulatory Research Institute stated:

The year 2006 saw significant changes in the retail rate regulation of the local exchange services provided by carriers (LECs) in the United States. Between October 2005 and December 2006 . . . nine states adopted new state laws affecting the regulatory regimes of their local carriers; seventeen states reviewed or adopted new rate plans for one or more of their incumbents and eighteen states deregulated the rates of certain local exchange services, particularly bundled services and those provided in competitive urban areas.

[I]n some cases, the adoption of new state laws or new regulatory plans resulted in the elimination of all regulation of retail service rates, except for rates applicable to single-line basic exchange service. Legislatures or state commissions have granted complete pricing flexibility or rate deregulation to the largest incumbents in five states and in seven others, they have done so for all their ILECs. . . . The rates for stand-alone basic exchange services, which had remained regulated in most states until recently, are now beginning to be flexibly regulated in some states and scheduled to be deregulated in others.⁶

13. Florida should take a similar approach. As discussed in detail below, competition has been thriving in Florida for years and continues to intensify. The competitive market now controls the behavior of Florida's telecommunications providers, driving investment and deployment decisions, generating the type and quality of services demanded by telecommunications consumers, and determining the prices for telecommunications services. The time has now come to review and reevaluate the state's regulatory structure for incumbent wireline telecommunications providers. The existing structure is predicated on the assumption that the incumbent providers are dominant and unaffected by competitive market forces. That assumption no longer holds true. Because market forces now drive the Florida

⁶ *State Retail Rate Regulation of Local Exchange Providers as of December 2006*, National Regulatory Research Institute, April 2007, p. 1. As noted in Paragraphs 30-31, the Joint Telecommunications Companies are not requesting rate deregulation in this proceeding. The fact that other states have done so, however, illustrates the strong trend toward revising outdated regulations to reflect the current competitive telecommunications environment.

telecommunications market, many regulations have become obsolete and detrimental to the public interest because they favor some providers over others. Continuing to impose such regulatory treatment in a competitive market imposes additional and unnecessary costs on incumbent providers and prevents them from quickly and efficiently responding to competitive changes in the market. This leads to less competition, not more.

14. This Joint Petition seeks to eliminate patchwork and unnecessary regulations in Rule Chapters 25-4 and 25-9, F.A.C., and proposes a new rule in Chapter 25-24, F.A.C. These requested changes will further enhance the competitiveness of Florida's telecommunications market, where a consumer and competitive driven marketplace will ensure reasonable and adequate protections for consumers. All proposed changes are consistent with the current requirements of Chapter 364, F.S.

III. FLORIDA'S RETAIL MARKET IS COMPETITIVE AND THE COMMISSION SHOULD UPDATE ITS RULES ACCORDINGLY

15. The retail telecommunications environment in Florida has progressed to an unprecedented level of competition, with many competitive providers vying to meet Floridians' communications needs.

16. Wireline, wireless, cable, satellite, and VoIP platforms have been widely deployed throughout Florida. Cable systems pass 94% of households in Florida with an 81% penetration rate, which exceeds the national average of 71%. Cable companies have deployed broadband and voice services to 99.8% and 86% of homes passed, respectively. Wireless service is even more widely available in both metropolitan and rural areas, with 99% of households in Florida having access to at least three wireless service providers and over 97% having access to four or more wireless providers. VoIP is also widely available over any broadband connection (including the cable broadband connections available to 94% of Florida households); every zip code in Florida has at least three broadband providers present. In its May 31, 2006, Competition

Report, the Commission conservatively estimated that there were more than 662,000 VoIP subscribers in Florida.

17. Florida's telecommunications consumers have embraced competition and are choosing intermodal platforms in large and increasing numbers. At year-end 2000, there were about 3.4 million more residential and small business access lines than total wireless and high-speed broadband lines. Only four years later, there were 6.9 million fewer residential and small business lines than wireless and broadband. This trend continued and by year-end 2006, there were 8.5 million more residential wireless and residential broadband lines than Incumbent Local Exchange Carrier ("ILEC") and Competitive Local Exchange Carrier ("CLEC") residential lines combined. When factoring in population growth, it is estimated that from 2001 to 2006 Florida's local exchange companies lost approximately 3.6 million residential access lines to intermodal competitors. Likewise, from 1999 through 2006, annual local calls fell from 32.9 billion to 14.9 billion, or 55%. When factoring in population growth, the number of local calls has fallen by 69%. Interstate switched access minutes of use also have declined, by 29% from 2000 to 2006.

18. As reported by the Federal Communications Commission's Wireline Competition Bureau, the number of wireless subscribers in Florida increased by 2.2 million for a 17.5% annual growth rate during 2006.⁷ This brought the total number of wireless subscribers in Florida as of December 31, 2006, to 14.8 million, which exceeded the number of ILEC access lines by 5.8 million.⁸ With continuation of these growth trends, the number of wireless subscribers in Florida will soon (if not already) be double the number of ILEC access lines. In addition, the Commission's most recent competition report stated that 29% of Floridians were considering switching from wireline to wireless-only service.

⁷ *Local Telephone Competition: Status as of December 31, 2006*, at Table 14.

⁸ *Id.* at Table 7.

19. Florida has several cable operators providing residential phone service. Comcast recently reported that it had surpassed Embarq in the number of residential access lines, becoming the nation's fourth largest provider of residential phone service.⁹ Another report about Comcast indicates that it is now targeting less populous Tier II areas, such as the Lake City and Live Oak areas, for telephone service.¹⁰ Bright House Networks has stated that it "provides local voice service to hundreds of thousands of residential customers in Florida."¹¹ NERA reports Bright House Networks has reached nearly 500,000 telephone customers in the Tampa Bay and Orlando markets, with a penetration rate of almost 15%.

20. In short, the evidence demonstrating the prevalence of intermodal competition in Florida is overwhelming:

- 99.8% of households in Florida have access to at least two wireless carriers, 99% have access to at least three wireless carriers, and more than 97% have access to at least four wireless carriers.
- 94% of households in Florida are passed by cable systems, with a video penetration rate of 81%, well above the national average. Of those households passed by cable systems, 86% can subscribe to cable telephony.
- 99.8% of households passed by cable systems can subscribe to broadband. Every zip code in Florida has three or more broadband providers, and 99% of zip codes have four or more broadband providers. Broadband penetration of the population is 53%, well above the national average of 47%. Wherever broadband is available, customers have the option of subscribing to any of a number of VoIP providers.

21. Residential and business customers are aware of their numerous options and are taking advantage of them in ever increasing numbers:

- There were 14.8 million wireless subscribers in Florida at the end of 2006.

⁹ Jason Gertzen, *Comcast Says It Has More Telephone Customers Than Embarq*, Kansas City Star, Jan. 8, 2008.

¹⁰ Troy Roberts, *Talking 'bout VoIP*, Lake City Reporter, Feb. 10, 2008.

¹¹ Complaint and Petition for Resolution of Interconnection Pricing Dispute, PSC Docket No. 080110-TP, Feb. 22, 2008, at p. 1.

- By December 2006, wireless subscribers exceeded wireline lines by 5.8 million.
- In keeping with the national trend, 29% of Floridians are considering switching from wireline to wireless only service.
- Florida's broadband line count had surpassed 5 million as of December 31, 2006.
- The Commission estimated in 2006 that there were more than 662,000 VoIP subscribers in Florida.

22. The intense intermodal competition that has developed in the Florida telecommunications industry calls for a reevaluation of industry regulation. Changes in Florida's regulatory requirements should begin now to ensure the continued growth in competition and the continued investment in innovative technologies and services. Accordingly, the Commission should initiate rulemaking to adopt the proposed rule addition, amendments and deletions.

IV. THE COMMISSION HAS AUTHORITY TO MAKE REGULATORY CHANGES

23. The Commission has the authority to amend and repeal existing telecommunications rules and adopt a new rule to update its regulations. This authority arises from several statutory provisions, including Section 364.01(2), F.S., which states that regulation of telecommunications companies is the "exclusive jurisdiction" of the Commission.

24. As noted previously, in 1995 the Florida Legislature enacted Chapter 95-403, Laws of Florida, opening up the local monopoly telecommunications market to competition by allowing competing telephone companies to operate in Florida. That legislation acknowledged the desirable results of competition in the telecommunications market, recognized the need for Commission oversight of a transition from a monopoly environment to competition, and pointed to benefits flowing from regulatory changes encouraging competition:

. . . The Legislature finds that the competitive provision of telecommunications services . . . 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 . . . 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 economic status of the telecommunications workforce. . .

Section 364.01(3), F.S.

25. The Legislature has given the Commission this “exclusive jurisdiction” over telecommunications in order for the Commission to:

(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.

(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 services 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.

Section 364.01(4), F.S. (emphasis added).

26. These provisions give the Commission the authority to initiate rulemaking to make needed changes to the Commission’s telecommunications rules to encourage competition, to ensure all telecommunications providers are treated fairly, and to eliminate rules delaying or impairing the transition to competition.

27. The Commission, as a state agency, is directed to “review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements”

and, at a minimum, to perform a “formal review” of its rules every two years. Section 120.74, F.S. As part of this review, the Commission is directed, in part, to “[c]larify and simplify its rules; [d]elete obsolete or unnecessary rules; [d]elete rules that are redundant of statutes; [and] [s]eek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector.” Section 120.74(b)-(e), F.S.

28. The Commission thus has the authority and the obligation to revise its telecommunications rules to clarify and simplify the rules, and to eliminate rules that are obsolete or unnecessary, that add little to the statutes, or that impose an unnecessary burden.

29. Therefore, the Commission has jurisdiction to enact the rule revisions, deletions and addition requested in this Joint Petition.

30. There are certain areas that remain regulated under Florida law. For example, telecommunications companies are subject to rate caps,¹² Section 364.051, F.S.; are required to provide universal service, until January 1, 2009, and to meet carrier-of-last-resort obligations, Section 364.025, F.S.; cannot charge discriminatory or special rates or charges, Sections 364.08, 364.09 and 364.10(1), F.S.; must provide a Lifeline Assistance Plan to qualified residential subscribers, Section 364.10(2), F.S.; must pay regulatory assessment fees, Section 364.336, F.S.; and are required to comply with the Emergency Communications Number E911 Act, Sections 365.171-.175, F.S. Further, under existing statutes, the Commission “shall assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the [telecommunications] company,” Section 364.0252, F.S.; shall have access to records of a telecommunications company, Section 364.183, F.S.; and shall have oversight over “cross-subsidization, predatory pricing, or other similar anticompetitive behavior,” Section 364.3381(3), F.S.

¹² Telecommunications companies are subject to price caps if they filed election for price regulation of basic local telecommunications service.

31. This Joint Petition does not request any changes to Commission rules that would conflict with or run afoul of these statutory requirements.

V. PROPOSED RULE ADDITION AND REVISIONS FOR STREAMLINED REGULATION

32. The Joint Telecommunications Companies request that the Commission, under its existing authority, adopt a new rule to allow for streamlined regulation of telecommunications markets and companies that are subject to competition. This rule, with four subsections related to various components of streamlined regulation, is provided in **Attachment A**.

A. Proposed Subsection (1) – Competition Test for Streamlined Regulation

33. Competition in Florida’s telecommunications markets brings innovation, investment, choice, and quality services at market rates. Customers of telecommunications services are best served by competition where competitors are able to compete fairly without unnecessary regulatory constraints and requirements. Thus, where the appropriate “competitiveness” standard is met, competition will effectively discipline the market and the Commission should provide streamlined regulation.

34. There are as many possible standards to determine what is “competitive” as there are states that have revised their regulation of telecommunications providers. After a careful review of these various standards and the reasoning behind them, the Joint Telecommunications Companies believe the appropriate standard in Florida should be based on a market defined, at the telecommunications company’s option, as a Metropolitan Statistical Area, an exchange, the company’s service territory,¹³ or on such other basis as submitted¹³ by the telecommunications company. The test to determine if competition exists in a market should be based on: (a) the presence of at least three (3) local service access alternatives (e.g. wireline, wireless, broadband,

¹³ The company’s service territory would mean all exchanges served by a telecommunications company in Florida.

cable, or other technology) within the market and (b) whether two-thirds (2/3) or more of the households in the market have access to at least three different providers (the ILEC plus two other providers) using any local service access alternative. The test is based on households, understanding that if residential service is competitive, then business service will be as well. Once a telecommunications company provides evidence indicating that the competition test has been met for the specified market or markets, the Commission should determine those markets are competitive and subject to streamlined regulation. The Joint Telecommunications Companies have suggested specific rule language in Subsection (1) of the proposed rule in **Attachment A** to implement this standard.

35. The competition test outlined in Subsection (1), which uses elements of regulatory changes implemented in other states, is appropriate for Florida because it will impose a standard strict enough to require that there be adequate competition to regulate a market, yet flexible enough to ensure that clearly competitive markets will qualify and that Florida customers will enjoy the benefits of a telecommunications market in which competition is not hindered by asymmetrical regulation. The economic basis for this standard is provided in the affidavit of Dr. William E. Taylor of NERA, attached hereto as **Attachment D**.

B. Proposed Subsection (2) – A Telecommunications Company’s Eligibility for Streamlined Regulation

36. For administrative efficiency and consistency, it is important for a telecommunications company with the majority of its access lines in competitive markets to be subject to streamlined regulation for all its access lines. Otherwise, such a company would be forced to operate some portion of its business under traditional regulation and the remainder under streamlined regulation, which would be operationally difficult and inefficient. Therefore, the Joint Telecommunications Companies have suggested rule language providing that a telecommunications company with at least two-thirds (2/3) of its Florida access lines in markets

that meet the competition test in Subsection (1) would be eligible for streamlined regulation for all its lines. *See Attachment A*, Subsection (2). This subsection of the rule also would clarify that rate-of-return regulated telecommunications companies are not eligible for streamlined regulation.

C. Proposed Subsection (3) – Determination of Eligibility for Streamlined Regulation

37. **Attachment A**, Subsection (3) outlines the process for seeking a determination of eligibility for streamlined regulation for a market or a telecommunications company, pursuant to Subsections (1) or (2). Proposed Subsection (3) specifies the process to be followed, including times for various steps in the process, such as when a grant of streamlined regulation can be protested by another party, or when a denial can be protested by the telecommunications company seeking the determination. The proposed subsection seeks to provide an accelerated process so that telecommunications companies seeking a determination regarding streamlined regulation can obtain such a determination without undue regulatory delay.

D. Proposed Subsection (4) – Rules Applicable to Competitive Markets or Companies Subject to Streamlined Regulation

38. Once it has been determined that a market, under Subsection (1), or a company, under Subsection (2), is subject to streamlined regulation, certain aspects of traditional regulation, which are not necessary or appropriate in a competitive telecommunications environment, should no longer be applied to that market or company. Subsection (4) lists the following rules from Chapter 25-4 that would not apply under streamlined regulation:

- Rule 25-4.0185, F.A.C., Periodic Reports
- Rule 25-4.0201, F.A.C., Audit Access to Records
- Rule 25-4.021, F.A.C., System Maps and Records
- Rule 25-4.023, F.A.C., Report of Interruptions
- Rule 25-4.066, F.A.C., Availability of Service
- Rule 25-4.069, F.A.C., Maintenance of Plant and Equipment
- Rule 25-4.070, F.A.C., Customer Trouble Reports

- Rule 25-4.071, F.A.C., Adequacy of Service
- Rule 25-4.072, F.A.C., Transmission Requirements
- Rule 25-4.073, F.A.C., Answering Time
- Rule 25-4.074, F.A.C., Intercept Service
- Rule 25-4.077, F.A.C., Metering and Recording Equipment
- Rule 25-4.083, F.A.C., Preferred Carrier Freeze
- Rule 25-4.085, F.A.C., Service Guarantee Program
- Rule 25-4.107, F.A.C., Information to Customers
- Rule 25-4.108, F.A.C., Initiation of Service
- Rule 25-4.109, F.A.C., Customer Deposits
- Rule 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies
- Rule 25-4.112, F.A.C., Termination of Service by Customer
- Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company
- Rule 25-4.114, F.A.C., Refunds
- Rule 25-4.115, F.A.C., Directory Assistance
- Rule 25-4.117, F.A.C., 800 Service
- Rule 25-4.200, F.A.C., Application and Scope
- Rule 25-4.202, F.A.C., Construction
- Rule 25-4.210, F.A.C., Service Evaluation and Investigations
- Rule 25-4.214, F.A.C., Tariff Filings
- Rule 25-4.215, F.A.C., Limited Scope Proceedings

The proposed language specifies that the rules of Chapters 25-4, 25-9, 25-14, and 25-24, F.A.C., would continue to apply to competitive markets or streamlined regulation companies, to the extent they currently do, except as otherwise indicated in Subsection (4). The text of each of the above-listed rules and an explanation as to why each of these rules should not be applicable under streamlined regulation are provided in **Attachment B**.

39. Subsection (4) of the proposed rule also lists the following rules in Chapter 25-9, F.A.C., that should not apply to competitive markets or companies subject to streamlined regulation:

- Rule 25-9.005, F.A.C., Information to Accompany Filings
- Rule 25-9.020, F.A.C., Front Cover
- Rule 25-9.021, F.A.C., Title Page
- Rule 25-9.022, F.A.C., Table of Contents
- Rule 25-9.023, F.A.C., Description of Territory Served
- Rule 25-9.024, F.A.C., Miscellaneous
- Rule 25-9.025, F.A.C., Technical Terms and Abbreviations

- Rule 25-9.026, F.A.C., Index of Rules and Regulations
- Rule 25-9.027, F.A.C., Rules and Regulations
- Rule 25-9.029, F.A.C., Index of Rate or Exchange Schedules
- Rule 25-9.030, F.A.C., Rate Schedules – General
- Rule 25-9.032, F.A.C., Telephone Utility Exchange Schedules
- Rule 25-9.045, F.A.C., Withdrawal of Tariffs

The Chapter 25-9, F.A.C., rules listed are inapplicable in a competitive environment.¹⁴ The text of these rules and an explanation as to why the rules should not apply under streamlined regulation are also provided in **Attachment B**.

40. Finally, Subsection (4) would provide that none of the rules of Chapter 25-14, F.A.C., would apply to competitive markets or companies subject to streamlined regulation. Chapter 25-14, F.A.C., covers accounting and tax matters that are only relevant to rate-of-return regulated companies subject to the Commission's general rate setting authority. Under the proposed rules, rate-of-return regulated companies are not eligible for streamlined regulation. Hence, the policies contained in this chapter would not apply to competitive markets or telecommunications companies eligible for streamlined regulation.

41. The Joint Telecommunications Companies believe the proposed rule should be adopted to ensure that regulated telecommunications companies operating in competitive markets are not subject to more onerous or costly regulatory requirements than apply to competitive providers operating on intermodal platforms, such as wireless, cable telephony, or VoIP. An environment in which competitive outcomes are driven by the prices, features, and quality of the services different telecommunications providers offer, instead of on the weight of the legacy regulatory burdens they bear, will benefit Florida customers and the Florida economy.

¹⁴ The Chapter 25-9, F.A.C., rules that are not listed (and should therefore continue to apply under streamlined regulation) specify how tariffs should be filed, so that the proper format to allow the appropriate tracking of tariffs would continue to apply under streamlined regulation.

VI. PROPOSED DELETIONS AND AMENDMENTS TO EXISTING RULES

42. In addition to the recommended changes to allow for streamlined regulation, the Joint Telecommunications Companies also request the deletion or amendment of certain rules that are obsolete or unnecessary, or that warrant clarification. The current rule language, the requested amendments, and a brief explanation for each change are included on **Attachment C**.

43. Rule 25-4.006, F.A.C., Issuance of Certificate in the Event of Failure to Furnish Adequate Service, should be deleted as obsolete. The rule assumes there is only one certificate holder per territory, which is not the case in today's telecommunications market.

44. Several rules should be deleted because, in the existing competitive environment, the issues covered in such rules are best handled on a complaint basis. These include Rules 25-4.024, F.A.C., Held Applications for Service; 25-4.039, F.A.C., Traffic; and 25-4.046, F.A.C., Incremental Cost Data Submitted by Local Exchange Companies. The Joint Telecommunications Companies recognize that upon the deletion of Rule 25-4.046, F.A.C., the Commission would continue to have oversight jurisdiction over cross-subsidization, predatory pricing or other similar anticompetitive behavior in accordance with Section 364.3381, F.S.

45. Rule 25-4.007, F.A.C., Reference to Commission, should be deleted. The rule specifies that a party may apply to the Commission for an interpretation of any of its rules or regulations. The Florida Administrative Procedure Act now permits any substantially affected party to request a declaratory statement regarding "an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances." Section 120.565(1), F.S. (2007). Thus, Rule 25-4.007, F.A.C., has been pre-empted and should be eliminated.

46. Two rules should be deleted as unnecessary. Rule 25-4.019, F.A.C., Records and Reports in General, adds little, if anything, to Sections 364.18, 364.183, and 364.185, F.S. As

directed by Section 120.74(d), F.S., state agencies should delete rules that are “redundant of statutes,” such as this rule. Further, none of the Florida Statutes listed as “implemented” by this rule require imposition of these requirements on price-regulated companies. The Joint Telecommunications Companies are exempt from Section 364.18, F.S., under Section 364.051(c), F.S., so it does not support the rule as it applies to price-regulated companies. Further, Sections 364.183(1), F.S., and 364.386, F.S., are permissive, not mandatory. The Joint Telecommunications Companies recognize that they would be required to provide information in accordance with applicable statutes, even if this rule is repealed. Rule 25-4.116, F.A.C., Telephone Number Assignment Procedure, should also be deleted because it adds little, if anything, to the federal requirements.

47. Several rules should be updated to eliminate unnecessary or obsolete phrases or to provide clarification. These include Rules 25-4.022, F.A.C., Complaint – Trouble Reports, Etc.; 25-4.034, F.A.C., Tariffs; 25-4.040, F.A.C., Telephone Directories; Directory Assistance; and 25-4.067, F.A.C., Extension of Facilities – Contributions in Aid of Construction. Rule 25-4.079, F.A.C., Hearing/Speech Impaired Persons, should be revised so that it reflects the current practice for providing specialized customer premises equipment for hearing and speech impaired persons. Rule 25-9.034, F.A.C., Contracts and Agreements should be amended to clarify that the rule does not apply to telecommunications companies.

48. The Joint Telecommunications Companies have also suggested amendments to other rules to clarify that the rules apply only to rate-of-return regulated local exchange telecommunications companies. These rules are Rules 25-4.017, F.A.C., Uniform System of Accounts; 25-4.0174, F.A.C., Uniform System and Classification of Accounts – Depreciation; 25-4.0175, F.A.C., Depreciation; and 25-4.0178, F.A.C., Retirement Units. It is not the intent of the Joint Telecommunications Companies to change the impact of these rules, but merely to

clarify the companies to which they apply. Rule 25-9.044, F.A.C., Change of Ownership, should also be revised as outlined on **Attachment C** to indicate that as to telecommunications companies, this rule applies only to rate-of-return regulated companies.

49. Thus, the Joint Telecommunications Companies submit that these proposed deletions and rule amendments should be adopted to eliminate rules that are obsolete and unnecessary, and to clarify the application of other existing rules.

VI. THE COMMISSION SHOULD INITIATE RULEMAKING AND ADOPT THE JOINT TELECOMMUNICATIONS COMPANIES' PROPOSED ADDITION, REVISIONS, AND DELETIONS

50. The Joint Telecommunications Companies respectfully request the Commission initiate rulemaking proceedings to adopt the new rule in **Attachment A**, providing for streamlined regulation, and to amend or repeal the unnecessary or obsolete rules outlined in **Attachment C**.

Respectfully submitted,

/s/ Susan F. Clark
Susan F. Clark
Lisa C. Scoles
Radey Thomas Yon & Clark, P.A.
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301
(850) 425-6654 (phone)
**Attorneys for the Joint Telecommunications
Companies**

/s/ Dulaney L. O'Roark III
Dulaney L. O'Roark III
P. O. Box 110, MC FLTC0007
Tampa, Florida 33601-0110
(678) 259-1449 (phone)
Attorney for Verizon Florida LLC

/s/ E. Earl Edenfield, Jr.
E. Earl Edenfield, Jr.
Tracy W. Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301
(305) 347-5558 (phone)
**Attorneys for BellSouth Telecommunications,
Inc. d/b/a AT&T Florida**

/s/ Lisa S. Foshee
Lisa S. Foshee
J. Phillip Carver
AT&T Southeast
675 West Peachtree Street, Suite 4300
Atlanta, Georgia
(404) 335-0710 (phone)
**Attorneys for BellSouth Telecommunications,
Inc. d/b/a AT&T Florida**

/s/ Susan S. Masterton
Susan S. Masterton
1313 Blair Stone Road
Tallahassee, FL 32301
(850) 599-1560 (phone)
Attorney for Embarq Florida, Inc.

/s/ Peter R. Healey
Peter R. Healy
TDS Telecom
525 Junction Road, Suite 7000
Madison, WI 53717
(608) 664-4117 (phone)
Attorney for TDS Telecom

/s/ J. Jeffry Wahlen
J. Jeffry Wahlen
Ausley & McMullen
P. O. Box 391
Tallahassee, FL 32302
(850) 224-9115 (phone)
Attorney for Windstream Florida, Inc.

ATTACHMENT A

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ATTACHMENT A
PROPOSED NEW RULE

Proposed New Rule	Comments
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Proposed Rule:

25-24.xxx Streamlined Regulation for Telecommunications Markets and Companies.

(1) Determination of Whether a Market Should be Subject to Streamlined Regulation:

(a) A telecommunications company may apply for Streamlined Regulation of a market by showing that the market is competitive. A market may be defined, at the telecommunications company's option, as a Metropolitan Statistical Area, an exchange, the company's service territory, or on such other basis as submitted by the telecommunications company. A market that is competitive shall be eligible for Streamlined Regulation. For purposes of this subsection, the company's service territory means all exchanges served by a telecommunications company in Florida.

(b) A market shall be determined to be competitive if:

1. At least three (3) local service access alternatives are present within the market. For purposes of this rule, local service access alternative means wireline, wireless, broadband, cable, or other technology approved by the Commission; and
2. At least two-thirds (2/3) of households within the market have access to at least three (3) different providers using any local service access alternative, including the telecommunications company seeking Streamlined Regulation.

(2) Determination of Whether a Telecommunications Company Should be Subject to Streamlined Regulation:

(a) A telecommunications company not otherwise eligible for Streamlined Regulation in all its markets is eligible for Streamlined Regulation in all its markets if at least two-thirds (2/3) of its access lines in the state are in markets that have been determined to be competitive pursuant to Subsection (1) of this rule.

(b) A rate-of-return regulated telecommunications company is not eligible for Streamlined Regulation.

(3) Determination of Eligibility for Streamlined Regulation:

(a) A telecommunications company seeking a determination of Streamlined Regulation for eligible markets pursuant to Subsection (1) of this rule shall file an application with the Commission. The application must:

Proposed Subsection (1) outlines the appropriate test for competition in Florida's telecommunications markets.

Proposed Subsection (2) allows a company with two-thirds of its Florida access lines in a competitive market to operate its entire business under Streamlined Regulation, rather than operating the majority of the business under Streamlined Regulation and a small portion under traditional regulation. It also clarifies that rate-of-return regulated telecommunication companies are not eligible for Streamlined Regulation.

Proposed Subsection (3) sets out the process for seeking a determination of eligibility for Streamlined Regulation.

ATTACHMENT A

PROPOSED NEW RULE

Proposed New Rule	Comments
<p>1. Identify each market that is eligible for Streamlined Regulation;</p> <p>2. Identify the number and type of local service access alternatives existing within each eligible market; and</p> <p>3. Identify the percentage of households within each market that have access to at least three (3) different providers using any local service access alternative.</p> <p>(b) A telecommunications company seeking a determination that it should be subject to Streamlined Regulation pursuant to Subsection (2) of this rule shall file an application with the Commission. The application must:</p> <p>1. Identify the applicable markets which are competitive pursuant to Subsection (1) of this rule; and</p> <p>2. Show that at least two-thirds (2/3) of its access lines in the state are in competitive markets pursuant to Subsection (1) of this rule.</p> <p>(c) The Commission shall grant or deny an application for Streamlined Regulation, using the criteria in Subsection (1) or (2), within 45 days of the date of filing, unless both the telecommunications company and the Commission agree to extend the effective date for a period of time, not to exceed an additional 45 days. If the Commission denies the application, it must notify the telecommunications company and describe the reasons for the denial, within 45 days of the date of the initial filing or by the agreed-upon extension date, if applicable.</p> <p>(d) Notice of the Commission's grant or denial of an application for Streamlined Regulation shall be given by a notice of proposed agency action issued by the Commission. Any substantially affected person may challenge the Commission's decision regarding an application for Streamlined Regulation by filing a protest to the proposed agency action within 21 days. If a protest is filed, the Commission shall issue a final order granting or denying the application within 90 days of the filing of the protest.</p> <p>(e) A denial of an application for Streamlined Regulation by the Commission does not disqualify a market or a telecommunications company for a subsequent determination of Streamlined Regulation. Any subsequent application for Streamlined Regulation will depend on the degree of competition existing at the time of any subsequent application for Streamlined Regulation.</p> <p>(4) Rules Applicable to Competitive Markets or Companies Subject to Streamlined Regulation:</p> <p>(a) This rule applies only to competitive markets, pursuant to Subsection (1) of this rule, or to companies subject to Streamlined Regulation, pursuant to Subsection (2) of this rule.</p>	<p>Proposed Subsection (4) specifies which rules would apply and would not apply to competitive markets or companies subject to Streamlined Regulation.</p>

ATTACHMENT A

PROPOSED NEW RULE

Proposed New Rule	Comments
<p>(b) Chapters 25-4, 25-9, 25-14 and 25-24, F.A.C., shall continue to apply to competitive markets or companies subject to Streamlined Regulation, to the extent they currently do, except as otherwise provided by this rule.</p> <p>(c) The following rules from Chapter 25-4, F.A.C., shall <u>not</u> apply to competitive markets or to companies subject to Streamlined Regulation:</p> <ol style="list-style-type: none">1. Rule 25-4.0185, F.A.C., Periodic Reports2. Rule 25-4.0201, F.A.C., Audit Access to Records3. Rule 25-4.021, F.A.C., System Maps and Records4. Rule 25-4.023, F.A.C., Report of Interruptions5. Rule 25-4.066, F.A.C., Availability of Service6. Rule 25-4.069, F.A.C., Maintenance of Plant and Equipment7. Rule 25-4.070, F.A.C., Customer Trouble Reports8. Rule 25-4.071, F.A.C., Adequacy of Service9. Rule 25-4.072, F.A.C., Transmission Requirements10. Rule 25-4.073, F.A.C., Answering Time11. Rule 25-4.074, F.A.C., Intercept Service12. Rule 25-4.077, F.A.C., Metering and Recording Equipment13. Rule 25-4.083, F.A.C., Preferred Carrier Freeze14. Rule 25-4.085, F.A.C., Service Guarantee Program15. Rule 25-4.107, F.A.C., Information to Customers16. Rule 25-4.108, F.A.C., Initiation of Service17. Rule 25-4.109, F.A.C., Customer Deposits18. Rule 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies19. Rule 25-4.112, F.A.C., Termination of Service by Customer20. Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company21. Rule 25-4.114, F.A.C., Refunds22. Rule 25-4.115, F.A.C., Directory Assistance23. Rule 25-4.117, F.A.C., 800 Service24. Rule 25-4.200, F.A.C., Application and Scope25. Rule 25-4.202, F.A.C., Construction26. Rule 25-4.210, F.A.C., Service Evaluation and Investigations27. Rule 25-4.214, F.A.C., Tariff Filings28. Rule 25-4.215, F.A.C., Limited Scope Proceedings <p>(d) The following rules from Chapter 25-9, F.A.C., shall <u>not</u> apply to competitive markets or companies subject to Streamlined Regulation:</p>	

ATTACHMENT A

PROPOSED NEW RULE

Proposed New Rule	Comments
<ol style="list-style-type: none">1. Rule 25-9.005, F.A.C., Information to Accompany Filings2. Rule 25-9.020, F.A.C., Front Cover3. Rule 25-9.021, F.A.C., Title Page4. Rule 25-9.022, F.A.C., Table of Contents5. Rule 25-9.023, F.A.C., Description of Territory Served6. Rule 25-9.024, F.A.C., Miscellaneous7. Rule 25-9.025, F.A.C., Technical Terms and Abbreviations8. Rule 25-9.026, F.A.C., Index of Rules and Regulations9. Rule 25-9.027, F.A.C., Rules and Regulations10. Rule 25-9.029, F.A.C., Index of Rate or Exchange Schedules11. Rule 25-9.030, F.A.C., Rate Schedules – General12. Rule 25-9.032, F.A.C., Telephone Utility Exchange Schedules13. Rule 25-9.045, F.A.C., Withdrawal of Tariffs <p>(e) None of the rules from Chapter 25-14, F.A.C., shall apply to competitive markets or companies subject to Streamlined Regulation.</p> <p><i>Specific Authority 350.127(2), F.S. Law Implemented 364.01(4), 364.03, F.S. History–New XX-XX-08.</i></p>	

ATTACHMENT B

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ATTACHMENT B

**RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES
PURSUANT TO PROPOSED RULE IN ATTACHMENT A**

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>25-4.0185 Periodic Reports.</p> <p>Each local exchange telecommunications company shall file with the Commission's Division of Competitive Markets and Enforcement the information required by Commission Form PSC/CMP 28 (4/05), which is incorporated into this rule by reference. Form PSC/CMP 28, entitled "Engineering Data Requirements," may be obtained from the Commission's Division of Competitive Markets and Enforcement.</p> <p>(1) The information required by schedules 2, 3, 8, 11, 15 and 16 of Form PSC/CMP 28 shall be reported on a quarterly basis by the large LECs and semiannually by the small LECs and shall be filed on or before the end of the month following the reporting period.</p> <p>(2) The information required by Schedule 19 of Form PSC/CMP 28 shall be reported on a semiannual basis and shall be filed on or before the end of the month following the second and fourth quarters.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.17, 364.183(1) FS. History—New 12-14-86, Amended 7-20-89, 12-27-94, 3-10-96, 4-3-05.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such reports are not needed in a competitive environment. Competitors of wireline providers are not required to submit such reports.</p>
<p>25-4.0201 Audit Access to Records.</p> <p>This rule addresses the reasonable access to utility and affiliate records provided by Section 364.183(1), F.S., for the purposes of management and financial audits.</p> <p>(1) The audit scope, audit program and objectives, and audit requests are not constrained by relevancy standards narrower than those provided by Section 364.183(1), F.S.</p> <p>(2) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility to review its response for possible claims of confidentiality or privilege.</p> <p>(3) In those instances where the utility disagrees with the auditor's assessment of a reasonable response time to the request, the utility shall first attempt to discuss the disagreement with the auditor and reach an acceptable revised date. If agreement cannot be reached, the utility shall discuss the issue with successive levels of supervisors at the Commission until an agreement is reached. If necessary, a final decision shall be made by the Prehearing Officer. If the audit is related to an undocketed case, the Chairman shall make the decision.</p> <p>(4) The utility and its affiliates shall have the opportunity to safeguard their records by copying them or logging them out, provided, however, that safeguard measures shall not be used to prevent reasonable access by Commission auditors to utility or affiliate records.</p> <p>(5) Reasonable access to records includes reasonable access to personnel to obtain testimonial evidence in response to inquiries or through interviews.</p> <p>(6) Nothing in this rule shall preclude Commission auditors from making copies or taking notes. In the event these notes relate to documents for which the company has asserted confidential status, such notes shall also be given confidential status.</p> <p>(7) Form PSC/RCA 6-R (2/95), entitled "Audit Document and Record Request/Notice of Intent" is incorporated by reference into this rule. This form is used by auditors when requests are formalized. This form documents audit requests, the due dates for responses, and all Notices of Intent to Seek Confidential Classification.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.183(1) FS. History—New 3-1-95.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Competitors of wireline providers are generally not required to meet such requirements.</p> <p>Section 364.183, F.S., would continue to apply to assure Commission access to books and records.</p> <p style="text-align: right;">DOCUMENT NUMBER DATE 01925 MAR 14 88</p>

ATTACHMENT B

RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES PURSUANT TO PROPOSED RULE IN ATTACHMENT A

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>25-4.021 System Maps and Records.</p> <p>Each telephone company shall maintain suitable maps and/or records to show the location and description of its toll and exchange plant facilities and the extent of area served by the company.</p> <p><i>Specific Authority 350.127(2), 364.17 FS. Law Implemented 364.17, 364.183 FS. History—Revised 12-1-68, Formerly 25-4.21</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such maps and records are not needed in a competitive environment. Competitors of wireline providers are not required to maintain such maps and records.</p>
<p>25-4.023 Report of Interruptions.</p> <p>(1) The Commission shall be informed of any major interruptions to service that affect 1,000 or more subscribers for a period of 30 minutes or more as soon as it comes to the attention of the utility. The Company shall provide the time, the location, the expected duration of the outage and when the interruption is restored.</p> <p>(2) In addition, a copy of all Florida service interruption reports made to the Federal Communications Commission in accordance with the provisions of Part 63 of Chapter 1 of Title 47; Code of Federal Regulations; Notification of Common Carriers of Service Disruptions (Effective April 12, 1996) shall be immediately forwarded to the Commission's Division of Competitive Markets and Enforcement, Bureau of Service Quality.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.17, 364.183 FS. History—Revised 12-1-68, Amended 3-31-76, Formerly 25-4.23, Amended 10-1-96, 4-3-05.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.066 Availability of Service.</p> <p>(1) Each telecommunications company shall provide central office equipment and outside plant facilities designed and engineered in accordance with realistic anticipated customer demands for basic local telecommunications service within its certificated area in accordance with its filed tariffs or orders of the Commission, subject to its ability to secure and provide, for reasonable expense, suitable facilities and rights for construction and maintenance of such facilities.</p> <p>(2) Where central office and outside plant facilities are readily available, at least 90 percent of all requests for primary service in any calendar month shall normally be satisfied in each exchange of at least 50,00 lines and quarterly in exchanges of less than 50,000 lines within an interval of three working days after receipt of application when all tariff requirements relating thereto have been complied with, except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.</p> <p>(3) If the applicant requests an installation date beyond three working days, the requested date shall be counted as day three for measurement purposes.</p> <p>(4) When an appointment is made in order for the company to gain access to the customer's premises, the mutually agreed upon date will be day three for measurement purposes. Failure of the customer to be present to afford the company representative entry to the premises during the appointment period shall exempt the order for measurement purposes. Whenever a company representative is unable to gain admittance to a customer's premises during the scheduled appointment period, the company representative shall leave a notice, stating the name of the company representative and the date and time the company representative was at the premises.</p> <p>(5) Each telecommunications company shall establish as its objective the satisfaction of at least 95 percent of all applications for new service in each exchange within a 30 day maximum interval and, further, shall have as its objective the capability of furnishing service within each of its</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Companies must provide acceptable arrangements to provide service; otherwise, customers can and will switch to competitors. Competitors of wireline providers do not have to meet a similar requirement.</p>

ATTACHMENT B

**RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES
PURSUANT TO PROPOSED RULE IN ATTACHMENT A**

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>exchanges to applicants within 60 days after date of application; except those instances where a later installation date is requested by the applicant or where special equipment or services are involved.</p> <p>(6) Whenever, for any reason, the service installation cannot be made at the time requested by the applicant or within the prescribed interval, the applicant shall be notified promptly of the delay and the reason therefor.</p> <p>(7) Where facility additions are required to make service available, the applicant shall be further advised as to the circumstances and conditions under which service will be provided and as soon as practicable an estimated date when service will be furnished. With respect to applications aged over six months all service dates that result in a further delay due to the company's inability to meet the original estimated date of service shall be identified in the appropriate section of the report of held applications filed with the Commission and shall include an explanation of the reasons therefor.</p> <p>(8) Each company shall report pursuant to Rule 25-4.0185, F.A.C. Periodic Reports, the performance of the company with respect to the availability of service requirements as outlined in Form PSC/CMP 28 (4/05), incorporated into Rule 25-4.0185, F.A.C., by reference and available from the Division of Competitive Markets and Enforcement. Each company shall explain the reasons for all service orders that are not completed within 30 calendar days.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.025, 364.03, 364.14, 364.15, 364.183, 364.185 FS. History-Revised 12-1-68, Amended 3-31-76, Formerly 25-4.66, Amended 3-10-96, 4-3-05, 4-3-05.</i></p>	

ATTACHMENT B

**RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES
PURSUANT TO PROPOSED RULE IN ATTACHMENT A**

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>25-4.069 Maintenance of Plant and Equipment.</p> <p>Each telecommunications company shall adopt and pursue a maintenance program aimed at achieving efficient operation of its system so as to permit the rendering of safe, adequate, and continuous service at all times.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.15 FS. History—Revised 12-1-68, Amended 12-13-82, 9-30-85, Formerly 25-4.69, Amended 4-16-90, 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.070 Customer Trouble Reports.</p> <p>(1) Each telecommunications company shall make all reasonable efforts to minimize the extent and duration of trouble conditions that disrupt or affect customer telephone service. Trouble reports will be classified as to their severity on a service interruption (synonymous with out-of-service or OOS) or service affecting (synonymous with non-out-of-service or non-OOS) basis. Service interruption reports shall not be downgraded to a service affecting report; however, a service affecting report shall be upgraded to a service interruption if changing trouble conditions so indicate.</p> <p>(a) Companies shall make every reasonable attempt to restore service on the same day that the interruption is reported to the serving repair center.</p> <p>(b) In the event a subscriber's service is interrupted other than by a negligent or willful act of the subscriber and it remains out of service in excess of 24 hours after being reported to the company, an appropriate adjustment or refund shall be made to the subscriber automatically, pursuant to Rule 25-4.110, F.A.C. (Customer Billing). Service interruption time will be computed on a continuous basis, Sundays and holidays included. Also, if the company finds that it is the customer's responsibility to correct the trouble, it must notify or attempt to notify the customer within 24 hours after the trouble was reported.</p> <p>(c) If service is discontinued in error by the telephone company, the service shall be restored without undue delay, and clarification made with the subscriber to verify that service is restored and in satisfactory working condition.</p> <p>(2) Sundays and Holidays:</p> <p>(a) Except for emergency service providers, such as the military, medical, police, and fire, companies are not required to provide normal repair service on Sundays. Where any repair action involves a Sunday or holiday, that period shall be excepted when computing service objectives, but not refunds for OOS conditions.</p> <p>(b) Service interruptions occurring on a holiday not contiguous to Sunday will be treated as in paragraph (2)(a) of this rule. For holidays contiguous to a Sunday or another holiday, sufficient repair forces shall be scheduled so that repairs can be made if requested by a subscriber.</p> <p>(3) Service Objectives:</p> <p>(a) Service Interruption: Restoration of interrupted service shall be scheduled to insure at least 95 percent shall be cleared within 24 hours of report in each exchange that contains at least 50,000 lines and will be measured on a monthly basis. For exchanges that contain less than 50,000 lines, the results can be aggregated on a quarterly basis. For any exchange failing to meet this objective, the company shall provide an explanation with its periodic report to the Commission.</p> <p>(b) Service Affecting: Clearing of service affecting trouble reports shall be scheduled to insure at least 95 percent of such reports are cleared within 72 hours of the report in each exchange which contains at least 50,000 lines and will be measured on a monthly basis. For exchanges</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment where companies must provide service with minimal disruption to retain customers, who can and will switch providers if the telecommunications service provided is interrupted frequently. Further, when landline service is disrupted, wireless and other technology options are generally available such that customers are not left completely without telecommunications service.</p>

ATTACHMENT B

**RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES
PURSUANT TO PROPOSED RULE IN ATTACHMENT A**

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>which contain less than 50,000 lines, the results can be aggregated on a quarterly basis.</p> <p>(c) If the customer requests that the service be restored on a particular day beyond the objectives outlined in paragraphs (a) and (b) above, the trouble report shall be counted as having met the objective if the requested date is met.</p> <p>(4) Priority shall be given to service interruptions that affect public health and safety that are reported to and verified by the company and such service interruptions shall be corrected as promptly as possible on an emergency basis.</p> <p>(5) Repeat Trouble: Each telephone company shall establish procedures to insure the prompt investigation and correction of repeat trouble reports such that the percentage of repeat troubles will not exceed 20 percent of the total initial customer reports in each exchange when measured on a monthly basis. A repeat trouble report is another report involving the same item of plant within 30 days of the initial report.</p> <p>(6) The service objectives of this rule shall not apply to subsequent customer reports, (not to be confused with repeat trouble reports), emergency situations, such as unavoidable casualties where at least 10 percent of an exchange is out of service.</p> <p>(7) Reporting Criteria: Each company shall periodically report the data specified in Rule 25-4.0185, F.A.C., Periodic Reports, on Form PSC/CMP 28 (4/05), incorporated into Rule 25-4.0185, F.A.C., by reference and available from the Division of Competitive Markets and Enforcement.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.15, 364.17, 364.18, 364.183, 364.386 FS. History—Revised 12-1-68, Amended 3-31-76, Formerly 25-4.70, Amended 6-24-90, 3-10-96, 4-3-05.</i></p>	

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<p>25-4.071 Adequacy of Service.</p> <p>(1) Each telecommunications company shall provide switching equipment, trunking, and associated facilities within its operating territory for the handling of local and toll traffic, designed and engineered on the basis of realistic forecasts of growth so that during the average busy season busy hour at least 97 percent of all calls offered to any trunk group (toll connecting, inter-office, extended area service) shall not encounter an all-trunk busy condition.</p> <p>(2) Telephone calls to valid numbers should encounter a ring-back tone, line busy signal, or non-working number intercept facility (operator or recording) after completion of dialing. The call completion standards established for such calls by category of call is as follows:</p> <p>(a) Intra-office Calls – 95 percent, (b) Inter-office Calls – 95 percent, (c) Extended Area Calls – 95 percent, and (d) Intra-LATA DDD Calls – 95 percent.</p> <p>(3) All telephone calls to invalid telephone numbers shall encounter an operator or suitable recorded intercept facility, preferably a recording other than the non-working number recording used for valid number calls.</p> <p>(4) Intercept service shall be as outlined in Rule 25-4.074, F.A.C.</p> <p>(5) A line busy signal (60 impulse per minute tone) shall not be used for any signaling purpose except to denote that a subscriber's line, other valid terminal, centrex or PBX trunks, or equipment where the quantity is controlled by the customer is in use.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.15, 364.17, 364.18, 364.183, 364.19, 364.386 FS. History-- Revised 12-1-68, Amended 3-31-76, Formerly 25-4.71, Amended 6-24-90, 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Companies must provide an acceptable level of service; otherwise, customers can and will switch to competitors. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.072 Transmission Requirements.</p> <p>(1) Telecommunications companies shall furnish and maintain the necessary plant, equipment, and facilities to provide modern, adequate, sufficient, and efficient transmission of communications between customers in their service areas. Transmission parameters shall conform to ANSI/IEEE Standard 820 Telephone Loop Performance Characteristics (Adopted 1984) incorporated herein by reference.</p> <p>(2) Accurate dependable milliwatt supplies shall be made a part of each central office. Additionally, for those central offices having an installed line capacity of 1,000 lines or more, the buffered access on a minimum three line rotary group basis shall be a part of the milliwatt supply.</p> <p>(3) Each central office shall be equipped with a minimum of one termination which shall trip ringing and terminate the line on a balanced basis so that end to end noise measurements may be made.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.15, 364.386 FS. History--New 12-1-68, Amended 3-31-76, Formerly 25-4.72, Amended 3-10-96, 4-3-05.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.073 Answering Time.</p> <p>(1) Each telephone utility shall provide equipment designed and engineered on the basis of realistic forecasts of growth, and shall make all reasonable efforts to provide adequate personnel so as to meet the following service criteria under normal operating conditions:</p> <p>(a) At least 90 percent of all calls directed to repair services and 80 percent of all calls to business offices shall be answered within 30</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment as customers can and will change providers if they are not happy with the</p>

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<p>seconds after the last digit is dialed when no menu driven system is utilized.</p> <p>(b) When a company utilizes a menu driven, automated, interactive answering system (referred to as the system or as an Integrated Voice Response Unit (IVRU)), at least 95 percent of the calls offered shall be answered within 15 seconds after the last digit is dialed. The initial recorded message presented by the system to the customer shall include the option of transferring to a live attendant within the first 30 seconds of the message.</p> <p>(c) For subscribers who either select the option of transferring to a live assistant, or do not interact with the system for twenty seconds, the call shall be transferred by the system to a live attendant. At least 90 percent of the calls shall be answered by the live attendant prepared to give immediate assistance within 55 seconds of being transferred to the attendant.</p> <p>(d) The terms “answered” as used in paragraphs (a) and (c) above, shall be construed to mean more than an acknowledgment that the customer is waiting on the line. It shall mean that the service representative is ready to render assistance.</p> <p>(2) Answering time studies using actual data or any statistically valid substitute for actual data shall be made to the extent and frequency necessary to determine compliance with this rule.</p> <p>(3) All telecommunications companies are expected to answer their main published telephone number on a 24 hour a day basis. Such answering may be handled by a special operator at the toll center or directory assistance facility when the company offices are closed. Where after hours calls are not handled as described above, at least the first published business office number will be equipped with a telephone answering device which will notify callers after the normal working hours of the hours of operation for that business office. Where recording devices are used, the message shall include the telephone number assigned to handle urgent or emergency calls when the business office is closed.</p> <p>(4) Each company shall report, pursuant to Rule 25-4.0185, F.A.C. Periodic Reports, the performance of the company with respect to answer time as outlined in Form PSC/CMP 28 (4/05), incorporated into Rule 25-4.0185, F.A.C., by reference and available from the Division of Competitive Markets and Enforcement.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.386, 365.171 FS. History–New 12-1-68, Amended 3-31-76, Formerly 25-4.73, Amended 11-24-92, 4-3-05.</i></p>	<p>manner in which calls to the provider are answered and addressed.</p>

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<p>25-4.074 Intercept Service.</p> <p>(1) Intercept service shall be engineered to provide a 90 percent completion for changed numbers (with the exception of the 30 day period immediately following an inter-office transfer with directory) and for vacant or non-working numbers.</p> <p>(2) Subscriber lines which are temporarily disconnected for nonpayment of bills shall be placed on intercept (preferably operator intercept).</p> <p>(3) All private branch exchanges and In-Dial Paging Systems, whether provided by the company or customer and which are equipped for direct in-dialing and installed after the effective date of these rules, shall meet the service requirements outlined herein prior to the assignment of a number block by the telephone company.</p> <p>(4) With the exception of numbers that are changed coincident with the issuance of a new directory, intercept service shall be provided by each telephone company in accordance with the following:</p> <p>(a) Intercept service shall be provided for non-working and changed numbers until assigned, re-assigned, or no longer listed in the directory.</p> <p>(b) Any 7-digit number (or other number serving a public safety or other emergency agency) when replaced by the universal emergency number "911" shall be intercepted by either a telecommunications company assistance or a public safety agency operator or special recorded announcement for at least one year or until the next directory issue. Also, intercept service for the universal emergency telephone number "911" shall be provided in central offices where the number is inoperable. The intercept service may be automated with a message indicating the "911" emergency number is inoperable in that area and to consult the directory for the appropriate emergency number or if a directory is not available to dial operator for assistance.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.03, 364.051 FS. History—New 12-1-68, Amended 3-31-76, Formerly 25-4.74, Amended 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.077 Metering and Recording Equipment.</p> <p>(1) Where mechanical or electronic means are used for registering or recording information which will affect a subscriber's bill, such equipment shall be in good mechanical and electrical condition, shall be accurately read, and shall be inspected daily to insure that it is functioning properly. Where message rate service (MRS) or any type of optional calling that involves customer billing other than by a flatrate method is used, the metering or measuring device used to record call data shall be accurate 95 percent of the time.</p> <p>(2) Every telephone meter and recording device shall be tested prior to its installation, either by the manufacturer, the company, or an approved organization equipped for testing.</p> <p>(3) Metering and timing equipment shall be maintained so that the accuracy of company billing operations enjoys a high confidence level from their customers. After allowance for a one-second variation, timing accuracy shall be not less than 97 percent.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03, 364.051, 364.19 FS. History—New 12-1-68, Amended 3-31-76, Formerly 25-4.77, Amended 6-24-90, 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>
<p>25-4.083 Preferred Carrier Freeze.</p> <p>(1) A PC Freeze shall not be imposed or removed on a subscriber's account without the subscriber's authorization and shall not be required as a condition for obtaining service.</p> <p>(2) A PC Freeze shall be implemented or removed at no charge to the subscriber.</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. The Federal Communications Commission has rules that cover this area. Two sets of rules on both the federal and state levels are not needed</p>

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<p>(3) The subscriber's authorization shall be obtained for each service for which a PC Freeze is requested. Procedures implemented by local exchange providers must clearly distinguish among telecommunications services (e.g., local, local toll, and toll) subject to a PC Freeze.</p> <p>(4) All notification material regarding PC Freezes must include:</p> <ul style="list-style-type: none">(a) An explanation of what a PC Freeze is and what services are subject to a freeze;(b) A description of the specific procedures necessary to lift a PC Freeze and an explanation that the subscriber will be unable to make a change in provider selection unless the subscriber authorizes lifting of the PC Freeze; and(c) An explanation that there are no charges for implementing or removing a PC Freeze. <p>(5) A local provider shall not solicit, market, or induce subscribers to request a PC Freeze. A local provider is not prohibited, however, from informing an existing or potential new subscriber who expresses concerns about slamming about the availability of a PC Freeze.</p> <p>(6) A local exchange provider shall not implement a PC Freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:</p> <ul style="list-style-type: none">(a) The local exchange provider has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of subsection (7);(b) The local exchange provider has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the PC Freeze is to be imposed. The electronic authorization should confirm appropriate verification data (e.g., the subscriber's date of birth or the last four digits of the subscriber's social security number) and the information required in paragraphs (7)(a) through (d). Telecommunications providers electing to confirm PC Freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the PC Freeze request, including automatically recording the originating automatic numbering identification; or(c) An independent third party has obtained the subscriber's oral authorization to submit the PC Freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or the last four digits of the subscriber's social security number) and the information required in paragraphs (7)(a) through (d). The independent third party must not be owned, managed, or directly controlled by the provider or the provider's marketing agent; must not have any financial incentive to confirm PC Freeze requests for the provider or the provider's marketing agent; and must operate in a location physically separate from the provider or the provider's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a PC Freeze. <p>(7) A local exchange provider shall accept a subscriber's written and signed authorization to impose a PC Freeze on a preferred provider selection. A written authorization shall be printed in a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:</p> <ul style="list-style-type: none">(a) The subscriber's billing name and address and the telephone number(s) to be covered by the PC Freeze;(b) The specific service, (e.g., local, local toll, and toll), separately stated, on which a PC Freeze will be imposed.;(c) That the subscriber understands that to make a change in provider selection, the subscriber must lift the PC Freeze; and(d) That there will be no charge to the subscriber for a PC Freeze. <p>(8) All local exchange providers shall, at a minimum, offer subscribers the following procedures for lifting a PC Freeze:</p>	<p>in a competitive environment.</p>

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<p>(a) Acceptance of a subscriber’s written or electronically signed authorization; and</p> <p>(b) Acceptance of a subscriber’s oral authorization along with a mechanism that allows the submitting provider to conduct a three-way conference call between the provider administering the PC Freeze and the subscriber. The provider administering the PC Freeze shall confirm appropriate verification data (e.g., the subscriber’s date of birth or the last four digits of the subscriber’s social security number) and the subscriber’s intent to lift a specific PC Freeze.</p> <p>(9) Information obtained under subsection (6) and paragraph (8)(a) shall be retained by the provider for a period of one year.</p> <p>(10) A PC Freeze shall not prohibit a local provider from changing wholesale services when serving the same end user.</p> <p>(11) Local providers shall make available an indicator on the customer service record that identifies whether the subscriber currently has a PC Freeze in place.</p> <p>(12) Local providers shall make available the ability for the subscriber’s new local provider to initiate a local PC Freeze using the local service request.</p> <p><i>Specific Authority 350.127, 364.01, 364.603 FS. Law Implemented 364.01, 364.603 FS. History–New 9-9-04.</i></p>	

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<p>25-4.085 Service Guarantee Program. A company may petition the Commission for approval of a Service Guarantee Program, which would relieve the company from the rule requirement of each service standard addressed in the approved Service Guarantee Program. When evaluating a Service Guarantee Program for approval, the Commission will consider the Program's benefits to the customers and whether the Program is in the public interest. The Commission shall have the right to enforce the provisions of the Service Guarantee Plan. <i>Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.01(4), 364.03, 364.035, 364.036, 364.386 FS. History—New 6-14-05.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment.</p> <p>The Joint Telecommunications Companies understand that, depending on the language of the relevant orders, Commission orders in effect regarding a particular telecommunications company's service guarantee program may remain in effect until such orders expire or are revised by the Commission.</p>
<p>25-4.107 Information to Customers. (1) Each company shall provide such information and assistance as is reasonable to assist any customer or applicant in obtaining telephone service adequate to his communications needs. At the time of initial contact, each local exchange telecommunications company shall advise the person applying for or inquiring about residential or single line business service of the rate for the least expensive one party basic local exchange telephone service available to him unless he requests specific equipment or services. Each company shall inform all persons applying for residential service of the availability of the company's installment plan for the payment of service connection charges. The information will be provided at the time of initial contact and shall include, but not be limited to, information on rate amounts and installment time periods and procedures. Upon customer request, the person shall also be given an 800 number to call to receive information on the "No Sales Solicitation" list offered through the Department of Agriculture and Consumer Services, Division of Consumer Services. In any discussion of enhanced or optional services, each service shall be identified specifically, and the price of each service shall be given. Such person shall also be informed of the availability of and rates for local measured service, if offered in his exchange. Local exchange telecommunications companies shall submit copies of the information provided to customer service representatives to the Division of Competitive Competitive Markets and Enforcement for prior approval. (2) At the earliest time practicable, the company shall provide to that customer the billing cycle and approximate date he may expect to receive his monthly billing. <i>Specific Authority 350.127(2), 364.14(2) FS. Law Implemented 364.025, 364.03, 364.04, 364.051, 364.15, 350.127 FS. History—New 7-5-79, Amended 11-30-86, 11-28-89, 3-31-91, 10-30-91.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment as customers can and will change providers if a provider does not provide telecommunications service adequate to a customer's needs.</p>
<p>25-4.108 Initiation of Service. Any applicant for telephone service may be required to make application in writing in accordance with standard practices and forms prescribed by the utility, provided that the policy adopted by the utility for the initiation of service shall have uniform application and shall be set forth in its filed tariff. Such application shall be considered as notice to the utility that the applicant desires service and upon compliance by the applicant with such other provisions governing utility service as may be in effect, the utility shall undertake to initiate service without unreasonable delay. Each company shall permit residential customers to pay service connection charges in equal monthly installments over a period of at least 3</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Such a requirement is not needed in a competitive environment. Competitors of wireline providers do not have to meet a similar requirement.</p>

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<p>months. A company may charge a monthly service fee of \$1.00 to applicants who elect to pay the service connection charge in installments. <i>Specific Authority 350.127(2), 364.14(2) FS. Law Implemented 364.025, 364.03, 364.04, 364.051, 364.08, 364.15 FS. History—New 12-1-68, Amended 10-30-91.</i></p>	
<p>25-4.109 Customer Deposits.</p> <p>(1) Deposit required; establishment of credit. Each local exchange company’s (LEC) tariff shall contain their specific criteria for determining the amount of initial deposit. Each LEC may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the company’s rules for prompt payment of bills. Credit will be deemed so established if:</p> <p>(a) The applicant for service has been a customer of any LEC within the last two years and during the last twelve (12) consecutive months of service did not have more than one occasion in which a bill was paid after becoming delinquent and has never had service disconnected for non-payment.</p> <p>(b) The applicant for service furnishes a satisfactory guarantor to secure payment of bills for the service requested. A satisfactory guarantor shall, at the minimum, be a customer of the company with a satisfactory payment record. A guarantor’s liability shall be terminated when a residential customer whose payment of bills is secured by the guarantor meets the requirements of subsection (4) of this rule. Guarantors providing security for payment of residential customers’ bills shall only be liable for bills contracted at the service address contained in the contract of guaranty.</p> <p>(c) The applicant pays a cash deposit.</p> <p>(d) The applicant for service furnishes an irrevocable letter of credit from a bank or a surety bond.</p> <p>(2) Amount of deposit. The amount of the initial required deposit shall not exceed an amount equal to the charges for one month’s local exchange service plus two months estimated toll service provided by or billed by the LEC. If, after ninety (90) days service, the actual deposit is found to be greater than an amount equal to one month’s local service plus two months actual average toll service provided by or billed by the LEC, the company shall, upon demand of the subscriber to the Company, promptly refund the difference. These deposit rules apply to local exchange service and toll service provided by or billed by the LEC only and do not apply to special arrangement agreements covering termination equipment installations for which the telephone company may require a reasonable deposit.</p> <p>(3) New or additional deposits. A company may require upon reasonable written notice of not less than 15 days, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills. Provided, however, that the total amount of required deposit should not exceed twice the actual average monthly toll provided by or billed by the LEC plus one month’s local service charge, for the 90-day period immediately prior to the date of notice. In the event the customer has had service less than 90 days, then the company shall base its new or additional deposit upon the actual average monthly billing available. When the company has a good reason to believe payment by a nonresidential customer is in jeopardy and toll usage provided by or billed by the LEC is significantly above normal for that customer, the company may request a new or additional deposit. If the deposit requested is not paid within 48 hours, the company may discontinue service.</p> <p>(4) Refund of deposit. After a customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the company shall refund the residential customer’s deposits and shall, at its option, either refund or pay the higher rate of interest</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Although this rule favors the provider, it is not necessary in a competitive environment.</p> <p>The Joint Telecommunications Companies and the Commission may need to work out the transitioning out of the application of this rule, including how providers should handle deposits that have already been collected.</p>

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specified below for nonresidential deposits, providing the customer has not, in the preceding 12 months:

- (a) Made more than one late payment of a bill (after the expiration of 15 days from the date of mailing or delivery by the company);
 - (b) Paid with a check refused by a bank;
 - (c) Been disconnected for nonpayment, or at any time; and
 - (d) Used service in a fraudulent or unauthorized manner.
- (5) Interest on deposit.

(a) Each telephone company which requires deposits to be made by its customers shall pay a minimum interest on such deposits of 6 percent per annum. The company shall pay an interest rate of 7 percent per annum on deposits of nonresidential customers qualifying under subsection (4) when the utility elects not to refund such deposit after 23 months.

(b) The deposit interest shall be simple interest in all cases and settlement shall be made annually, either in cash or by credit on the current bill. This does not prohibit any company paying a higher rate of interest than required by this rule. No customer depositor shall be entitled to receive interest on their deposit until and unless a customer relationship and the deposit have been in existence for a continuous period of six months. Then he or she shall be entitled to receive interest from the day of the commencement of the customer relationship and the placement of deposit. Nothing in this rule shall prohibit a company from refunding at any time a deposit with an accrued interest.

(6) Record of deposits. Each company having on hand deposits from customers or hereafter receiving deposits from them shall keep records to show:

- (a) The name of each customer making the deposit;
- (b) The premises occupied by the customer when the deposit was made;
- (c) The date and amount of deposit; and
- (d) Each transaction concerning the deposit such as interest payment, interest credited or similar transactions.

(7) Receipt for deposit. A non-transferable certificate of deposit shall be issued to each customer and means provided so that the customer may claim the deposit if the certificate is lost. The deposit receipt shall contain notice that after ninety (90) days service, the subscriber is entitled to refunds of any deposit over and above an amount equal to one month's local service plus two months' average toll service provided by or billed by the LEC.

(8) Refund of deposit when service is discontinued. Upon termination of service, the deposit and accrued interest may be credited against the final account of the LEC and the balance, if any, shall be returned promptly to the customer but in no event later than forty-five (45) days after service is discontinued.

Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.07, 364.19 FS. History—New 12-1-68, Amended 4-1-69, 7-20-73, 3-31-76, 6-10-80, 9-16-80, 1-31-84, 10-13-88, 8-29-89, 4-25-94.

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25-4.110 Customer Billing for Local Exchange Telecommunications Companies.

(1) Each company shall issue bills monthly or may offer customers a choice of billing intervals that includes a monthly billing interval.

(2) Each billing party shall set forth on the bill all charges, fees, and taxes which are due and payable.

(a) There shall be a heading for each originating party which is billing to that customer account for that billing period. The heading shall clearly and conspicuously indicate the originating party's name. If the originating party is a certificated telecommunications company, the certificated name must be shown. If the originating party has more than one certificated name, the name appearing in the heading must be the name used to market the service.

(b) The toll-free customer service number for the service provider or its customer service agent must be conspicuously displayed in the heading, immediately below the heading, or immediately following the list of charges for the service provider. For purposes of this subparagraph, the service provider is defined as the company which provided the service to the end user. If the service provider has a customer service agent, the toll-free number must be that of the customer service agent and must be displayed with the service provider's heading or with the customer service agent's heading, if any. For purposes of this subparagraph, a customer service agent is a person or entity that acts for any originating party pursuant to the terms of a written agreement. The scope of such agency shall be limited to the terms of such written agreement.

(c) Each charge shall be described under the applicable originating party heading.

(d)1. Taxes, fees, and surcharges related to an originating party heading shall be shown immediately below the charges described under that heading. The terminology for Federal Regulated Service Taxes, Fees, and Surcharges must be consistent with all FCC required terminology.

2. The billing party shall either:

a. Identify Florida taxes and fees applicable to charges on the customer's bill and identify the assessment base and rate for each percentage based tax, fee, and surcharge, or

b.(i) Provide a plain language explanation of any line item and applicable tax, fee, and surcharge to any customer who contacts the billing party or customer service agent with a billing question and expresses difficulty in understanding the bill after discussion with a service representative.

(ii) If the customer requests or continues to express difficulty in understanding the explanation of the authority, assessment base or rate of any tax, fee or surcharge, the billing party shall provide an explanation of the state, federal, or local authority for each tax, fee, and surcharge; the line items which comprise the assessment base for each percentage based tax, fee, and surcharge; or the rate of each state, federal, or local tax, fee, and surcharge consistent with the customer's concern. The billing party or customer service agent shall provide this information to the customer in writing upon the customer's request.

(e) If each recurring charge due and payable is not itemized, each bill shall contain the following statement: "Further written itemization of local billing available upon request."

(3) Each LEC shall provide an itemized bill for local service:

(a) With the first bill rendered after local exchange service to a customer is initiated or changed; and

(b) To every customer at least once each twelve months.

(4) The annual itemized bill shall be accompanied by a bill stuffer which explains the itemization and advises the customer to verify the

This rule should not apply to competitive markets or Streamlined Regulation companies. The Federal Communications Commission's Truth-in-Billing requirements specified in 47 Code of Federal Regulations §§64.2400-64.2401 cover this area. Two sets of rules on both the federal and state levels are not needed in a competitive environment.

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items and charges on the itemized bill. This bill stuffer shall be submitted to the Commission's Division of Competitive Markets and Enforcement for prior approval. The itemized bill provided to residential customers and to business customers with less than ten access lines per service location shall be in easily understood language. The itemized bill provided to business customers with ten or more access lines per service location may be stated in service order code, provided that it contains a statement that, upon request, an easily understood translation is available in written form without charge. An itemized bill shall include, but not be limited to the following information, separately stated:

- (a) Number and types of access lines;
- (b) Charges for access to the system, by type of line;
- (c) Touch tone service charges;
- (d) Charges for custom calling features, separated by feature;
- (e) Unlisted number charges;
- (f) Local directory assistance charges;
- (g) Other tariff charges; and
- (h) Other nontariffed, regulated charges contained in the bill.

(5) All bills rendered by a local exchange company shall clearly state the following items:

(a) Any discount or penalty. The originating party is responsible for informing the billing party of all such penalties or discounts to appear on the bill, in a form usable by the billing party;

(b) Past due balance;

(c) Items for which nonpayment will result in disconnection of the customer's basic local service, including a statement of the consequences of nonpayment;

(d) Long-distance monthly or minimum charges, if included in the bill;

(e) Long-distance usage charges, if included in the bill;

(f) Usage-based local charges, if included in the bill;

(g) Telecommunications Access System Surcharge, per subsection 25-4.160(3), F.A.C.;

(h) "911" fee per Section 365.171(13), F.S.; and

(i) Delinquent date.

(6) Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 24 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative; except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.

(7)(a) Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the company. However, the company may demand immediate payment under the following circumstances:

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<p>1. Where service is terminated or abandoned;</p> <p>2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill, or, in the case of a new customer who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service; or</p> <p>3. Where the company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.</p> <p>(b) The demand for immediate payment shall be accompanied by a bill which itemizes the charges for which payment is demanded, or, if the demand is made orally, an itemized bill shall be mailed or delivered to the customer within three days after the demand is made.</p> <p>(c) If the company cannot present an itemized bill, it may present a summarized bill which includes the customer's name and address and the total amount due. However, a customer may refuse to make payment until an itemized bill is presented. The company shall inform the customer that he may refuse payment until an itemized bill is presented.</p> <p>(8) Each telephone company shall include a bill insert advising each subscriber of the directory closing date and the subscriber's opportunity to correct any error or make changes as the subscriber deems necessary in advance of the closing date. It shall also state that at no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number, and surname of the subscriber. The notice shall be included in the billing cycle closest to 60 days preceding the directory closing date.</p> <p>(9) Annually, each telephone company shall include a bill insert advising each residential subscriber of the option to have the subscriber's name placed on the "No Sales Solicitation" list maintained by the Department of Agriculture and Consumer Services, Division of Consumer Services, and the 800 number to contact to receive more information.</p> <p>(10) Where any undercharge in billing of a customer is the result of a company mistake, the company may not backbill in excess of 12 months. Nor may the company recover in a ratemaking proceeding any lost revenue which inures to the company's detriment on account of this provision.</p> <p>(11) Local Communications Services Tax.</p> <p>(a) The Local Communications Services Tax is comprised of the discretionary communications services tax levied by the governing authority of each municipality and county authorized by Chapter 202, F.S.</p> <p>(b) When a municipality or county levies the Local Communications Services Tax authorized by Chapter 202, F.S., the local exchange company may collect that tax only from its subscribers receiving service within that municipality or county.</p> <p>(c) A local exchange company may not incorporate any portion of the Local Communications Services Tax into its other rates for service.</p> <p>(12) State Communications Services Tax.</p> <p>(a) The State Communications Services Tax is comprised of the Gross Receipts Tax imposed by Chapter 203, F.S., the communications services sales tax imposed by Chapter 202, F.S., and any local option sales tax.</p> <p>(b) A local exchange company may not incorporate any portion of the State Communications Services Tax into its other rates for service.</p>	

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<p>(13) Each LEC shall apply partial payment of an end user/customer bill first towards satisfying any unpaid regulated charges. The remaining portion of the payment, if any, shall be applied to nonregulated charges.</p> <p>(14) All bills produced shall clearly and conspicuously display the following information for each service billed in regard to each company claiming to be the customer's presubscribed provider for local, local toll, or toll service:</p> <ul style="list-style-type: none">(a) The name of the certificated company;(b) Type of service provided, i.e., local, local toll, or toll; and(c) A toll-free customer service number. <p>(15) This section applies to LECs that provide transmission services or bill and collect on behalf of Pay Per Call providers. Pay Per Call services are defined as switched telecommunications services between locations within the State of Florida which permit communications between an end use customer and an information provider's program at a per call charge to the end user/customer. Pay Per Call services include 976 services provided by the LECs and 900 services provided by interexchange carriers.</p> <p>(a) Charges for Pay Per Call service (900 or 976) shall be segregated from charges for regular long distance or local charges by appearing separately under a heading that reads as follows: "Pay Per Call (900 or 976) nonregulated charges." The following information shall be clearly and conspicuously disclosed on each section of the bill containing Pay Per Call service (900 or 976) charges:</p> <ul style="list-style-type: none">1. Nonpayment of Pay Per Call service (900 or 976) charges will not result in disconnection of local service;2. End users/customers can obtain free blocking of Pay Per Call service (900 or 976) from the LEC;3. The local or toll-free number the end user/customer can call to dispute charges;4. The name of the IXC providing 900 service; and5. The Pay Per Call service (900 or 976) program name. <p>(b) Pay Per Call Service (900 and 976) Billing. LECs and IXCs who have a tariff or contractual relationship with a Pay Per Call (900 or 976) provider shall not provide Pay Per Call transmission service or billing services, unless the provider does each of the following:</p> <ul style="list-style-type: none">1. Provides a preamble to the program which states the per minute and total minimum charges for the Pay Per Call service (900 and 976); child's parental notification requirement is announced on preambles for all programs where there is a potential for minors to be attracted to the program; child's parental notification requirement in any preamble to a program targeted to children must be in language easily understandable to children; and programs that do not exceed \$3.00 in total charges may omit the preamble, except as provided in subparagraph (11)(b)3.;2. Provides an 18 second billing grace period in which the end user/customer can disconnect the call without incurring a charge; from the time the call is answered at the Pay Per Call provider's premises, the preamble message must be no longer than 15 seconds. The program may allow an end user/customer to affirmatively bypass a preamble;3. Provides on each program promotion targeted at children (defined as younger than 18 years of age) clear and conspicuous notification, in language understandable to children, of the requirement to obtain parental permission before placing or continuing with the call. The parental consent notification shall appear prominently in all advertising and promotional materials, and in the program preamble. Children's programs shall not have rates in excess of \$5.00 per call, and shall not include the enticement of a gift or premium;4. Promotes its services without the use of an autodialer or broadcasting of tones that dial a Pay Per Call (900 or 976) number;	

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5. Prominently discloses the additional cost per minute or per call for any other telephone number that an end user/customer is referred to either directly or indirectly;

6. In all advertising and promotional materials, displays charges immediately above, below, or next to the Pay Per Call number, in type size that can be seen as clearly and conspicuously at a glance as the Pay Per Call number. Broadcast television advertising charges, in Arabic numerals, must be shown on the screen for the same duration as the Pay Per Call number is shown, each time the Pay Per Call number is shown. Oral representations shall be equally as clear;

7. Provides on Pay Per Call services that involve sales of products or merchandise clear preamble notification of the price that will be incurred if the end user/customer stays on the line, and a local or toll free number for consumer complaints; and

8. Meets internal standards established by the LEC or IXC as defined in the applicable tariffs or contractual agreement between the LEC and the IXC; or between the LEC/IXC and the Pay Per Call (900 or 976) provider which when violated, would result in the termination of a transmission or billing arrangement.

(c) Pay Per Call (900 and 976) Blocking. Each LEC shall provide blocking where technically feasible of Pay Per Call service (900 and 976), at the request of the end user/customer at no charge. Each LEC or IXC must implement a bill adjustment tracking system to aid its efforts in adjusting and sustaining Pay Per Call charges. The LEC or IXC will adjust the first bill containing Pay Per Call charges upon the end user's/customer's stated lack of knowledge that Pay Per Call service (900 and 976) has a charge. A second adjustment will be made if necessary to reflect calls billed in the following month which were placed prior to the Pay Per Call service inquiry. At the time the charge is removed, the end user/customer may agree to free blocking of Pay Per Call service (900 and 976).

(d) Dispute resolution for Pay Per Call service (900 and 976). Charges for Pay Per Call service (900 and 976) shall be automatically adjusted upon complaint that:

1. The end user/customer did not receive a price advertisement, the price of the call was misrepresented to the consumer, or the price advertisement received by the consumer was false, misleading, or deceptive;

2. The end user/customer was misled, deceived, or confused by the Pay Per Call (900 or 976) advertisement;

3. The Pay Per Call (900 or 976) program was incomplete, garbled, or of such quality as to render it inaudible or unintelligible, or the end user/customer was disconnected or cut off from the service;

4. The Pay Per Call (900 and/or 976) service provided out-of-date information; or

5. The end user/customer terminated the call during the preamble described in subparagraph 25-4.110(11)(b)2., F.A.C., but was charged for the Pay Per Call service (900 or 976).

(e) If the end user/customer refuses to pay a disputed Pay Per Call service (900 or 976) charge which is subsequently determined by the LEC to be valid, the LEC or IXC may implement Pay Per Call (900 and 976) blocking on that line.

(f) Credit and Collection. LECs and IXCs billing Pay Per Call (900 and 976) charges to an end user/customer in Florida shall not:

1. Collect or attempt to collect Pay Per Call service (900 or 976) charges which are being disputed or which have been removed from an end user's/customer's bill; or

2. Report the end user/customer to a credit bureau or collection agency solely for non-payment of Pay Per Call (900 or 976) charges.

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<p>(g) LECs and IXC's billing Pay Per Call service (900 and 976) charges to end users/customers in Florida shall implement safeguards to prevent the disconnection of phone service for non-payment of Pay Per Call (900 or 976) charges.</p> <p>(16) Companies that bill for local service must provide notification with the customer's first bill or via letter, and annually thereafter that a PC Freeze is available. Existing customers must be notified annually that a PC Freeze is available.</p> <p>(17) The customer must be given notice on the first or second page of the customer's next bill in conspicuous bold face type when the customer's presubscribed provider of local, local toll, or toll service has changed.</p> <p>(18) If a customer notifies a billing party that they did not order an item appearing on their bill or that they were not provided a service appearing on their bill, the billing party shall promptly provide the customer a credit for the item and remove the item from the customer's bill, with the exception of the following:</p> <ul style="list-style-type: none">(a) Charges that originate from:<ul style="list-style-type: none">1. Billing party or its affiliates;2. A governmental agency;3. A customer's presubscribed intraLATA or interLATA interexchange carrier; and(b) Charges associated with the following types of calls:<ul style="list-style-type: none">1. Collect calls;2. Third party calls;3. Customer dialed calls for; and4. Calls using a 10-10-xxx calling pattern. <p>(19)(a) Upon request from any customer, a billing party must restrict charges in its bills to only:</p> <ul style="list-style-type: none">1. Those charges that originate from the following:<ul style="list-style-type: none">a. Billing party or its affiliates;b. A governmental agency;c. A customer's presubscribed intraLATA or interLATA interexchange carrier; and2. Those charges associated with the following types of calls:<ul style="list-style-type: none">a. Collect calls;b. Third party calls;c. Customer dialed calls; andd. Calls using a 10-10-xxx calling pattern. <p>(b) Customers must be notified of this right by billing parties annually and at each time a customer notifies a billing party that the customer's bill contained charges for products or services that the customer did not order or that were not provided to the customer.</p> <p>(c) Small local exchange telecommunications companies as defined in Section 364.052(1), F.S., are exempted from this subsection.</p> <p>(20) Nothing prohibits originating parties from billing customers directly, even if a charge has been blocked from a billing party's bill at the request of a customer.</p>	

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<p><i>Specific Authority 350.127, 364.604(5) FS. Law Implemented 350.113, 364.03, 364.04, 364.05, 364.052, 364.17, 364.19, 364.602, 364.604 FS. History—New 12-1-68, Amended 3-31-76, 12-31-78, 1-17-79, 7-28-81, 9-8-81, 5-3-82, 11-21-82, 4-13-86, 10-30-86, 11-28-89, 3-31-91, 11-11-91, 3-10-96, 12-28-98, 7-5-00,</i></p>	
<p>25-4.112 Termination of Service by Customer. Any customer may be required to give reasonable notice of his intention to discontinue service. Until the telephone utility shall be notified, the customer may be held responsible for charges for telephone service. <i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.19 FS. History—New 12-1-68.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Although this rule favors the provider, it is not necessary in a competitive environment.</p>
<p>25-4.113 Refusal or Discontinuance of Service by Company. (1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with any rule or remedy any deficiency: (a) For non-compliance with or violation of any state or municipal law, ordinance, or regulation pertaining to telephone service. (b) For the use of telephone service for any other property or purpose than that described in the application. (c) For failure or refusal to provide the company with a deposit to insure payment of bills in accordance with the company’s regulations. (d) For neglect or refusal to provide reasonable access to the company for the purpose of inspection and maintenance of equipment owned by the company. (e) For noncompliance with or violation of the Commission’s regulations or the company’s rules and regulations on file with the Commission, provided 5 working days’ written notice is given before termination. (f) For nonpayment of bills for telephone service, including the telecommunications access system surcharge referred to in subsection 25-4.160(3), F.A.C., provided that suspension or termination of service shall not be made without 5 working days’ written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service. A company shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the company, nor discontinue a customer’s Lifeline local service if the charges, taxes, and fees applicable to dial tone, local usage, dual tone multifrequency dialing, emergency services such as “911,” and relay service are paid. No company shall discontinue service to any customer for the initial nonpayment of the current bill on a day the company’s business office is closed or on a day preceding a day the business office is closed. (g) For purposes of paragraphs (e) and (f), “working day” means any day on which the company’s business office is open and the U.S. Mail is delivered. (h) Without notice in the event of customer use of equipment in such manner as to adversely affect the company’s equipment or the company’s service to others. (i) Without notice in the event of hazardous conditions or tampering with the equipment furnished and owned by the company. (j) Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the company may, before restoring service, require the customer to make, at his own expense, all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenues resulting from such fraudulent use. (2) In case of refusal to establish service, or whenever service is discontinued, the company shall notify the applicant or customer in writing</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Although this rule favors the provider, it is not necessary in a competitive environment.</p>

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<p>of the reason for such refusal or discontinuance.</p> <p>(3) Service shall be initiated or restored when the cause for refusal or discontinuance has been satisfactorily adjusted.</p> <p>(4) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:</p> <p>(a) Delinquency in payment for service by a previous occupant of the premises, unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer shall benefit from such new service.</p> <p>(b) Delinquency in payment for service by a present occupant who was delinquent at another address and subsequently joined the household of the customer in good standing.</p> <p>(c) Delinquency in payment for separate telephone service of another customer in the same residence.</p> <p>(d) Failure to pay for business service at a different location and a different telephone number shall not constitute sufficient cause for refusal of residence service or vice versa.</p> <p>(e) Failure to pay for a service rendered by the company which is not regulated by the Commission.</p> <p>(f) Failure to pay the bill of another customer as guarantor thereof.</p> <p>(g) Failure to pay a dishonored check service charge imposed by the company.</p> <p>(5) When service has been discontinued for proper cause, the company may charge a reasonable fee to defray the cost of restoring service, provided such charge is set out in its approved tariff on file with the Commission.</p> <p><i>Specific Authority 350.127, 427.704(8) FS. Law Implemented 364.03, 364.19, 364.604, 427.704 FS. History—Revised 12-1-68, Amended 3-31-76, 10-25-84, 10-30-86, 1-1-91, 9-16-92, 1-7-93, 1-25-95, 7-5-00.</i></p>	

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<p>25-4.114 Refunds.</p> <p>(1) Applicability. With the exception of deposit refunds, all refunds ordered by the Commission shall be made in accordance with the provisions of this Rule, unless otherwise ordered by the Commission.</p> <p>(2) Timing of Refunds. Refunds must be made within ninety (90) days of the Commission's order unless a different time frame is prescribed by the Commission. Unless a stay has been requested in writing and granted by the Commission, a motion for reconsideration of an order requiring a refund will not delay the timing of the refund. In the event that a stay is granted pending reconsideration, the timing of the refund shall commence from the date of the order disposing of any motion for reconsideration. This Rule does not authorize any motion for reconsideration not otherwise authorized by Chapter 25-22, F.A.C.</p> <p>(3) Basis of Refund. Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of access lines. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.</p> <p>(4) Interest.</p> <p>(a) In the case of refunds which the Commission orders to be made with interest, the average monthly interest rate until the refund is posted to the customers account shall be based on the thirty (30) day commercial paper rate for high grade, unsecured notes sold through dealers by major corporations in multiples of \$1,000 as regularly published in the Wall Street Journal.</p> <p>(b) This average monthly interest rate shall be calculated for each month of the refund period:</p> <ol style="list-style-type: none">1. By adding the published interest rate in effect for the last business day of the month prior to each month of the refund period and the published rate in effect for the last business day of each month of the refund period divided by twenty-four (24) to obtain the average monthly interest rate;2. The average monthly interest rate for the month prior to distribution shall be the same as the last calculated average monthly interest rate. <p>(c) The average monthly interest rate shall be applied to the sum of the previous month's ending balance (including monthly interest accruals) and the current month's ending balance divided by two (2) to accomplish a compounding effect.</p> <p>(d) Interest Multiplier. When the refund is computed for each customer, an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer. The interest multiplier shall be calculated by dividing the total amount refundable to all customers, including interest, by the total amount of the refund, excluding interest. For the purpose of calculating the interest multiplier, the utility may, upon approval by the Commission, estimate the monthly refundable amount.</p> <p>(e) Commission staff shall provide applicable interest rate figures and assistance in calculations under this Rule upon request of the affected utility.</p> <p>(5) Method of Refund Distribution. For those customers still on the system, a credit shall be made on the bill. In the event the refund is for a greater amount than the bill, the remainder of the credit shall be carried forward until the refund is completed. If the customer so requests, a check for any negative balance must be sent to the customer within ten (10) days of the request.</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment. Competitors of wireline providers do not have to comply with a similar requirement.</p>

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<p>For customers entitled to a refund but no longer on the system, the company shall mail a refund check to the last known billing address except that no refund for less than \$1.00 will be made to these customers.</p> <p>(6) Security for Money Collected Subject to Refund. In the case of money being collected subject to refund, the money shall be secured by a bond unless the Commission specifically authorizes some other type of security such as placing the money in escrow, approving a corporate undertaking, or providing a letter of credit. The Commission may require the company to provide a report by the 10th of each month indicating the monthly and total amount of money subject to refund as of the end of the preceding month. The report shall also indicate the status of whatever security is being used to guarantee repayment of the money.</p> <p>(7) Refund Reports. During the processing of the refund, monthly reports on the status of the refund shall be made by the 10th of the following month. In addition, a preliminary report shall be made within thirty (30) days after the date the refund is completed and again 90 days thereafter. A final report shall be made after all administrative aspects of the refund are completed. The above reports shall specify the following:</p> <ul style="list-style-type: none">(a) The amount of money to be refunded and how that amount was computed;(b) The amount of money actually refunded;(c) The amount of any unclaimed refunds; and(d) The status of any unclaimed amounts. <p>(8) With the last report under subsection (7) of this rule, the company shall suggest a method for disposing of any unclaimed amounts. The Commission shall then order a method of disposing of the unclaimed funds.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.05(4), 364.055(2), 364.07, 364.08, 364.19 FS. History—New 8-18-83.</i></p>	

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<p>25-4.115 Directory Assistance.</p> <p>(1) Directory assistance service provided by any telephone company shall be subject to the following:</p> <p>(a) Charges for directory assistance shall be reflected in tariffs filed with the Commission and shall apply to the end-user.</p> <p>(b) The tariff shall state the number of telephone numbers that may be requested by a customer per directory assistance call.</p> <p>(2) Charges for calls within a local calling area or within a customer's Home Numbering Plan Area (HNPA) shall be at rates prescribed in the general service tariff of the local exchange company originating the call and shall be subject to the following:</p> <p>(a) There shall be no charge for directory assistance calls from lines or trunks serving individuals with disabilities. As used in this rule, "disability" means, with respect to an individual – A physical or mental impairment that prohibits a customer from using the telephone directory.</p> <p>(b) The same charge shall apply for calls within a local calling area and calls within an HNPA.</p> <p>(c) The tariff shall state the number of calls per billing month per individual line or trunk to the number designated for local directory assistance (i.e., 411, 311 or 611) for which no charges will apply. The local exchange company shall charge for each local directory assistance call in excess of this allowance. The charge shall not apply for calls from pay stations.</p> <p>(d) The local exchange company shall apply the charge for each call to the number designated for long distance directory assistance within the customer's HNPA (i.e., 1 + (850) 555-1212).</p> <p><i>Specific Authority 350.127 FS. Law Implemented 364.02, 364.025, 364.03, 364.04, 364.07, 364.08 FS. History–New 6-12-86, Amended 6-3-90, 5-31-93, 11-21-95, 5-8-05.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>
<p>25-4.117 800 Service.</p> <p>Telephone companies are prohibited from billing to or collecting from the originating caller any charges for calls to an 800 service subscriber.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.04, 364.051 FS. History–New 3-5-90.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>
<p>25-4.200 Application and Scope.</p> <p>The purpose of this part is to adopt streamlined procedures for regulating small local exchange companies as required by Section 364.052, F.S. This part shall apply to all small local exchange companies, except as otherwise noted.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.052 FS. History–New 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>
<p>25-4.202 Construction.</p> <p>(1) The intent of this Part is to minimize the regulation of small LECs with respect to audits, investigations, service standards, cost studies, periodic reports, evaluations, and discovery. Where the rules contained in this Part conflict with other provisions in Chapter 25, F.A.C., the conflicting rules shall be construed so that the less burdensome requirement will apply.</p> <p>(2) When determining whether regulatory requirements should be imposed on small local exchange companies, the Commission and its staff shall weigh the requirement's benefits against the cost of compliance by considering factors such as the amount of data and resources available, the relative amount of precision needed, and whether the use of outside consultants is necessary.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.052 FS. History–New 3-10-96, Amended 1-31-00.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>

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<p>25-4.210 Service Evaluations and Investigations.</p> <p>(1) Commission staff shall not conduct a service evaluation of a small local exchange company more frequently than every four years unless there is a compelling reason to do so. Reasons sufficiently compelling to justify service evaluations on a more frequent basis include, but are not limited to, poor results on the most recent service evaluation, a material number of customer complaints received by the Commission against a small local exchange company, service quality deficiencies indicated by the service quality reports filed by the small local exchange company with the Commission, reports of significant rule violations affecting service by a small local exchange company, or a complaint from a county or city regarding violation of one of the Commission's service standards.</p> <p>(2) During the course of undocketed generic investigations involving issues of general applicability to all or a part of the telecommunications industry, the following shall apply:</p> <p>(a) Commission staff shall coordinate data requests to small local exchange companies and weigh the benefit that would be gained from the information against the cost of compliance to determine whether the information is needed.</p> <p>(b) Upon receipt of a Commission staff data request, a small local exchange company may request to decline to respond if the small local exchange company does not have responsive data that will materially contribute to the resolution of the issue under review, or where responding to the data request would be unduly costly or otherwise burdensome. In such event, the small local exchange company shall notify the staff within a reasonable time after receipt of the request and shall state the basis for requesting to not respond. Any dispute arising from a small local exchange company's notification under this subsection shall be resolved by the Director of the division issuing the data request or the Director's designee.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.052, 364.15, 364.18 FS. History--New 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>
<p>25-4.214 Tariff Filings.</p> <p>Tariff filings for new services and changes to an existing service that are submitted by small local exchange companies subject to the Commission's rate base and rate of return regulation shall go into effect on the 30th day following the day of filing unless:</p> <p>(1) The company requests a later effective date; or</p> <p>(2) The Commission suspends or denies the filing prior to the 30th day.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.04, 364.052 FS. History--New 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>
<p>25-4.215 Limited Scope Proceedings.</p> <p>A small local exchange company may seek to change its existing overall rate relationships without affecting its total revenues by filing a petition for a limited scope proceeding pursuant to Sections 364.05 and 364.058, F.S., and submitting Schedule E-2 (the priceout schedule) in Form PSC/ECR 20-T (3/96), entitled "Minimum Filing Requirements," which is incorporated herein by reference in Rule 25-4.141, F.A.C., and may be obtained from the Commission's Division of Economic Regulation. The required MFR Schedule E-2 must show that the revenues generated under the proposed rate relationships shall not exceed the revenues generated under the small local exchange company's existing rate relationships, based on data for units and revenues for the last full calendar year available.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.05, 364.052, 364.058 FS. History--New 3-10-96.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. This rule is not necessary in a competitive environment.</p>

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25-9.005 Information to Accompany Filings.

- (1) Except in the case of schedules published under authority of an order of the Commission that sets rates, charges or conditions of service, each letter of transmittal shall be accompanied by the following items in connection with each service classification in which any change is proposed:
- (a) As applicable, a tabulation in typical bill form setting forth, at representative consumption levels, the charges applicable under the present and proposed rates, together with the differences expressed in dollars and in percent;
 - (b) The estimated gross increase or decrease in annual revenues resulting therefrom, if ascertainable.
- (2) In addition to the foregoing, Telephone Companies, Electric utilities and gas utilities shall provide the following:
- (a) A description of the service or equipment and its functions;
 - (b) A statement of the justification for the change and documentation supporting that justification;
 - (c) If a service or type of equipment is proposed to be limited or discontinued, a description of other service or equipment options available to customers.
 - (d) A company may request a waiver of any of the requirements of this subsection upon a written application showing that the requirement is inordinately burdensome or unnecessary for analysis of its filing. The directors of the Divisions of Economic Regulation and Competitive Markets and Enforcement, respectively, will dispose of any such request. A company may request Commission review of a denial of a waiver.
- (3)(a) When a local exchange telephone company whose annual revenues from regulated telecommunications operations are \$100,000,000 or more files a tariff to introduce a new service, incremental cost data shall be filed sufficient to demonstrate that the proposed rates for the service are not below incremental cost. When a local exchange telephone company whose annual revenues from regulated telecommunications services are less than \$100,000,000 files a tariff for a new service, it shall provide incremental cost data, if available, or otherwise demonstrate that the proposed rates for the service are not below that local exchange company's incremental cost.
- (b) Where the change involves a rate or charge and the electric, gas, or telephone utility elects to make a cost study, the utility shall file a cost information statement containing a summary of the cost study performed, including:
- 1. All underlying assumptions;
 - 2. The cost study number, if assigned;
 - 3. The cost of providing the service or equipment;
 - 4. The proposed contribution above or below direct cost, stated in both dollars and percent;
 - 5. A statement as to why each above-cost or below-cost contribution rate was chosen; and
 - 6. The anticipated effect of the change on the company's rate of return.
- (4) Whenever a new or additional service classification or rate schedule is filed with the Commission, the information required by subsection (1) above need not be furnished. In lieu thereof, a statement shall be filed stating the purpose and reason for the new service classification or schedule and, if determinable, the estimated annual revenue to be derived therefrom and the estimated number of customers to be served thereby.
- (5) The company shall provide a coded copy of each tariff sheet filed showing changes to the existing tariff sheet. Changes shall be indicated by inserting and underlining new words; words to be deleted shall be lined through with hyphens.
- (6) The provisions of paragraph (1)(b) and subsections (2) and (3) shall not apply to telephone interexchange carriers granted exemptions by Order No. 13678, issued September 13, 1984.

Specific Authority 350.127(2) FS. Law Implemented 364.05, 364.3381, 366.06, 367.081 FS. History—Repromulgated 1-8-75, 10-22-75, Amended 1-18-82, 8-8-85, Formerly 25-9.05, Amended 5-24-94.

This rule should not apply to competitive markets or Streamlined Regulation companies.

Cost information has to be available but is not required to be filed, even for basic service. The Joint Telecommunications Companies recognize that some cost requirements, imposed by statutes, would still have to be met, even if this rule was made inapplicable to Streamlined Regulation companies.

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<p>25-9.020 Front Cover. The front cover shall adequately identify the volume as the rate book or tariff filed by the particular utility with the Florida Public Service Commission governing the sale of the specific utility service provided. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History—Repromulgated 1-8-75, Formerly 25-9.20.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. Several other rules from Chapter 25-9 have also been included in this Attachment B for that same reason. However, rules providing a format to allow the appropriate tracking of tariffs have <u>not</u> been included in this attachment and should remain in effect for Streamlined Regulation companies.</p>
<p>25-9.021 Title Page. The title sheet shall be a repetition of the front cover except that it shall be Sheet No. 1 of the rate book (upper right-hand corner) and shall have thereon the general information required by Rule 25-9.009, F.A.C., of these regulations. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History—Repromulgated 1-8-75, Formerly 25-9.21.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>
<p>25-9.022 Table of Contents. (1) In rate books of less than thirty (30) sheets, the table of contents may serve as a detailed subject index for the entire volume or for all sections the size of which does not require an individual index. (2) In the larger rate books the major sections will be individually indexed in accordance with Rules 25-9.007 and 25-9.008, F.A.C. In these larger rate books the table of contents will serve as an index or guide to the separate sections as set out in said two rules. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History—Repromulgated 1-8-75, Formerly 25-9.22.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>
<p>25-9.023 Description of Territory Served. (1) A brief, general description and/or map (8 1/2" × 11" inches) of the territory served by the utility shall be provided in this section. (2) Where the brevity of the description permits, this data may be placed on the title page (Rule 25-9.021, F.A.C., above) in which case this section may be omitted. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History—Repromulgated 1-8-75, Formerly 25-9.23.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>
<p>25-9.024 Miscellaneous. There should be placed in this section any information or data of a general nature which the utility believes pertinent or informative and which does not belong under any of the specified captioned sections. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History—Repromulgated 1-8-75, Formerly 25-9.24.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>
<p>25-9.025 Technical Terms and Abbreviations. This section shall contain full and concise information as to the meaning of all technical and special terms and abbreviations and of all reference marks used in the regulations or rate schedules.</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>

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<p><i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History–Repromulgated 1-8-75, Formerly 25-9.25.</i></p>	
<p>25-9.026 Index of Rules and Regulations. There shall be set forth in this section a detailed index of the utility’s rules and regulations to facilitate ready reference to any particular rule. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History–Repromulgated 1-8-75, Formerly 25-9.26.</i></p>	This rule should not apply to competitive markets or Streamlined Regulation companies.
<p>25-9.027 Rules and Regulations. (1) This section shall include all rules, regulations, practices, services, classifications, exceptions and conditions made or observed relative to the utility service furnished which are general and apply to all or many of the rate schedules or exchange areas served. (2) The regulations shall be lettered or numbered and titled so that convenient reference can be made to them. (3) If a general regulation does not apply to a particular schedule, classification or exchange, that fact should be clearly stated. <i>Specific Authority 350.127(2), 366.05(1) FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History–Repromulgated 1-8-75, Formerly 25-9.27.</i></p>	This rule should not apply to competitive markets or Streamlined Regulation companies.
<p>25-9.029 Index of Rate or Exchange Schedules. (1) This section shall provide an index to facilitate prompt reference to any particular rate schedule or to any given exchange. (2) In cases where the rate sections for which this index is provided contain less than twelve (12) sheets, this section may be omitted. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History–Repromulgated 1-8-75, Formerly 25-9.29.</i></p>	This rule should not apply to competitive markets or Streamlined Regulation companies.
<p>25-9.030 Rate Schedules – General. (1) All standard rate schedules governing service to customers shall be placed in and made a part of this section, except special contracts. (2) In case all the information pertaining to an individual rate schedule cannot be placed on one sheet, place the note “Continued to Sheet No. ____” at the bottom of the sheet and “Continued from Sheet No. ____” at the top of the next sheet. <i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.04, 366.05(1), 367.041(2) FS. History–Repromulgated 1-8-75, Formerly 25-9.30.</i></p>	This rule should not apply to competitive markets or Streamlined Regulation companies.
<p>25-9.032 Telephone Utility Exchange Schedules. (1) Local rates for no more than one exchange area shall appear on a single sheet. (2) Local exchange schedules shall be arranged alphabetically and the sequence of arrangement of information for each schedule shall be as follows: (a) Application of and exceptions to general regulations and rates shall be clearly stated. (b) Rates and services within the base rate area. (c) Rates and services outside the base rate area but within the exchange service area. (d) Miscellaneous local rates and services if not shown in or if they differ from the general rates and services otherwise applicable. (e) Map and/or written description of base rate area.</p>	This rule should not apply to competitive markets or Streamlined Regulation companies.

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(f) Map and/or written description of exchange service area. <i>Specific Authority 350.127(2), FS. Law Implemented 364.04 FS. History—Repromulgated 1-8-75, Formerly 25-9.32.</i>	

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<p>25-9.045 Withdrawal of Tariffs. Every public utility desiring to withdraw or cancel any tariff or any provision of a tariff which is considered no longer effective or necessary shall file with the Commission an informal application setting forth its reasons for desiring to withdraw or cancel such tariff or tariff provision, and requesting permission to withdraw same.</p> <p><i>Specific Authority 364.20, 367.121 FS. Law Implemented 364.05 FS. History—Repromulgated 1-8-75, Formerly 25-9.45.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies.</p>
<p>25-14.001 In General. The Commission is responsible for the setting of reasonable rates and charges of numerous utility companies. In determining reasonable charges to be paid by the customers of these companies, the Commission promulgates policy determinations affecting all companies subject to its jurisdiction. This chapter has been established to identify policy determinations affecting the rates, charges and tariffs of all companies subject to our rate-setting jurisdiction. Except as provided by Parts X through XIV, Chapter 25-24, F.A.C., the provisions of this chapter shall not apply to Interexchange Companies, Pay Telephone Service Companies, Shared Tenant Service Companies, Operator Service Provider Companies or Alternative Access Vendor Service Providers.</p> <p><i>Specific Authority 350.127(2), 366.05(1), 367.121 FS. Law Implemented 364.03, 364.05, 364.337, 366.04, 366.041, 366.05, 367.121 FS. History—New 7-25-73, Formerly 25-14.01, Amended 2-23-87, 1-8-95.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>
<p>25-14.004 Effect of Parent Debt on Federal Corporate Income Tax. In Commission proceedings to establish revenue requirements or address over-earnings, other than those entered into under Rule 25-14.003, F.A.C., the income tax expense of a regulated company shall be adjusted to reflect the income tax expense of the parent debt that may be invested in the equity of the subsidiary where a parent-subsidiary relationship exists and the parties to the relationship join in the filing of a consolidated income tax return.</p> <p>(1) Where the regulated utility is a subsidiary of a single parent, the income tax effect of the parent’s debt invested in the equity of the subsidiary utility shall reduce the income tax expense of the utility.</p> <p>(2) Where the regulated utility is a subsidiary of tiered parents, the adjusted income tax effect of the debt of all parents invested in the equity of the subsidiary utility shall reduce the income tax expense of the utility.</p> <p>(3) The capital structure of the parent used to make the adjustment shall include at least long term debt, short term debt, common stock, cost free capital and investment tax credits, excluding retained earnings of the subsidiaries. It shall be a rebuttable presumption that a parent’s investment in any subsidiary or in its own operations shall be considered to have been made in the same ratios as exist in the parent’s overall capital structure.</p> <p>(4) The adjustment shall be made by multiplying the debt ratio of the parent by the debt cost of the parent. This product shall be multiplied by the statutory tax rate applicable to the consolidated entity. This result shall be multiplied by the equity dollars of the subsidiary, excluding its retained earnings. The resulting dollar amount shall be used to adjust the income tax expense of the utility.</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>

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<i>Specific Authority 350.127(2) FS. Law Implemented 366.05(1), 364.03, 364.035, 367.121(1)(a) FS. History—New 1-25-83, Formerly 25-14.04.</i>	

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<p>25-14.010 Accounting for Deferred Taxes from Intercompany Profits.</p> <p>(1) Definitions. For the purposes of this rule, the following definitions shall apply:</p> <p>(a) "Intercompany transactions" are transactions involving the sale of depreciable assets includable in rate base by a manufacturing or non-manufacturing member of a controlled group which files a consolidated tax return to a non-manufacturing member of the group.</p> <p>(b) "Net profit" on intercompany transactions shall be sales revenue less cost of sales and general and administrative expenses attributed to sales.</p> <p>(c) "Gross profit" on intercompany transactions shall be sales revenue less cost of sales.</p> <p>(d) "Deferred taxes" are taxes calculated by applying the marginal statutory tax rate to the gross or net profit from intercompany transactions.</p> <p>(2) Deferred taxes. For ratemaking purposes, deferred taxes shall be calculated on the net profit or gross profit from intercompany transactions and shall be treated as zero cost capital.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.035, 366.041(1), 366.06(1), 367.081(2) FS. History--New 9-29-86, Amended 7-16-87.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>
<p>25-14.011 Procedures for Processing Ruling Requests to be Filed with the Internal Revenue Service.</p> <p>(1) When a utility or regulated company is directed by this Commission to file a ruling request with the Internal Revenue Service, the utility or regulated company shall, when the Office of Public Counsel has formally intervened in the proceeding:</p> <p>(a) Within 60 days of the date of receipt of the order directing that a ruling request be filed, provide a draft copy of the ruling request to both the Commission and the Office of Public Counsel;</p> <p>(b) Within 90 days of the date of receipt of said order, meet with the Commission Staff and the Office of Public Counsel to finalize the ruling request for presentation to the Commission for a determination that the Commission believes the request is adequate and complete or to draft issues whereby unresolved differences regarding adequacy and completeness of the ruling request may be presented to the Commission for resolution;</p> <p>(c) Within 30 days of the date of receipt of the order making a determination of adequacy and completeness of the ruling request or resolving issues related to the ruling request, file the ruling request with the Internal Revenue Service copying the Commission and the Office of Public Counsel;</p> <p>(d) Notify and copy the Commission and the Office of Public Counsel of any contact related to the ruling request between the utility or regulated company, its representatives, or its affiliates and their representatives, and the Internal Revenue Service;</p> <p>(e) Provide to the Commission and the Office of Public Counsel copies of any additional information in relation to the ruling request prior to its being provided to the Internal Revenue Service;</p> <p>(f) Consult both the Commission Staff and the Office of Public Counsel to attend and participate in said conference; and allow both the Commission and the Office of Public Counsel the opportunity to make separate subsequent submissions related to the ruling request.</p> <p>(2) The utility, Commission Staff, and the Office of Public Counsel shall use their best efforts to have the request for ruling promptly</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>

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<p>considered by the Commission on a timely basis and without unnecessary delay. Except for a good cause, the Commission shall make a determination as to the adequacy and completeness of a ruling request within 160 days of directing the utility or regulated company to file the request under subsection (1).</p> <p>(3) When the Office of Public Counsel has not formally intervened in the proceeding, the utility or regulated company shall not be required to notify, consult with, or provide copies of the documents described in subsections (1) and (3) to the Office of Public Counsel.</p> <p>(4) When a utility or regulated company shall file any ruling request with the Internal Revenue Service related to a normalization issue under section 46(f), 167(1), or 168 or to sections 118 and 468 of the Internal Revenue Code, the utility or regulated company shall:</p> <p>(a) Provide its proposed ruling request to the Commission for determination as to completeness and adequacy in accordance with Internal Revenue Service rules;</p> <p>(b) Provide a copy of the ruling request to the Commission when it is filed with the Internal Revenue Service;</p> <p>(c) Notify and copy the Commission of any contact related to the ruling request between the utility or regulated company, its representative, its affiliates and their representatives, and the Internal Revenue Service;</p> <p>(d) Provide to the Commission copies of any additional information in relation to the ruling request prior to its being provided to the Internal Revenue Service;</p> <p>(e) When so ordered by the Commission, consult the Commission Staff prior to scheduling any conference between the utility or regulated company and its representatives and the Internal Revenue Service when said conference is related to the ruling request; permit the Commission Staff to attend and participate in said conference; and allow the Commission to participate in any subsequent submissions or procedural matters related to the ruling request.</p> <p>(5) Draft ruling requests shall be submitted in writing and, when required by staff, on a 3 1/2" or 5 1/4" diskette with the format in which it was saved, i.e., MultiMate, DisplayWrite, WordPerfect, OfficeWriter, Wang PC, WordStar, MS Word, PFS; Write, or ASC II. The transmittal memorandum accompanying the draft ruling request shall provide, when applicable, an electronic mail or telecopier number.</p> <p>(6) The requirements in paragraphs (1)(d) through (f) and (4)(c) through (e) shall be reciprocal in that they shall apply to the Commission Staff and the Office of Public Counsel as well as to the utilities.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.035, 364.055, 364.18, 364.183, 366.04, 366.041, 366.07, 366.071, 366.076, 366.093, 367.081, 367.082, 367.0822, 367.156 FS. History—New 6-19-91.</i></p>	

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<p>25-14.012 Accounting for Postretirement Benefits Other Than Pensions.</p> <p>(1) "Postretirement benefits other than pensions" shall mean all forms of benefits, other than retirement income, provided by an employer to retirees, as defined by the Financial Accounting Standards Board in its Statement of Financial Accounting Standards No. 106 (Employers' Accounting for Postretirement Benefits Other Than Pensions, December 1990, which is hereby incorporated by reference). Those benefits may be defined in terms of specified benefits, such as health care, tuition assistance, or legal services, that are provided to retirees as the need for those benefits arises, or they may be defined in terms of monetary amounts that become payable on the occurrence of a specified event, such as life insurance benefits.</p> <p>(2) Each utility that offers postretirement benefits other than pensions shall account for the costs of such benefits in the manner required by Statement of Financial Accounting Standards No. 106 (December, 1990). Deferral accounting under Statement of Financial Accounting Standards No. 71 (Accounting for the Effects of Certain Types of Regulation, December 1982 shall not be used to account for the costs of post retirement benefits other than pensions without prior Commission approval.</p> <p>(3) Each utility's unfunded accumulated postretirement benefit obligation shall be treated as a reduction to rate base in rate proceedings. The amount that reduces rate base is limited to that portion of the liability associated with the cost methodology for post retirement benefits other than pensions.</p> <p><i>Specific Authority 364.01, 366.05, 367.011 FS. Law Implemented 364.17, 366.04, 367.121 FS. History—New 8-4-93.</i></p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>
<p>25-14.013 Accounting for Deferred Income Taxes Under SFAS 109.</p> <p>(1) Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes, (SFAS 109, February 1992), incorporated by reference, shall be implemented by each utility in a manner such that the balances of excess and deficient deferred income taxes are properly stated and that the application of SFAS 109 is revenue neutral in the ratemaking process.</p> <p>(2) Definitions. For purposes of this rule, the following definitions apply:</p> <p>(a) "Statutory amounts." The accumulated deferred taxes that are required by § 167(l)(3)(G)(ii) or § 168(f)(2) or (i)(9) of the Internal Revenue Code.</p> <p>(b) "Non-statutory amounts." The accumulated deferred taxes that are not required by § 167(l)(3)(G)(ii) or § 168(f)(2) or (i)(9) of the Internal Revenue Code.</p> <p>(c) "Protected amounts." The accumulated deferred taxes that are subject to § 203(e) of the Tax Reform Act of 1986.</p> <p>(d) "Unprotected amounts." The accumulated deferred taxes that are not subject to § 203(e) of the Tax Reform Act of 1986.</p> <p>(3) Upon implementation of SFAS 109, each utility shall first record the income tax gross-up required by the statement, to account for the temporary differences previously recorded net of tax, and the related deferred income taxes in the appropriate balance sheet accounts. The historical income tax rates in effect when the temporary differences were originally realized shall be used in calculating the income tax gross-up for items previously recorded net of tax.</p> <p>(4) Each utility shall then recalculate all deferred income tax balances to reflect the enacted income tax rates in the period the timing differences are expected to reverse. The difference between the deferred income tax balances per books and the recalculated balances shall be</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>

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recorded in regulatory asset and liability accounts as prescribed by the applicable Uniform System of Accounts at the time of recalculation.

(5) The deferred income taxes on prior flow-through items and temporary differences, which were not considered timing differences prior to implementation of SFAS 109, such as equity AFUDC and unamortized investment tax credits, shall be recorded at the enacted income tax rates. Corresponding regulatory assets and liabilities shall also be recorded.

(6) Regulatory assets and liabilities as established by each utility in subsections (4) and (5) are considered temporary differences and shall be grossed up for income taxes at the enacted income tax rates to reflect the revenue requirements to be received from or refunded to customers in the future. This income tax gross up shall be recorded in the related regulatory asset or liability accounts and the deferred income tax accounts. The regulatory assets and liabilities created under SFAS 109 shall be considered as temporary differences and deferred income taxes shall be provided.

(7) Deferred income tax assets shall be recorded by each utility for all tax credit carry-forwards including, but not limited to, net operating loss carry-forwards, investment tax credit carry-forwards and alternative minimum tax credit carry-forwards.

(8) Each utility shall maintain accumulated deferred income tax accounts at a level of detail sufficient to distinguish between Federal and state amounts, statutory and non-statutory amounts and protected and unprotected amounts. Separate accounts shall be maintained for federal and state income taxes. Differences between prior and current statutory rates shall be recorded in a regulatory asset or liability account.

(9) The regulatory assets and liabilities shall be reversed as the temporary differences reverse. Excess and deficient deferred income taxes associated with temporary differences shall not be reversed any faster than allowed under either the average rate assumption method of § 203(e) of the Tax Reform Act of 1986 or Revenue Procedure 88-12, whichever is applicable. For good cause shown, this provision may be waived notwithstanding the requirements of subsection (1).

(10) When the statutory income tax rate is changed as a result of legislative action after the implementation of SFAS 109, each utility shall adjust its deferred income tax balances to reflect the new statutory income tax rate. The recording of regulatory assets and liabilities for the excess or deficient deferred income taxes, accounting detail and reversal of the excess and deficient deferred income taxes shall comply with subsections (4) through (9) of this rule.

(11) All regulatory assets and liabilities and debit and credit deferred taxes resulting purely from implementation of SFAS 109 shall be treated in a manner similar to accumulated deferred income taxes at zero cost and shall be included in the capital structure as a separate line item in all reports filed with the Commission.

(12) Implementation and restatement for SFAS 109 shall be allowed for ratemaking purposes at a time which coincides with implementation for external reporting purposes if implementation is in compliance with this rule.

Specific Authority 350.127(2) FS. Law Implemented 366.05(1), 364.03, 364.035, 367.121(1)(a) FS. History—New 2-14-93.

ATTACHMENT B

RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES PURSUANT TO PROPOSED RULE IN ATTACHMENT A

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>25-14.014 Accounting for Asset Retirement Obligations Under SFAS 143.</p> <p>(1) The Financial Accounting Standards Board issued Statement No. 143, Accounting for Asset Retirement Obligations (SFAS 143) in June 2001. The statement applies to legal obligations associated with the retirement of tangible, long-lived assets that result from the acquisition, construction, development or normal operation of a long-lived asset. For utilities required to implement SFAS 143, it shall be implemented in a manner such that the assets, liabilities and expenses created by SFAS 143 and the application of SFAS 143 shall be revenue neutral in the rate making process.</p> <p>(2) Definitions. For purposes of this rule, the following definitions apply:</p> <p>(a) "Accretion Expense." The concurrent cost that is recorded as an operating item in the statement of income to account for the passage of time and the resulting period-to-period increase in the Asset Retirement Obligation.</p> <p>(b) "Asset Retirement Cost." The amount capitalized that increases the carrying amount of the long-lived asset when a liability for an Asset Retirement Obligation is recognized.</p> <p>(c) "Asset Retirement Obligation." An obligation associated with the retirement of a tangible long-lived asset.</p> <p>(3) Pursuant to SFAS 143, each utility shall recognize the fair value of a liability for an Asset Retirement Obligation in the period in which it is incurred if a reasonable estimate of the fair value can be made. If a reasonable estimate of fair value cannot be made in the period the Asset Retirement Obligation is incurred, the liability shall be recognized when the reasonable estimate of fair value can be made. The fair value of the liability for an Asset Retirement Obligation is the amount at which that liability could be settled in a current transaction between willing parties, that is, other than in a forced or liquidation transaction. If quoted market prices are not available, the estimate of fair value shall be based on the best information available in the circumstances including prices for similar liabilities and the result of present value or other valuation techniques. The Asset Retirement Obligations shall be kept by function and recorded in separate subaccounts.</p> <p>(4) Upon initial recognition of a liability for an Asset Retirement Obligation, the utility shall capitalize an Asset Retirement Cost by increasing the carrying amount of the long-lived assets by the same amount as the liability. The Asset Retirement Cost shall be kept by function and recorded in a separate subaccount as intangible plant. The utility shall subsequently allocate that Asset Retirement Cost to expense over its useful life. The expense shall be recorded in a separate subaccount.</p> <p>(5) Asset Retirement Costs do not qualify for Allowance for Funds Used During Construction.</p> <p>(6) Pursuant to SFAS 143, in periods subsequent to the initial measurement, a utility shall recognize period-to-period changes in the liability for an Asset Retirement Obligation resulting from accretion or revisions to either the timing or the amount of the original estimate of undiscounted cash flows.</p> <p>(a) A utility shall measure the accretion cost in the liability for an Asset Retirement Obligation due to passage of time by applying the interest method of allocation to the amount of the liability at the beginning of the period. This amount shall be recognized as an increase in the carrying amount of the liability.</p> <p>(b) The accretion expense shall be recorded in a separate subaccount.</p> <p>(c) Revisions to a previously recorded Asset Retirement Obligation will result from changes in the assumptions used to estimate the cash flows required to settle the Asset Retirement Obligation, including changes in estimated probabilities, amounts, and timing of the settlement of</p>	<p>This rule should not apply to competitive markets or Streamlined Regulation companies. None of the rules in Chapter 25-14 should apply to competitive markets or Streamlined Regulation companies because those rules are only relevant to rate-of-return regulated companies.</p>

ATTACHMENT B

**RULES NOT APPLICABLE TO COMPETITIVE MARKETS OR STREAMLINED REGULATION COMPANIES
PURSUANT TO PROPOSED RULE IN ATTACHMENT A**

Rules Not Applicable to Competitive Markets or Streamlined Regulation Companies	Comments
<p>the Asset Retirement Obligation, as well as changes in the legal requirements of an obligation. Upward revisions to the undiscounted estimated cash flows shall be treated as a new liability and discounted at the current rate. Downward revisions will result in a reduction of the Asset Retirement Obligation. The amount of the liability to be removed shall be discounted at the rate that was used at the time the obligation was originally recorded. The concurrent debit or credit shall be made to the Asset Retirement Cost.</p> <p>(7) Differences between amounts prescribed by the Commission and those used in the application of SFAS 143 shall be recorded as Regulatory Liabilities or Regulatory Assets in separate subaccounts.</p> <p>(8) The Regulatory Debit and Regulatory Credit accounts shall be used to record the differences between the Commission prescribed amounts and the amounts which are reported as expense under SFAS 143.</p> <p>(9) Each utility shall keep records supporting the calculation and the assumptions used in the determination of the Asset Retirement Obligation and the related Asset Retirement Cost and the related Regulatory Assets and Regulatory Liabilities established in accordance with this rule and the implementation of SFAS 143.</p> <p>(10) If a utility is not required to establish an Asset Retirement Obligation for an asset or group of assets, the cost of removal shall continue to be included in the calculation of the depreciation expense and accumulated depreciation.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.035, 366.05(1), 367.121(1)(a) FS. History—New 8-26-03.</i></p>	

ATTACHMENT C

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ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.006 Issuance of Certificate in the Event of Failure to Furnish Adequate Service. If a certificate holder fails or refuses to provide reasonably adequate service to any territory embraced within its certificate after notice and hearing and a reasonable opportunity to do so, the Commission may issue a certificate to any other person willing and able to provide reasonably adequate service to such territory. <i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.025, 364.335 FS. History—Revised 12-1-68, Formerly 25-4.06.</i></p>	<p>25-4.006 Issuance of Certificate in the Event of Failure to Furnish Adequate Service. If a certificate holder fails or refuses to provide reasonably adequate service to any territory embraced within its certificate after notice and hearing and a reasonable opportunity to do so, the Commission may issue a certificate to any other person willing and able to provide reasonably adequate service to such territory. <i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.025, 364.335 FS. History—Revised 12-1-68, Formerly 25-4.06.</i></p>	<p>This rule should be deleted. It is obsolete as it assumes there is only one certificate holder per territory.</p>
<p>25-4.007 Reference to Commission. In the event of any question involving the interpretation of any of these rules and regulations, any party in interest may apply in writing to the Commission for interpretation. <i>Specific Authority 364.20 FS. Law Implemented 364.28 FS. History—New 12-1-68, Formerly 25-4.07.</i></p>	<p>25-4.007 Reference to Commission. In the event of any question involving the interpretation of any of these rules and regulations, any party in interest may apply in writing to the Commission for interpretation. <i>Specific Authority 364.20 FS. Law Implemented 364.28 FS. History New 12-1-68, Formerly 25-4.07.</i></p>	<p>This rule should be deleted. It is obsolete as Section 120.565, F.S. provides for a declaratory ruling.</p>
<p>25-4.017 Uniform System of Accounts. (1) Each rate-of-return regulated local exchange telecommunications company shall maintain its accounts and records in conformity with the Uniform System of Accounts for Telecommunications Companies (USOA) as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 32 Class A, revised as of October 1, 2002, and as modified below. Inquiries relating to interpretation of the USOA shall be submitted in writing to the Commission's Division of Economic Regulation. (2) Each company shall establish separate depreciation reserve subaccounts for each corresponding subaccount established in the USOA or by rules of this Commission. (3) A telecommunications company may use a different account numbering system but shall use the same account descriptions as prescribed in the USOA or by this Commission. If a different account numbering system is used, a cross reference of the company's system to the Commission's numbering system shall be shown in the company's chart of accounts. (4) Each company shall file, within 60 days of a final order involving accounting matters, a description of all resultant entries and adjustments to the</p>	<p>25-4.017 Uniform System of Accounts. (1) Each rate-of-return regulated local exchange telecommunications company shall maintain its accounts and records in conformity with the Uniform System of Accounts for Telecommunications Companies (USOA) as prescribed by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 32 Class A, revised as of October 1, 2002, and as modified below. Inquiries relating to interpretation of the USOA shall be submitted in writing to the Commission's Division of Economic Regulation. (2) Each <u>rate-of-return regulated local exchange telecommunications</u> company shall establish separate depreciation reserve subaccounts for each corresponding subaccount established in the USOA or by rules of this Commission. (3) A <u>rate-of-return regulated local exchange</u> telecommunications company may use a different account numbering system but shall use the same account descriptions as prescribed in the USOA or by this Commission. If a different account numbering system is used, a cross reference of the company's system to the Commission's numbering system shall be shown in the company's chart of accounts. (4) Each <u>rate-of-return regulated local exchange telecommunications company</u> shall file, within 60 days of a final order involving accounting matters, a description of</p>	<p>This rule should be revised. The proposed changes clarify that the entire rule applies only to rate-of-return regulated local exchange telecommunications companies.</p>

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Existing Rule	Proposed Amendments to Rule	Comments
<p>accounting records.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS. History—Revised 12-1-68, Amended 3-31-76, 8-21-79, 1-2-80, 12-13-82, 12-13-83, 9-30-85, Formerly 25-4.17, Amended 11-30-86, 4-25-88, 2-10-92, 8-11-92, 3-10-96, 9-15-03.</i></p>	<p>all resultant entries and adjustments to the accounting records.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS. History—Revised 12-1-68, Amended 3-31-76, 8-21-79, 1-2-80, 12-13-82, 12-13-83, 9-30-85, Formerly 25-4.17, Amended 11-30-86, 4-25-88, 2-10-92, 8-11-92, 3-10-96, 9-15-03.</i></p>	

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.0174 Uniform System and Classification of Accounts - Depreciation.</p> <p>(1) Depreciation rates are to be designed in accordance with the Uniform System and Classification of Accounts (USOA) and this rule. The primary accounts listed below are identical to those prescribed in the USOA. New accounts and subaccounts, as listed below, are established under these accounts. They are intended to group together items which are relatively homogeneous in their expected life and salvage characteristics, and are for the purpose of establishing uniformity among the companies in depreciation studies.</p> <p>(2) A company may further develop depreciation subaccounts within a listed account as appropriate for its plant. No company shall, however, establish a new subaccount that would represent less than ten percent of the original primary account.</p> <p>(3) Notwithstanding subsection (2), a new subaccount must be established for the introduction of a new technology, or for the treatment of an obsolescent component of a current viable technology.</p> <p>(4) Depreciation reserve, plant activity data, salvage cost, and costs of removal, respectively, shall be maintained for each depreciation category for which a depreciation rate is to be developed. This shall be done on the books of the company.</p> <p>(5) The following accounts and subaccounts, where applicable, shall be used in the design of depreciation rates.</p> <p>(a) Support assets, Account 2110. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Motor vehicles, Account 2112. The following subaccounts shall be used, <ol style="list-style-type: none"> a. Passenger cars and light trucks. This account shall include passenger cars and trucks of one ton in capacity or less. b. Heavy trucks and special purpose vehicles. This subaccount shall include trucks of greater than one ton capacity. c. Tractors and trailers. 2. Garage work equipment, Account 2115. This account shall include tools and equipment used to maintain vehicles. 3. Other work equipment, Account 2116. This account shall include power 	<p>25-4.0174 Uniform System and Classification of Accounts - Depreciation.</p> <p>(1) Depreciation rates <u>for rate-of-return regulated local exchange telecommunications companies</u> are to be designed in accordance with the Uniform System and Classification of Accounts (USOA) and this rule. The primary accounts listed below are identical to those prescribed in the USOA. New accounts and subaccounts, as listed below, are established under these accounts. They are intended to group together items which are relatively homogeneous in their expected life and salvage characteristics, and are for the purpose of establishing uniformity among the companies in depreciation studies.</p> <p>(2) A <u>rate-of-return regulated local exchange telecommunications</u> company may further develop depreciation subaccounts within a listed account as appropriate for its plant. No company shall, however, establish a new subaccount that would represent less than ten percent of the original primary account.</p> <p>(3) Notwithstanding subsection (2), a new subaccount must be established for the introduction of a new technology, or for the treatment of an obsolescent component of a current viable technology.</p> <p>(4) Depreciation reserve, plant activity data, salvage cost, and costs of removal, respectively, shall be maintained for each depreciation category for which a depreciation rate is to be developed. This shall be done on the books of the <u>rate-of-return regulated local exchange telecommunications</u> company.</p> <p>(5) The following accounts and subaccounts, where applicable, shall be used in the design of depreciation rates.</p> <p>(a) Support assets, Account 2110. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Motor vehicles, Account 2112. The following subaccounts shall be used, <ol style="list-style-type: none"> a. Passenger cars and light trucks. This account shall include passenger cars and trucks of one ton in capacity or less. b. Heavy trucks and special purpose vehicles. This subaccount shall include trucks of greater than one ton capacity. c. Tractors and trailers. 2. Garage work equipment, Account 2115. This account shall include tools and equipment used to maintain vehicles. 3. Other work equipment, Account 2116. This account shall include power 	<p>This rule should be revised. The proposed changes clarify that the entire rule applies only to rate-of-return regulated local exchange telecommunications companies.</p>

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Existing Rule	Proposed Amendments to Rule	Comments
<p>operated equipment, general purpose tools, and other such work equipment items.</p> <p>4. Buildings, Account 2121.</p> <p>5. Furniture, Account 2122.</p> <p>6. Office equipment, Account 2123. The following subaccounts shall be used:</p> <p>a. Office support equipment. This subaccount shall include office devices such as typewriters, cash registers, check writers, calculating, reproducing, addressing, billing, blueprinting, and other office machines.</p> <p>b. Company communications equipment. This subaccount shall include CPE and PBX equipment installed for official company use.</p> <p>7. General purpose computers, Account 2124.</p> <p>(b) Central office switching, Account 2211. The following accounts shall be used:</p> <p>1. Analog electronic switching, Account 2211. This account shall be established for analog switching equipment and peripheral gear. It shall include equipment serving analog switchers that is used solely for recording calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service. It shall not include switchboards, and integral equipment thereof, which perform an operator assistance function.</p> <p>2. Digital electronic switching, Account 2212. This account includes investments in digital switches. This switching account shall include equipment serving digital electronic switchers that is used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service. It shall not include switchboards, and integral equipment thereof, which perform an operator assistance function. Major components such as hardware, processors, and cards that are expected to live substantially different from the remaining switch investment should be considered as subcomponents in developing the rate for the account.</p> <p>3. Electromechanical switching, Account 2215. This switching account includes investments in step-by-step or crossbar switchers. It does not include digital compatible equipment that is expected to live beyond the calculated life of</p>	<p>operated equipment, general purpose tools, and other such work equipment items.</p> <p>4. Buildings, Account 2121.</p> <p>5. Furniture, Account 2122.</p> <p>6. Office equipment, Account 2123. The following subaccounts shall be used:</p> <p>a. Office support equipment. This subaccount shall include office devices such as typewriters, cash registers, check writers, calculating, reproducing, addressing, billing, blueprinting, and other office machines.</p> <p>b. Company communications equipment. This subaccount shall include CPE and PBX equipment installed for official company use.</p> <p>7. General purpose computers, Account 2124.</p> <p>(b) Central office switching, Account 2211. The following accounts shall be used:</p> <p>1. Analog electronic switching, Account 2211. This account shall be established for analog switching equipment and peripheral gear. It shall include equipment serving analog switchers that is used solely for recording calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service. It shall not include switchboards, and integral equipment thereof, which perform an operator assistance function.</p> <p>2. Digital electronic switching, Account 2212. This account includes investments in digital switches. This switching account shall include equipment serving digital electronic switchers that is used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service. It shall not include switchboards, and integral equipment thereof, which perform an operator assistance function. Major components such as hardware, processors, and cards that are expected to live substantially different from the remaining switch investment should be considered as subcomponents in developing the rate for the account.</p> <p>3. Electromechanical switching, Account 2215. This switching account includes investments in step-by-step or crossbar switchers. It does not include digital compatible equipment that is expected to live beyond the calculated life of</p>	

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Existing Rule	Proposed Amendments to Rule	Comments
<p>electromechanical switching. Such investment shall be in a separate subaccount or included as a subcomponent used to develop the rate for the account or subaccount. This account also does not include switchboards which perform an operator assistance function and equipment which is an integral part thereof. It shall include, however, equipment serving electromechanical switchers that is used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service.</p> <p>(c) Operator systems, Account 2220. This account shall include such charges as directory assistance, call intercept, and other operator assisted call completion activities.</p> <p>(d) Central office – transmission, Account 2230. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Radio systems, Account 2231. 2. Circuit equipment, Account 2232. This investment shall be subcategorized in accord with the planning of the company, to be separated between the following: <ol style="list-style-type: none"> a. Analog; b. Digital; and c. That portion associated with optic technology. <p>(e) Information organization or termination, Account 2310. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Public telephone equipment. This account shall include coinless, coin-operated (including public and semi-public), credit card, and pay telephones. 2. Other regulated station equipment. This account shall include private line equipment, telecommunication devices for the deaf, E-911 equipment, and network carrier equipment physically located on the customer's premises. <p>(f) Cable and wire facilities, Account 2410. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Poles, Account 2411. 2. Aerial cable, Account 2421. The following subaccounts shall be used: <ol style="list-style-type: none"> a. Metallic. This investment shall be further subcategorized in accord with company planning; and 	<p>electromechanical switching. Such investment shall be in a separate subaccount or included as a subcomponent used to develop the rate for the account or subaccount. This account also does not include switchboards which perform an operator assistance function and equipment which is an integral part thereof. It shall include, however, equipment serving electromechanical switchers that is used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic dial tandem switchboards and special service switchboards used in conjunction with private line service.</p> <p>(c) Operator systems, Account 2220. This account shall include such charges as directory assistance, call intercept, and other operator assisted call completion activities.</p> <p>(d) Central office – transmission, Account 2230. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Radio systems, Account 2231. 2. Circuit equipment, Account 2232. This investment shall be subcategorized in accord with the planning of the company, to be separated between the following: <ol style="list-style-type: none"> a. Analog; b. Digital; and c. That portion associated with optic technology. <p>(e) Information organization or termination, Account 2310. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Public telephone equipment. This account shall include coinless, coin-operated (including public and semi-public), credit card, and pay telephones. 2. Other regulated station equipment. This account shall include private line equipment, telecommunication devices for the deaf, E-911 equipment, and network carrier equipment physically located on the customer's premises. <p>(f) Cable and wire facilities, Account 2410. The following accounts shall be used:</p> <ol style="list-style-type: none"> 1. Poles, Account 2411. 2. Aerial cable, Account 2421. The following subaccounts shall be used: <ol style="list-style-type: none"> a. Metallic. This investment shall be further subcategorized in accord with company planning; and 	

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PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>b. Fiber.</p> <p>3. Underground cable, Account 2422. The following subaccounts shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>4. Buried cable, Account 2423. The following subaccounts shall be used:</p> <p>a. Metallic. This subaccount shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>5. Submarine cable, Account 2424. The following subaccount shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>6. Intrabuilding network cable, Account 2426. The following subaccounts shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>7. Aerial wire, Account 2431.</p> <p>8. Conduit systems, Account 2441.</p> <p>(6) Depreciation rates used after July 1, 1996, shall be based on the account classifications in the USOA and this rule. In implementing these rates the following procedures shall be followed:</p> <p>(a) Reserve activity data, plant activity data, salvage costs, and costs of removal are to be recorded to the new accounts for activity subsequent to July 1, 1996.</p> <p>(b) The separation of investments and reserves under prior accounts into balances relating to new accounts and subaccounts under this rule may require estimation. Where vintaged distributions are maintained, separation into accounts and subaccounts may require synthesization.</p> <p>(c) If an existing account, in the opinion of the Commission, is essentially</p>	<p>b. Fiber.</p> <p>3. Underground cable, Account 2422. The following subaccounts shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>4. Buried cable, Account 2423. The following subaccounts shall be used:</p> <p>a. Metallic. This subaccount shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>5. Submarine cable, Account 2424. The following subaccount shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>6. Intrabuilding network cable, Account 2426. The following subaccounts shall be used:</p> <p>a. Metallic. This investment shall be further subcategorized in accord with company planning; and</p> <p>b. Fiber.</p> <p>7. Aerial wire, Account 2431.</p> <p>8. Conduit systems, Account 2441.</p> <p>(6) Depreciation rates used after July 1, 1996, shall be based on the account classifications in the USOA and this rule. In implementing these rates the following procedures shall be followed:</p> <p>(a) Reserve activity data, plant activity data, salvage costs, and costs of removal are to be recorded to the new accounts for activity subsequent to July 1, 1996.</p> <p>(b) The separation of investments and reserves under prior accounts into balances relating to new accounts and subaccounts under this rule may require estimation. Where vintaged distributions are maintained, separation into accounts and subaccounts may require synthesization.</p> <p>(c) If an existing account, in the opinion of the Commission, is essentially</p>	

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<p>compatible with an account listed in this rule, that account shall be deemed to be in compliance with this rule.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS.</i></p> <p><i>History—New 4-25-88, Amended 9-11-96.</i></p>	<p>compatible with an account listed in this rule, that account shall be deemed to be in compliance with this rule.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS.</i></p> <p><i>History—New 4-25-88, Amended 9-11-96.</i></p>	

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PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.0175 Depreciation.</p> <p>(1) For the purposes of Part II, the following definitions shall apply to small local exchange companies remaining under rate of return regulation:</p> <p>(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it should include each plant account prescribed in Rule 25-4.017, F.A.C.</p> <p>(b) Average Service Life – The period of time that the given type of equipment, on average, can be expected to prudently and economically serve the public.</p> <p>(c) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.</p> <p>(d) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or for calculations of realized life. Preferably, this is aged data in accord with the following:</p> <ol style="list-style-type: none"> 1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year. 2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements. 3. The net increase or decrease resulting from purchases, sales, or adjustments, and the distribution by years of placing of such amounts. 4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts. <p>(e) Remaining Life Method – The method of calculating a depreciation rate based on the unrecovered plant balance, less average future net salvage and the average remaining life. The formula for calculating a Remaining Life Rate (RLR) is:</p> $100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}$ <p>RLR = $\frac{\text{Average Remaining Life in Years}}{\text{Average Remaining Life in Years}}$</p>	<p>25-4.0175 Depreciation.</p> <p>(1) For the purposes of Part II, the following definitions shall apply <u>only</u> to small local exchange companies remaining under rate of return regulation:</p> <p>(a) Category or Category of Depreciable Plant – A grouping of plant for which a depreciation rate is prescribed. At a minimum it should include each plant account prescribed in Rule 25-4.017, F.A.C.</p> <p>(b) Average Service Life – The period of time that the given type of equipment, on average, can be expected to prudently and economically serve the public.</p> <p>(c) Embedded Vintage – A vintage of plant in service as of the date of study or implementation of proposed rates.</p> <p>(d) Mortality Data – Historical data by study category showing plant balances, additions, adjustments and retirements, used in analyses for life indications or for calculations of realized life. Preferably, this is aged data in accord with the following:</p> <ol style="list-style-type: none"> 1. The number of plant items or equivalent units (usually expressed in dollars) added each calendar year. 2. The number of plant items retired (usually expressed in dollars) each year and the distribution by years of placing of such retirements. 3. The net increase or decrease resulting from purchases, sales, or adjustments, and the distribution by years of placing of such amounts. 4. The number that remains in service (usually expressed in dollars) at the end of each year and the distribution by years of placing of such amounts. <p>(e) Remaining Life Method – The method of calculating a depreciation rate based on the unrecovered plant balance, less average future net salvage and the average remaining life. The formula for calculating a Remaining Life Rate (RLR) is:</p> $100\% - \text{Reserve \%} - \text{Average Future Net Salvage \%}$ <p>RLR = $\frac{\text{Average Remaining Life in Years}}{\text{Average Remaining Life in Years}}$</p>	<p>This rule should be revised. The proposed changes clarify that the entire rule applies only to rate-of-return regulated local exchange telecommunications companies.</p>

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>(f) Reserve Data – Historical data by study category showing reserve balances, debits and credits such as booked depreciation expense, salvage and cost of removal, and adjustments to the reserve utilized in monitoring reserve activity and position.</p> <p>(g) Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the company’s records or may require retrospective calculation.</p> <p>(h) Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the company’s records or may require retrospective calculation.</p> <p>(i) Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal, or for calculations of realized salvage.</p> <p>(j) Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate, using the formula: Theoretical Reserve = Book Investment - Future Accruals - Future Net Salvage</p> <p>(k) Vintage – The year of placement of a group of plant items or investment under study.</p> <p>(l) Whole Life Method – The method of calculating a depreciation rate based on the Whole Life (Average Service Life) and the Average Net Salvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is: $100\% - \text{Average Net Salvage \%}$ Whole Life Rate = $\frac{\text{Average Net Salvage \%}}{\text{Average Service Life in Years}}$</p> <p>(2)(a) Ranges for basic life and salvage values, established by the</p>	<p>(f) Reserve Data – Historical data by study category showing reserve balances, debits and credits such as booked depreciation expense, salvage and cost of removal, and adjustments to the reserve utilized in monitoring reserve activity and position.</p> <p>(g) Reserve Deficiency – An inadequacy in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the company’s records or may require retrospective calculation.</p> <p>(h) Reserve Surplus – An excess in the reserve of a category as evidenced by a comparison of that reserve indicated as necessary under current projections of life and salvage with that reserve historically accrued. The latter figure may be available from the company’s records or may require retrospective calculation.</p> <p>(i) Salvage Data – Historical data by study category showing bookings of retirements, gross salvage and cost of removal used in analysis of trends in gross salvage and cost of removal, or for calculations of realized salvage.</p> <p>(j) Theoretical Reserve or Prospective Theoretical Reserve – A calculated reserve based on components of the proposed rate, using the formula: Theoretical Reserve = Book Investment - Future Accruals - Future Net Salvage</p> <p>(k) Vintage – The year of placement of a group of plant items or investment under study.</p> <p>(l) Whole Life Method – The method of calculating a depreciation rate based on the Whole Life (Average Service Life) and the Average Net Salvage. Both life and salvage components are the estimated or calculated composite of realized experience and expected activity. The formula is: $100\% - \text{Average Net Salvage \%}$ Whole Life Rate = $\frac{\text{Average Net Salvage \%}}{\text{Average Service Life in Years}}$</p> <p>(2)(a) Ranges for basic life and salvage values, established by the Commission,</p>	

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<p>average service lives not reflected as a whole number shall be rounded using traditional rounding methodology. (For example, 1.1-1.4 rounds to 1.0; 1.5-1.9 rounds to 2.0.)</p> <p>(4) If the company's proposed and current average service lives for a given account are within the ranges established in paragraph (2)(a), no additional support for those values shall be required. If the company's proposed and current net salvage values for a given account are within the ranges established in paragraph (2)(a), no additional support for those values shall be required. The company shall submit to the Office of Commission Clerk the original, five hard copies, and a diskette of the information required by subsection (8) of this rule.</p> <p>(5) A company proposing basic life or salvage values outside of the ranges established in paragraph (2)(a) of this rule shall submit to the Office of Commission Clerk the original and five hard copies, and a diskette of the information required by subsection (10) of this rule.</p> <p>(6) After filing a petition for a change in depreciation rates, the company may reflect on its books and records the preliminary implementation of the proposed rates as of the proposed effective date. These rates are subject to Commission approval.</p> <p>(7) Any party protesting a Commission approved depreciation life or salvage value, shall carry the burden of proof in demonstrating that each protested value is unsupported by the operations and planning of each company.</p> <p>(8) A depreciation filing shall include:</p> <p>(a) A comparison of current and proposed depreciation rates and components for each category of depreciable plant. Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.</p> <p>(b) A comparison of annual depreciation expense, as of the proposed effective date, resulting from current rates with the expense produced by the proposed rates for each category of depreciable plant. The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.</p> <p>(c) Each recovery and amortization schedule currently in effect should be</p>	<p>service life is within an established range, current average service lives not reflected as a whole number shall be rounded using traditional rounding methodology. (For example, 1.1-1.4 rounds to 1.0; 1.5-1.9 rounds to 2.0.)</p> <p>(4) If the <u>rate-of-return regulated local exchange telecommunications</u> company's proposed and current average service lives for a given account are within the ranges established in paragraph (2)(a), no additional support for those values shall be required. If the company's proposed and current net salvage values for a given account are within the ranges established in paragraph (2)(a), no additional support for those values shall be required. The company shall submit to the Office of Commission Clerk the original, five hard copies, and a diskette of the information required by subsection (8) of this rule.</p> <p>(5) A <u>rate-of-return regulated local exchange telecommunications</u> company proposing basic life or salvage values outside of the ranges established in paragraph (2)(a) of this rule shall submit to the Office of Commission Clerk the original and five hard copies, and a diskette of the information required by subsection (10) of this rule.</p> <p>(6) After filing a petition for a change in depreciation rates, the <u>rate-of-return regulated local exchange telecommunications</u> company may reflect on its books and records the preliminary implementation of the proposed rates as of the proposed effective date. These rates are subject to Commission approval.</p> <p>(7) Any party protesting a Commission approved depreciation life or salvage value, shall carry the burden of proof in demonstrating that each protested value is unsupported by the operations and planning of each company.</p> <p>(8) A depreciation filing shall include:</p> <p>(a) A comparison of current and proposed depreciation rates and components for each category of depreciable plant. Current rates shall be identified as to the effective date and proposed rates as to the proposed effective date.</p> <p>(b) A comparison of annual depreciation expense, as of the proposed effective date, resulting from current rates with the expense produced by the proposed rates for each category of depreciable plant. The plant balances may involve estimates. Submitted data including plant and reserve balances or company planning involving estimates shall be brought to the effective date of the proposed rates.</p> <p>(c) Each recovery and amortization schedule currently in effect should be</p>	

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<p>included with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized, and reason for the schedule.</p> <p>(d) A general narrative describing the service environment of the applicant company and the factors, e.g., growth, technology, and physical conditions necessitating a revision in rates.</p> <p>(9) If a company's current average service life or salvage value for any given category of depreciable plant is not within the established range, the company must file the information in subsection (10) to justify its move into the range.</p> <p>(10) For each account that the Company proposed life or salvage value is not within the established range, the depreciation filing shall include the information in subsection (8) as well as the following:</p> <p>(a) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life or salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the company in the design of the depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, and trends. The explanation and justification shall state any statistical or mathematical methods of analysis or calculation used in the design of the category rate.</p> <p>(b) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or salvage studies, e.g., sales or extraordinary retirements must be specifically enumerated and explained.</p> <p>(c) The filing shall contain all calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. To the degree possible, data involving retirements should be aged.</p> <p>(11)(a) Companies shall provide calculations of depreciation rates using either the whole life method or the remaining life method. The use of one of these methods is required for all depreciable categories.</p>	<p>included with any new filing showing total amount amortized, effective date, length of schedule, annual amount amortized, and reason for the schedule.</p> <p>(d) A general narrative describing the service environment of the applicant company and the factors, e.g., growth, technology, and physical conditions necessitating a revision in rates.</p> <p>(9) If a <u>rate-of-return regulated local exchange telecommunications</u> company's current average service life or salvage value for any given category of depreciable plant is not within the established range, the company must file the information in subsection (10) to justify its move into the range.</p> <p>(10) For each account that the <u>rate-of-return regulated local exchange telecommunications</u> cCompany proposed life or salvage value is not within the established range, the depreciation filing shall include the information in subsection (8) as well as the following:</p> <p>(a) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life or salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the company in the design of the depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, and trends. The explanation and justification shall state any statistical or mathematical methods of analysis or calculation used in the design of the category rate.</p> <p>(b) The mortality and salvage data used by the company in the depreciation rate design must agree with activity booked by the utility. Unusual transactions not included in life or salvage studies, e.g., sales or extraordinary retirements must be specifically enumerated and explained.</p> <p>(c) The filing shall contain all calculations, analysis and numerical basic data used in the design of the depreciation rate for each category of depreciable plant. To the degree possible, data involving retirements should be aged.</p> <p>(11)(a) <u>Rate-of-return regulated local exchange telecommunications</u> cCompanies shall provide calculations of depreciation rates using either the whole life method or the remaining life method. The use of one of these methods is required for all depreciable categories.</p>	

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<p>(b) Companies shall file an election to remain with the remaining life methodology or move to whole life methodology within 90 days of the effective date of this rule. Failure to file an election shall result in the company's use of remaining life methodology. Only one election regarding depreciation methodology will be permitted.</p> <p>(12) When a company elects whole life methodology, no recovery of reserve imbalances will be considered for depreciation purposes. This methodology is not reserve sensitive.</p> <p>(13) When a company elects remaining life methodology, the following apply:</p> <p>(a) A company requiring the Commission staff's assistance in determining a remaining life based on its average service life selection, shall notify the Director of the Division of Economic Regulation, by letter, three months prior to the company's filing date.</p> <p>(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.</p> <p>(c) It shall be a rebuttable presumption that in determining the average remaining life, the mortality curve shapes shall be those used by the Commission the last time it prescribed rates.</p> <p>(14)(a) A company proposing an effective date of the beginning of its fiscal year shall submit its petition for a change in depreciation rates no later than the mid-point of that fiscal year.</p> <p>(b) A company proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its petition for a change in depreciation rates no later than the filing date of its Minimum Filing Requirements.</p> <p>(15) Included as part of the annual report filed pursuant to Rule 25-4.135, F.A.C., each company shall provide Schedule B-3, Analysis of Plant In Service, and Schedule B-4, Analysis of Accumulated Depreciation. Schedule B-3 shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements, and plant balance at year end). Schedule B-4 shall include reserve activity (reserve balance at the beginning of the</p>	<p>(b) <u>Rate-of-return regulated local exchange telecommunications</u> cCompanies shall file an election to remain with the remaining life methodology or move to whole life methodology within 90 days of the effective date of this rule. Failure to file an election shall result in the company's use of remaining life methodology. Only one election regarding depreciation methodology will be permitted.</p> <p>(12) When a <u>rate-of-return regulated local exchange telecommunications</u> company elects whole life methodology, no recovery of reserve imbalances will be considered for depreciation purposes. This methodology is not reserve sensitive.</p> <p>(13) When a <u>rate-of-return regulated local exchange telecommunications</u> company elects remaining life methodology, the following apply:</p> <p>(a) A company requiring the Commission staff's assistance in determining a remaining life based on its average service life selection, shall notify the Director of the Division of Economic Regulation, by letter, three months prior to the company's filing date.</p> <p>(b) The possibility of corrective reserve transfers shall be investigated by the Commission prior to changing depreciation rates.</p> <p>(c) It shall be a rebuttable presumption that in determining the average remaining life, the mortality curve shapes shall be those used by the Commission the last time it prescribed rates.</p> <p>(14)(a) A <u>rate-of-return regulated local exchange telecommunications</u> company proposing an effective date of the beginning of its fiscal year shall submit its petition for a change in depreciation rates no later than the mid-point of that fiscal year.</p> <p>(b) A <u>rate-of-return regulated local exchange telecommunications</u> company proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its petition for a change in depreciation rates no later than the filing date of its Minimum Filing Requirements.</p> <p>(15) Included as part of the annual report filed pursuant to Rule 25-4.135, F.A.C., each <u>rate-of-return regulated local exchange telecommunications</u> company shall provide Schedule B-3, Analysis of Plant In Service, and Schedule B-4, Analysis of Accumulated Depreciation. Schedule B-3 shall include booked plant activity (plant balance at the beginning of the year, additions, adjustments, transfers, reclassifications, retirements, and plant balance at year end). Schedule B-4 shall</p>	

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<p>year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications, and reserve balance at year end) for each category of investment for which a depreciation rate, amortization schedule, or capital recovery schedule has been approved.</p> <p>(16)(a) Prior to the date of retirement, the Commission may approve capital recovery schedules to correct calculated deficiencies where a utility demonstrates that replacement of an installation or group of installations is prudent, and the associated investment will not be recovered by the time of retirement through the existing depreciation rate.</p> <p>(b) The Commission may approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.</p> <p>(c) Associated plant and reserve activity, balances, and the annual capital recovery schedule expense must be maintained as subsidiary records.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.03 FS. History—New 9-8-81, Amended 4-28-83, 1-6-85, Formerly 25-4.175, Amended 4-27-88, 12-12-91, 9-11-96.</i></p>	<p>include reserve activity (reserve balance at the beginning of the year, retirements, accruals, salvage, cost of removal, adjustments, transfers, reclassifications, and reserve balance at year end) for each category of investment for which a depreciation rate, amortization schedule, or capital recovery schedule has been approved.</p> <p>(16)(a) Prior to the date of retirement, the Commission may approve capital recovery schedules to correct calculated deficiencies where a utility demonstrates that replacement of an installation or group of installations is prudent, and the associated investment will not be recovered by the time of retirement through the existing depreciation rate.</p> <p>(b) The Commission may approve a special capital recovery schedule when an installation is designed for a specific purpose or for a limited duration.</p> <p>(c) Associated plant and reserve activity, balances, and the annual capital recovery schedule expense must be maintained as subsidiary records.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.03 FS. History—New 9-8-81, Amended 4-28-83, 1-6-85, Formerly 25-4.175, Amended 4-27-88, 12-12-91, 9-11-96.</i></p>	

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<p>25-4.0178 Retirement Units.</p> <p>(1) This rule is intended to establish uniform retirement units for telephone companies and does not relieve any company from maintaining its accounts and records in conformity with the Uniform System and Classification of Accounts (USOA) as prescribed by the Federal Communications Commission (FCC) in Title 47, Code of Federal Regulations, Part 32, as adopted on December 2, 1986 and revised as of December 1, 1987, except to the extent that this rule requires different treatment as stated below.</p> <p>(2) For the purposes of this rule the following definitions apply:</p> <p>(a) "Book Cost" means the amount at which a retirement unit is included in a telephone plant account, including the costs of all labor and installation. This cost is to be determined from the company's records, but if it cannot be, it is to be estimated.</p> <p>(b) "Cost or in-plant cost" means original purchase price plus all labor and installation costs.</p> <p>(c) "Cost of Removal" means the cost of demolishing, dismantling, removing, tearing down or otherwise disposing of a retirement unit, including the cost of transportation and handling.</p> <p>(d) "Cradle-To-Grave Accounting" means an accounting method which treats a unit of plant as being in service from the time it is first purchased until it is finally junked or is otherwise finally disposed. Periods of in shop for refurbishing or in stock/inventory awaiting reinstallation are treated as being in service.</p> <p>(e) "Gross Salvage" means the amount received from selling or trading-in a retirement unit; or, if retained for reuse, the original, or estimated if not known, material cost of the unit.</p> <p>(f) "Item" means a single identifiable unit of plant. Where a dollar threshold is imposed, that threshold applies to the single item and not to the total of a group of such items purchased in one order.</p> <p>(g) "Minor Item" means any part or element of plant which is not designated as a retirement unit, but may be a component of or adjunct to a retirement unit.</p> <p>(h) "Plant Retired" means a retirement unit not subject to cradle to grave</p>	<p>25-4.0178 Retirement Units.</p> <p>(1) This rule is intended to establish uniform retirement units for <u>rate-of-return regulated local exchange telecommunications</u> telephone companies and does not relieve any <u>rate-of-return regulated local exchange telecommunications</u> company from maintaining its accounts and records in conformity with the Uniform System and Classification of Accounts (USOA) as prescribed by the Federal Communications Commission (FCC) in Title 47, Code of Federal Regulations, Part 32, as adopted on December 2, 1986 and revised as of December 1, 1987, except to the extent that this rule requires different treatment as stated below.</p> <p>(2) For the purposes of this rule the following definitions apply:</p> <p>(a) "Book Cost" means the amount at which a retirement unit is included in a telephone plant account, including the costs of all labor and installation. This cost is to be determined from the <u>rate-of-return regulated local exchange telecommunications</u> company's records, but if it cannot be, it is to be estimated.</p> <p>(b) "Cost or in-plant cost" means original purchase price plus all labor and installation costs.</p> <p>(c) "Cost of Removal" means the cost of demolishing, dismantling, removing, tearing down or otherwise disposing of a retirement unit, including the cost of transportation and handling.</p> <p>(d) "Cradle-To-Grave Accounting" means an accounting method which treats a unit of plant as being in service from the time it is first purchased until it is finally junked or is otherwise finally disposed. Periods of in shop for refurbishing or in stock/inventory awaiting reinstallation are treated as being in service.</p> <p>(e) "Gross Salvage" means the amount received from selling or trading-in a retirement unit; or, if retained for reuse, the original, or estimated if not known, material cost of the unit.</p> <p>(f) "Item" means a single identifiable unit of plant. Where a dollar threshold is imposed, that threshold applies to the single item and not to the total of a group of such items purchased in one order.</p> <p>(g) "Minor Item" means any part or element of plant which is not designated as a retirement unit, but may be a component of or adjunct to a retirement unit.</p> <p>(h) "Plant Retired" means a retirement unit not subject to cradle to grave</p>	<p>This rule should be revised. The proposed changes clarify that the rule applies only to rate-of-return regulated local exchange telecommunications companies.</p>

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<p>accounting, or an unreplaced minor item which has been removed, sold, abandoned, destroyed or otherwise removed from service.</p> <p>(i) "Retirement Unit" means an item of telephone plant designated as a retirement unit which when placed in service is to be capitalized if the cost of the unit meets the criteria in the "List of Retirement Units", and when removed from service, without a replacement or with a replacement that meets the criteria in the "List of Retirement Units", is to be credited to the plant account in which it is included and debited to the associated account reserve.</p> <p>(3) All depreciable plant is considered as consisting of retirement units or minor items of plant. Each company is to use this list of retirement units on a prospective basis. A company may add retirement units to this list. In the case of such addition, the company shall notify the Director of the Division of Economic Regulation within thirty days as to the nature and justification of the addition. However, the combination of any retirement units or the increase in size of any unit will not be permitted without Commission prior approval. Additions to or revisions to this list will be issued, when necessary, by this Commission.</p> <p>(4) The addition and retirement of retirement units are to be accounted for as follows:</p> <p>(a) When a retirement unit other than one designated for Company Communications Equipment, Account 2132.2, or Public Telephone Equipment, Account 2351, is placed in service for the first time at a location, the cost of the unit, if it meets the criteria in the "Lists of Retirement Units", should be added to the appropriate plant account along with associated labor and installation costs.</p> <p>(b) When a retirement unit for Company Communications Equipment, Account 2123.2, or Public Telephone Equipment, Account 2351, is placed in service for the first time at a location, only the materials cost of the unit, if it meets the criteria in the "List of Retirement Units", shall be added to the appropriate plant account. Associated labor and minor materials costs of installing such equipment shall be charged to the appropriate expense account.</p> <p>(c) When a retirement unit is replaced, the cost of the replacement should be</p>	<p>accounting, or an unreplaced minor item which has been removed, sold, abandoned, destroyed or otherwise removed from service.</p> <p>(i) "Retirement Unit" means an item of telephone plant designated as a retirement unit which when placed in service is to be capitalized if the cost of the unit meets the criteria in the "List of Retirement Units", and when removed from service, without a replacement or with a replacement that meets the criteria in the "List of Retirement Units", is to be credited to the plant account in which it is included and debited to the associated account reserve.</p> <p>(3) All depreciable plant is considered as consisting of retirement units or <u>minor items of plant</u>. Each <u>rate-of-return regulated local exchange telecommunications</u> company is to use this list of retirement units on a prospective basis. A <u>rate-of-return regulated local exchange telecommunications</u> company may add retirement units to this list. In the case of such addition, the <u>rate-of-return regulated local exchange telecommunications</u> company shall notify the Director of the Division of Economic Regulation within thirty days as to the nature and justification of the addition. However, the combination of any retirement units or the increase in size of any unit will not be permitted without Commission prior approval. Additions to or revisions to this list will be issued, when necessary, by this Commission.</p> <p>(4) The addition and retirement of retirement units are to be accounted for as follows:</p> <p>(a) When a retirement unit other than one designated for Company Communications Equipment, Account 2132.2, or Public Telephone Equipment, Account 2351, is placed in service for the first time at a location, the cost of the unit, if it meets the criteria in the "Lists of Retirement Units", should be added to the appropriate plant account along with associated labor and installation costs.</p> <p>(b) When a retirement unit for Company Communications Equipment, Account 2123.2, or Public Telephone Equipment, Account 2351, is placed in service for the first time at a location, only the materials cost of the unit, if it meets the criteria in the "List of Retirement Units", shall be added to the appropriate plant account. Associated labor and minor materials costs of installing such equipment shall be charged to the appropriate expense account.</p> <p>(c) When a retirement unit is replaced, the cost of the replacement should be</p>	

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<p>accounted for in the same manner as in subsection (a) if the cost meets the criteria set forth in the "List of Retirement Units" referred to in subsection (6). Otherwise, the charge should be made to the appropriate expense account.</p> <p>(d) When a retirement unit is retired, with a replacement that meets the criteria in the "List of Retirement Units" referred to in subsection (6), or is retired without replacement, the book cost of the retiring unit is to be credited to the plant account in which it is included and likewise debited to the associated account reserve. Any cost of removal and gross salvage associated with the retirement should be debited and credited, respectively, to the account reserve. Cost of the retiring unit, removal and gross salvage are to be recorded within one month of the retirement date. Such costs may be estimated with corrective adjustment entries made when the transactions are finalized.</p> <p>(5) The addition and retirement of minor items of depreciable property other than Company Communications Equipment, Account 2123.2, and Public Telephone Equipment Account 2351, are to be accounted for as follows:</p> <p>(a) When a minor item which did not previously exist as a part of a retirement unit at a given location is added, the cost is to be accounted for in the same manner as the addition of a retirement unit.</p> <p>(b) When a minor item is retired and not replaced, the book cost along with any associated cost of removal and gross salvage is to be accounted for in the same manner as the retirement of a retirement unit. If, however, the book cost of such a minor item has been accounted for by its inclusion in the retirement unit of which it is a part, no separate credit to the property account or debit to the associated account reserve is to be made.</p> <p>(c) When a minor item is replaced independently of the retirement unit of which it is a part, the cost of replacement is to be charged to the appropriate maintenance account for that item. If, however, the replacement causes a substantial betterment, the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity, the excess cost of the replacement over the estimated cost at current prices of the replacement without betterment should be charged to the appropriate plant account.</p> <p>(6) The Florida Public Service Commission document "List of Retirement</p>	<p>accounted for in the same manner as in subsection (a) if the cost meets the criteria set forth in the "List of Retirement Units" referred to in subsection (6). Otherwise, the charge should be made to the appropriate expense account.</p> <p>(d) When a retirement unit is retired, with a replacement that meets the criteria in the "List of Retirement Units" referred to in subsection (6), or is retired without replacement, the book cost of the retiring unit is to be credited to the plant account in which it is included and likewise debited to the associated account reserve. Any cost of removal and gross salvage associated with the retirement should be debited and credited, respectively, to the account reserve. Cost of the retiring unit, removal and gross salvage are to be recorded within one month of the retirement date. Such costs may be estimated with corrective adjustment entries made when the transactions are finalized.</p> <p>(5) The addition and retirement of minor items of depreciable property other than Company Communications Equipment, Account 2123.2, and Public Telephone Equipment Account 2351, are to be accounted for as follows:</p> <p>(a) When a minor item which did not previously exist as a part of a retirement unit at a given location is added, the cost is to be accounted for in the same manner as the addition of a retirement unit.</p> <p>(b) When a minor item is retired and not replaced, the book cost along with any associated cost of removal and gross salvage is to be accounted for in the same manner as the retirement of a retirement unit. If, however, the book cost of such a minor item has been accounted for by its inclusion in the retirement unit of which it is a part, no separate credit to the property account or debit to the associated account reserve is to be made.</p> <p>(c) When a minor item is replaced independently of the retirement unit of which it is a part, the cost of replacement is to be charged to the appropriate maintenance account for that item. If, however, the replacement causes a substantial betterment, the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity, the excess cost of the replacement over the estimated cost at current prices of the replacement without betterment should be charged to the appropriate plant account.</p> <p>(6) The Florida Public Service Commission document "List of Retirement Units</p>	

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<p>Units (Telephone Utilities)" dated January 1, 1988, is hereby incorporated by reference. A copy of this document may be obtained from the Director, Division of Economic Regulation, Florida Public Service Commission.</p> <p>(7) The capitalization and expensing of depreciable plant for 1988 and subsequent years shall be governed by this rule.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS. History—New 4-25-88.</i></p>	<p>(Telephone Utilities)" dated January 1, 1988, is hereby incorporated by reference. A copy of this document may be obtained from the Director, Division of Economic Regulation, Florida Public Service Commission.</p> <p>(7) The capitalization and expensing of depreciable plant for 1988 and subsequent years shall be governed by this rule.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 350.115, 364.17 FS. History—New 4-25-88.</i></p>	

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<p>25-4.019 Records and Reports in General.</p> <p>(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require, the results of any required tests and summaries of any required records. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.</p> <p>(2) Where a telephone company is operated with another enterprise, records must be separated in such manner that the results of the telephone operation may be determined at any time.</p> <p>(3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.18, 364.183, 364.386 FS. History—Revised 12-1-68, Amended 5-4-81, Formerly 25-4.19.</i></p>	<p>25-4.019 Records and Reports in General.</p> <p>(1) Each utility shall furnish to the Commission at such times and in such form as the Commission may require, the results of any required tests and summaries of any required records. The utility shall also furnish the Commission with any information concerning the utility's facilities or operations which the Commission may reasonably request and require. All such data, unless otherwise specified, shall be consistent with and reconcilable with the utility's annual report to the Commission.</p> <p>(2) Where a telephone company is operated with another enterprise, records must be separated in such manner that the results of the telephone operation may be determined at any time.</p> <p>(3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of Commission duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.18, 364.183, 364.386 FS. History—Revised 12-1-68, Amended 5-4-81, Formerly 25-4.19.</i></p>	<p>This rule should be deleted. It is not necessary as it adds little to Sections 364.18, 364.183 and 364.185, F.S.</p> <p>The Joint Telecommunications Companies understand they would still be required to provide information in accordance with applicable statutes.</p>
<p>25-4.022 Complaint - Trouble Reports, Etc.</p> <p>(1) Each telephone company shall maintain for at least six (6) months a record of all signed written complaints made by its subscribers regarding service or errors in billing, as well as a record of each case of trouble or service interruption that is reported to repair service. This record shall include the name and/or address of the subscriber or complainant, the date (and for reported trouble, the time) received, the nature of the complaint or trouble reported, the result of any investigation, the disposition of the complaint or service problem, and the date (and for reported trouble, the time) of such disposition.</p> <p>(2) Each signed letter of complaint shall be acknowledged in writing or by</p>	<p>25-4.022 Complaint - Trouble Reports, Etc.</p> <p>(1) Each telephone company shall maintain for at least six (6) months a record, <u>in either electronic or paper format</u>, of all signed written complaints made by its subscribers regarding service or errors in billing, as well as a record of each case of trouble or service interruption that is reported to repair service. This record shall include the name and/or address of the subscriber or complainant, the date (and for reported trouble, the time) received, the nature of the complaint or trouble reported, the result of any investigation, the disposition of the complaint or service problem, and the date (and for reported trouble, the time) of such disposition.</p> <p>(2) Each signed letter of complaint shall be acknowledged in writing or by <u>other</u></p>	<p>This rule should be revised. Maintenance of records of "trouble" or service interruption is not needed in today's competitive environment because customers will simply switch providers if a provider is not responsive to complaints or has frequent service interruptions. The requested revisions also reflect the fact that many records are now</p>

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<p>contact by a representative of the company.</p> <p><i>Specific Authority 350.127(2), 364.17 FS. Law Implemented 364.051, 364.17, 364.183, 364.20 FS. History- Revised 12-1-68, Formerly 25-4.22</i></p>	<p><u>means of</u> contact by a representative of the company.</p> <p><i>Specific Authority: 350.127(2), 364.17 FS. Law Implemented 364.051, 364.17, 364.183, 364.20 FS. History- Revised 12-1-68, Formerly 25-4.22</i></p>	<p>stored electronically.</p> <p>Rules 25-4.020(3)(a) and 25-22.032(1), F.A.C., already require a telecommunications company to maintain certain records for a minimum of three and two years, respectively.</p>
<p>25-4.024 Held Applications for Service.</p> <p>(1) Each local exchange telecommunications company shall accept and shall maintain a record of each application for access lines received during periods when a telecommunications company is unable to supply initial or additional telephone service to applicants within 30 days after the date applicant desires service. The telecommunications company shall keep a record, by exchanges, showing the name and address of each applicant for service, the date of application, date service desired, date service was promised, and the reason for the inability to provide the new service or additional access lines to the applicant.</p> <p>(2) Upon request, each company shall prepare and furnish to the Commission a report, by exchanges, of such held applications.</p> <p><i>Specific Authority 350.127(2), 364.17 FS. Law Implemented 364.025, 364.163, 364.17 FS. History- Revised 12-1-68, Amended 3-31-76, Formerly 25-4.24, 3-10-96.</i></p>	<p>25-4.024 Held Applications for Service.</p> <p>(1) Each local exchange telecommunications company shall accept and shall maintain a record of each application for access lines received during periods when a telecommunications company is unable to supply initial or additional telephone service to applicants within 30 days after the date applicant desires service. The telecommunications company shall keep a record, by exchanges, showing the name and address of each applicant for service, the date of application, date service desired, date service was promised, and the reason for the inability to provide the new service or additional access lines to the applicant.</p> <p>(2) Upon request, each company shall prepare and furnish to the Commission a report, by exchanges, of such held applications.</p> <p><i>Specific Authority 350.127(2), 364.17 FS. Law Implemented 364.025, 364.163, 364.17 FS. History- Revised 12-1-68, Amended 3-31-76, Formerly 25-4.24, 3-10-96.</i></p>	<p>This rule should be deleted and the issue should be addressed on a complaint basis.</p>
<p>25-4.034 Tariffs.</p> <p>(1) Each telecommunications company shall maintain on file with the Commission tariffs which set forth all rates and charges for customer services, the classes and grades of service available to subscribers, the conditions and circumstances under which service will be furnished, and all general rules and regulations governing the relation of customer and utility. Tariff filings shall be in compliance with the requirements of Chapter 25-9, F.A.C., of the Commission rules entitled "Construction and Filing of Tariffs by Public Utilities."</p> <p>(2) Each company shall file, as an integral part of its tariff, maps defining the exchange service areas. These maps shall delineate the boundaries in sufficient detail that they may be located in the field and shall embrace all territory included in the certificate of convenience and necessity.</p> <p>(3) Each telecommunications company shall maintain on file in each of its</p>	<p>25-4.034 Tariffs.</p> <p>(1) Each telecommunications company shall maintain on file with the Commission tariffs which set forth all rates and charges for customer services, the classes and grades of service available to subscribers, the conditions and circumstances under which service will be furnished, and all general rules and regulations governing the relation of customer and utility. Tariff filings shall be in compliance with the requirements of Chapter 25-9, F.A.C., of the Commission rules entitled "Construction and Filing of Tariffs by Public Utilities."</p> <p>(2) Each company shall file, as an integral part of its tariff, maps defining the exchange service areas. These maps shall delineate the boundaries in sufficient detail that they may be located in the field and shall embrace all territory included in the certificate of convenience and necessity.</p> <p>(3) Each telecommunications company shall maintain on file in each of its</p>	<p>This rule should be revised to delete subsection (3), which is obsolete and unnecessary. Companies do not have business offices to the extent they did 10-20 years ago and records are now routinely stored electronically. Customers can request a copy of a tariff and a copy will be printed and provided in accordance with Section 364.04(1), F.S.</p>

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<p>business offices, available for public inspection upon request, a copy of the local exchange tariff for exchanges under the administration of that office, its general exchange tariff, and its schedule of intrastate toll rates. Each business office shall likewise make available a copy of Chapter 25-4, F.A.C., of the Florida Public Service Commission Rules and Regulations for public inspection upon request.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.04, 364.163 FS. History-New 3-31-76, Amended 11-29-82, Formerly 25-4.34, Amended 9-13-88, 4-16-90, 3-10-96.</i></p>	<p>business offices, available for public inspection upon request, a copy of the local exchange tariff for exchanges under the administration of that office, its general exchange tariff, and its schedule of intrastate toll rates. Each business office shall likewise make available a copy of Chapter 25-4, F.A.C., of the Florida Public Service Commission Rules and Regulations for public inspection upon request.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.04, 364.163 FS. History-New 3-31-76, Amended 11-29-82, Formerly 25-4.34, Amended 9-13-88, 4-16-90, 3-10-96.</i></p>	

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<p>25-4.039 Traffic.</p> <p>(1) Suitable practices shall be adopted by each telecommunications company concerning the operating methods to be employed by operators with the objective of providing efficient service to the customers.</p> <p>(2) Telephone operators and service observing personnel shall be instructed to comply with the provisions of applicable statutes in maintaining the secrecy of communications.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03 FS. History Revised 12-1-68, Amended 3-31-76, Formerly 25-4.39, Amended 3-10-96.</i></p>	<p>25-4.039 Traffic.</p> <p>(1) Suitable practices shall be adopted by each telecommunications company concerning the operating methods to be employed by operators with the objective of providing efficient service to the customers.</p> <p>(2) Telephone operators and service observing personnel shall be instructed to comply with the provisions of applicable statutes in maintaining the secrecy of communications.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.03 FS. History Revised 12-1-68, Amended 3-31-76, Formerly 25-4.39, Amended 3-10-96.</i></p>	<p>This rule should be deleted and the issue handled on a complaint basis. In a competitive environment, the telecommunications companies already have the incentive to be efficient in order to effectively compete.</p>
<p>25-4.040 Telephone Directories; Directory Assistance.</p> <p>(1) Each local exchange telecommunications company shall normally publish updated telephone directories once every 12 months and shall publish updated directories at least once every 15 months. The directories shall normally alphabetically list the name, address, and telephone number of all subscribers located in the exchange(s) contained in the directory except the telephone numbers for public telephones or a name, address, number/address unlisted or unpublished at the subscriber's request. Also listed alphabetically shall be a listing designated "Poison Information Center" and the local telephone number, where the exchange served by the directory has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. A description of the local (toll free) calling scope shall be prominently displayed at the beginning of each alphabetical section in a directory. At no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number and surname of the subscriber. The exchange company shall place the first names or initials in the order requested by the subscriber.</p> <p>(2) Each subscriber served by a directory shall be furnished one copy of that directory for each access line. Subject to availability, additional directories shall be provided by the local exchange telecommunications company, which may charge a reasonable fee therefor. Within 30 days after the effective date of this rule each exchange company shall file with the Commission a tariff setting forth the fee, if</p>	<p>25-4.040 Telephone Directories; Directory Assistance.</p> <p>(1) Each local exchange telecommunications company shall normally publish updated telephone directories once every 12 months and shall publish updated directories at least once every 15 months. The directories shall normally alphabetically list the name, address, and telephone number of all subscribers located in the exchange(s) contained in the directory except the telephone numbers for public telephones or a name, address, number/address unlisted or unpublished at the subscriber's request. Also listed alphabetically shall be a listing designated "Poison Information Center" and the local telephone number, where the exchange served by the directory has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. A description of the local (toll free) calling scope shall be prominently displayed at the beginning of each alphabetical section in a directory. At no additional charge and upon the request of any residential subscriber, the exchange company shall list an additional first name or initial under the same address, telephone number and surname of the subscriber. The exchange company shall place the first names or initials in the order requested by the subscriber.</p> <p>(2) Each subscriber served by a directory shall be furnished one copy of that directory for each access line. Subject to availability, additional directories shall be provided by the local exchange telecommunications company, which may charge a reasonable fee therefor. Within 30 days after the effective date of this rule <u>Each</u> exchange company shall file with the Commission a tariff setting forth the fee, if any,</p>	<p>This rule should be revised as noted to eliminate obsolete or unnecessary portions and to provide clarification.</p>

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<p>any, and the conditions under which it will apply. Copies of each directory shall be furnished to the Bureau of Service Quality. When expanded calling scopes are involved, as with Extended Area Service, each subscriber shall be provided with directory listings for all published telephone numbers within the local service area.</p> <p>(3)(a) The name of the local exchange telecommunications company, the individual exchanges included in the directory and the month/year of issuance shall appear on the front cover of each directory.</p> <p>(b) Beginning with directories issued on or after January 1, 1995, the following information shall be listed on the inside of the front cover of the directory:</p> <p>1. "911" instructions for exchanges with "911" service. Such "911" instructions shall be at the top of the inside front cover and shall be outlined in order to be separate from other information on the inside front cover. "911" shall be the only listed emergency number; all other numbers on the inside front cover shall be listed as "nonemergency" or "other important numbers."</p> <p>2. For exchanges where "911" emergency service is not provided, emergency calling instructions and numbers including those of the police, sheriff, fire departments and ambulance services used by local government in case of emergency. Such emergency calling instructions shall be listed at the top of the inside front cover and shall be outlined and separate from other information. All other numbers on the inside front cover shall be listed as "nonemergency" or "other important numbers."</p> <p>3. The information required by Section 395.1027, F.S.</p> <p>(c) The following notice shall be conspicuously listed on the inside front cover or first page of the directory:</p> <p>FLORIDA PUBLIC SERVICE COMMISSION INQUIRIES CUSTOMERS OF UTILITIES AND COMPANIES REGULATED BY THE COMMISSION WHO HAVE FIRST CONTACTED SUCH A FIRM CONCERNING A PROBLEM, AND ARE NOT SATISFIED BY THE CORRECTIVE ACTION TAKEN MAY CONTACT:</p> <p>COMISION DE SERVICIO PÚBLICO DEL ESTADO DE LA FLORIDA: TODOS LOS CLIENTES DE UTILIDADES Y EMPRESAS REGULADAS EN</p>	<p>and the conditions under which it will apply. Copies of each directory shall be furnished to the Bureau of Service Quality. When expanded calling scopes are involved, as with Extended Area Service, each subscriber shall be provided with directory listings for all published telephone numbers within the local service area.</p> <p>(3)(a) The name of the local exchange telecommunications company, the individual exchanges included in the directory and the month/year of issuance shall appear on the front cover of each directory.</p> <p>(b) Beginning with directories issued on or after January 1, 1995, <u>The following information shall be listed on the inside of the front cover of the directory:</u></p> <p>1. "911" instructions for exchanges with "911" service. Such "911" instructions shall be at the top of the inside front cover and shall be outlined in order to be separate from other information on the inside front cover. "911" shall be the only listed emergency number; all other numbers on the inside front cover shall be listed as "nonemergency" or "other important numbers."</p> <p>2. For exchanges where "911" emergency service is not provided, emergency calling instructions and numbers including those of the police, sheriff, fire departments and ambulance services used by local government in case of emergency. Such emergency calling instructions shall be listed at the top of the inside front cover and shall be outlined and separate from other information. All other numbers on the inside front cover shall be listed as "nonemergency" or "other important numbers."</p> <p>23. 23. The information required by Section 395.1027, F.S.</p> <p>(c) The following notice shall be conspicuously listed on the inside front cover or first page of the directory:</p> <p>FLORIDA PUBLIC SERVICE COMMISSION INQUIRIES CUSTOMERS OF UTILITIES AND COMPANIES REGULATED BY THE COMMISSION WHO HAVE FIRST CONTACTED SUCH A FIRM CONCERNING A PROBLEM, AND ARE NOT SATISFIED BY THE CORRECTIVE ACTION TAKEN MAY CONTACT:</p> <p>COMISION DE SERVICIO PÚBLICO DEL ESTADO DE LA FLORIDA: TODOS LOS CLIENTES DE UTILIDADES Y EMPRESAS REGULADAS EN LA</p>	

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<p>LA FLORIDA QUE HAYAN INICIADO CONTACTO CON DICHA ENTIDAD Y NO ESTÉN SATISFECHOS CON LA RESOLUCIÓN DE SU QUEJA Y/O INVESTIGACIÓN PUEDEN DIRIGIRSE A:</p> <p align="center">THE FLORIDA PUBLIC SERVICE COMMISSION Division of Regulatory Compliance and Consumer Assistance 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-8153 Phone Toll Free (TDD & Voice) 1 (800) 342-3552 Facsimile Toll Free 1 (800) 511-0809 Internet E-mail address for filing complaints: CONTACT@PSC.STATE.FL.US Internet Address for retrieving information: http://www.psc.state.fl.us/</p> <p>(4) The following information shall appear in the front pages of the directory, preceding subscriber listings, along with an index where there are four or more pages of such information:</p> <p>(a) Directions for the use of local exchange and long distance telephone services and calls to repair and directory assistance services.</p> <p>(b) Application and amount of directory assistance charges contained in company tariffs.</p> <p>(c) Application and amount of charges for line busy verification, emergency interrupt and maintenance/repair services.</p> <p>(d) The location of telephone company public business offices located in the area(s) contained in the directory.</p> <p>(e) Identification of customer payment locations and an explanation of discontinuance of service procedures for local service.</p> <p>(f) Policy on customer owned equipment and inside wiring shall include, but not be limited to the following information, separately stated:</p> <ol style="list-style-type: none"> 1. A layman's description of inside wiring. 2. A layman's description of demarcation point. 3. A layman's description of the customer's responsibility for all wiring on the customer's side of the demarcation point. 	<p>FLORIDA QUE HAYAN INICIADO CONTACTO CON DICHA ENTIDAD Y NO ESTÉN SATISFECHOS CON LA RESOLUCIÓN DE SU QUEJA Y/O INVESTIGACIÓN PUEDEN DIRIGIRSE A:</p> <p align="center">THE FLORIDA PUBLIC SERVICE COMMISSION Division of Regulatory Compliance and Consumer Assistance 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-8153 Phone Toll Free (TDD & Voice) 1 (800) 342-3552 Facsimile Toll Free 1 (800) 511-0809 Internet E-mail address for filing complaints: CONTACT@PSC.STATE.FL.US Internet Address for retrieving information: http://www.psc.state.fl.us/</p> <p>(4) The following information shall appear in the front pages of the directory, preceding subscriber listings, along with an index where there are four or more pages of such information:</p> <p>(a) Directions for the use of local exchange and long distance telephone services and calls to repair and directory assistance services.</p> <p>(b) Application and amount of directory assistance charges contained in company tariffs.</p> <p>(c) Application and amount of charges for line busy verification, emergency interrupt and maintenance/repair services.</p> <p>(d) The location of telephone company public business offices located in the area(s) contained in the directory.</p> <p>(e) Identification of <u>where</u> customer payment locations <u>can be found</u> and an explanation of discontinuance of service procedures for local service.</p> <p>(f) Policy on customer owned equipment and inside wiring shall include, but not be limited to the following information, separately stated:</p> <ol style="list-style-type: none"> 1. A layman's description of inside wiring. 2. A layman's description of demarcation point. 3. A layman's description of the customer's responsibility for all wiring on the customer's side of the demarcation point. 	

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<p>4. A generic description of the various types of vendors which sell repair equipment.</p> <p>5. A generic list of the types of service vendors providing maintenance or repair of inside wire, or customer premises equipment.</p> <p>6. Instructions on how to determine whether the customer or the telephone company is responsible for needed repairs.</p> <p>7. Instructions for determining when a phone jack is defective.</p> <p>8. Instructions for determining when a telephone is defective.</p> <p>(g) Policy on the recording of telephone conversations.</p> <p>(h) Policy on harassing calls and sales solicitations generated by illegal automatic dialing equipment.</p> <p>(i) Policy on various violations of law arising from the illegal use of telephone equipment and service.</p> <p>(j) A conspicuous notice of the availability of the "No Sales Solicitation" list offered through the Florida Department of Agriculture and Consumer Services, Division of Consumer Services, and the 800 number to contact for further information.</p> <p>(5) Directory assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. Directory assistance records must also contain listings for "Poison Information Center" and, the local telephone number, where the area served by the directory assistance operator has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.</p> <p>(6) In the event of an error in the listed number of any subscriber, each local exchange telecommunications company shall intercept all calls to the listed number for the period of time required to comply with Rule 25-4.074, F.A.C., provided the listed number is not in service. In the event of an error or omission in the name listing of a customer, the customer's correct name and telephone number shall be listed in the directory assistance and intercept records and the correct</p>	<p>4. A generic description of the various types of vendors which sell repair equipment.</p> <p>5. A generic list of the types of service vendors providing maintenance or repair of inside wire, or customer premises equipment.</p> <p>6. Instructions on how to determine whether the customer or the telephone company is responsible for needed repairs.</p> <p>7. Instructions for determining when a phone jack is defective.</p> <p>8. Instructions for determining when a telephone is defective.</p> <p>(g) Policy on the recording of telephone conversations.</p> <p>(h) Policy on harassing calls and sales solicitations generated by illegal automatic dialing equipment.</p> <p>(i) Policy on various violations of law arising from the illegal use of telephone equipment and service.</p> <p>(j) A conspicuous notice of the availability of the "No Sales Solicitation" list offered through the Florida Department of Agriculture and Consumer Services, Division of Consumer Services, and the 800 number to contact for further information.</p> <p>(5) Directory assistance operators shall maintain records of all telephone numbers (except for non-published telephone numbers) in the area for which they have the responsibility of furnishing service. Directory assistance records must also contain listings for "Poison Information Center" and, the local telephone number, where the area served by the directory assistance operator has local calling to a Poison Information Center. If no local telephone number exists, then the toll-free telephone number of a Poison Information Center shall be listed. All new or changed listings shall be provided to directory assistance operators within 48 hours after connection of service, excluding Saturdays, Sundays and holidays.</p> <p>(6) In the event of an error in the listed number of any subscriber, each local exchange telecommunications company shall intercept all calls to the listed number for the period of time required to comply with Rule 25-4.074, F.A.C., provided the listed number is not in service. In the event of an error or omission in the name listing of a customer, the customer's correct name and telephone number shall be listed in the directory assistance and intercept records and the correct number furnished the calling</p>	

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<p>number furnished the calling party upon request or interception.</p> <p>(7) When a subscriber will establish a residence or business shortly after the close of subscriber listing records but preceding publication, the local exchange telecommunications company shall, upon request, establish and list service at the requested new address and immediately place the service on suspension. Service connection and other appropriate local service charges shall be due and payable, independent of whether service is later restored.</p> <p>(8) When scheduled additions or changes in plant, records or operations will require a large group of number changes, the earliest possible notice shall be given to affected customers, regardless of the time of the change relative to the directory issuance cycle.</p> <p>(9) The local exchange telecommunications company shall not change a subscriber's telephone number without good cause and at least 30 days prior notice to the affected subscriber.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.02(2), 364.025, 364.0251, 364.03, 364.385, 365.171, 395.1027 FS. History-- New 12-1-68, Amended 3-31-76, 1-4-78, 12-10-84, Formerly 25-4.40, Amended 11-28-89, 3-31-91, 2-11-92, 12-16-94.</i></p>	<p>party upon request or interception.</p> <p>(7) When a subscriber will establish a residence or business shortly after the close of subscriber listing records but preceding publication, the local exchange telecommunications company shall, upon request, establish and list service at the requested new address and immediately place the service on suspension. Service connection and other appropriate local service charges shall be due and payable, independent of whether service is later restored.</p> <p>(8) When scheduled additions or changes in plant, records or operations will require a large group of number changes, the earliest possible notice shall be given to affected customers, regardless of the time of the change relative to the directory issuance cycle.</p> <p>(9) The local exchange telecommunications company shall not change a subscriber's telephone number without good cause and at least 30 days prior notice to the affected subscriber.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.02(2), 364.025, 364.0251, 364.03, 364.385, 365.171, 395.1027 FS. History-- New 12-1-68, Amended 3-31-76, 1-4-78, 12-10-84, Formerly 25-4.40, Amended 11-28-89, 3-31-91, 2-11-92, 12-16-94.</i></p>	

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Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.046 Incremental Cost Data Submitted by Local Exchange Companies.</p> <p>(1) Incremental cost yields the appropriate price floor for pricing of individual services. This rule sets forth requirements for incremental cost data submitted by local exchange companies (LECs) to the Commission.</p> <p>(2) For each service for which an incremental cost study has been performed by or for a LEC and the LEC submits incremental cost data based on the study, the LEC shall provide:</p> <p>(a) An executive summary that includes, at a minimum:</p> <ol style="list-style-type: none"> 1. An overview of the incremental cost study(ies) performed, a description of all cost models used, and a summary of the cost study results; 2. A discussion which demonstrates that the cost study methodology employed comports with accepted economic theory regarding incremental cost; 3. A discussion demonstrating the reasonableness of the assumptions made regarding the conditions projected to be in effect during the study's planning horizon; and 4. A discussion demonstrating the manner in which the service will be provisioned during the planning horizon. <p>(b) A list of all factors and their values used in the study including, but not limited to, utilization factors, annual charge factors, expense factors and supporting structures factors. At Commission staff's request, supporting work papers showing the derivation of all factors used in the study shall be provided on 5 days' notice.</p> <p>(c) Where identifiable, the amount of any group-specific costs shall be identified but not added into the results for an individual service. Group-specific costs are those costs related to the provision of a group of services but not causally attributable to any specific service;</p> <p>(d) The amount and types of costs that are causally apportioned (as opposed to directly assigned) to individual services shall be identified and the LEC shall describe and provide support for the method of apportionment used; and</p> <p>(e) For new services which may have a significant revenue impact or where a rate restructure of an existing service is being proposed that may have either significant customer or revenue impact, a narrative or flowchart indicating the</p>	<p>25-4.046 Incremental Cost Data Submitted by Local Exchange Companies.</p> <p>(1) Incremental cost yields the appropriate price floor for pricing of individual services. This rule sets forth requirements for incremental cost data submitted by local exchange companies (LECs) to the Commission.</p> <p>(2) For each service for which an incremental cost study has been performed by or for a LEC and the LEC submits incremental cost data based on the study, the LEC shall provide:</p> <p>(a) An executive summary that includes, at a minimum:</p> <ol style="list-style-type: none"> 1. An overview of the incremental cost study(ies) performed, a description of all cost models used, and a summary of the cost study results; 2. A discussion which demonstrates that the cost study methodology employed comports with accepted economic theory regarding incremental cost; 3. A discussion demonstrating the reasonableness of the assumptions made regarding the conditions projected to be in effect during the study's planning horizon; and 4. A discussion demonstrating the manner in which the service will be provisioned during the planning horizon. <p>(b) A list of all factors and their values used in the study including, but not limited to, utilization factors, annual charge factors, expense factors and supporting structures factors. At Commission staff's request, supporting work papers showing the derivation of all factors used in the study shall be provided on 5 days' notice.</p> <p>(c) Where identifiable, the amount of any group specific costs shall be identified but not added into the results for an individual service. Group-specific costs are those costs related to the provision of a group of services but not causally attributable to any specific service;</p> <p>(d) The amount and types of costs that are causally apportioned (as opposed to directly assigned) to individual services shall be identified and the LEC shall describe and provide support for the method of apportionment used; and</p> <p>(e) For new services which may have a significant revenue impact or where a rate restructure of an existing service is being proposed that may have either significant customer or revenue impact, a narrative or flowchart indicating the sequence of</p>	<p>This rule should be deleted and the issue should be addressed on a complaint basis.</p>

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>sequence of analyses performed leading to the cost results shall be provided. At Commission staff's request, all relevant work papers supporting the cost study shall be provided on 5 days' notice.</p> <p>(3) For each service for which a LEC submits incremental cost data not based on an incremental cost study performed by or for that LEC, the LEC shall provide a discussion demonstrating the reasonableness of using the surrogate cost data as the price floor for its service.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.3381 FS. History--New 5-24-95.</i></p>	<p>analyses performed leading to the cost results shall be provided. At Commission staff's request, all relevant work papers supporting the cost study shall be provided on 5 days' notice.</p> <p>(3) For each service for which a LEC submits incremental cost data not based on an incremental cost study performed by or for that LEC, the LEC shall provide a discussion demonstrating the reasonableness of using the surrogate cost data as the price floor for its service.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.3381 FS. History--New 5-24-95.</i></p>	

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.067 Extension of Facilities - Contributions in Aid of Construction.</p> <p>(1) Each telecommunications company shall make reasonable extensions to its lines and service and shall include in its tariffs filed with the Commission a statement of its standard extension policy setting forth the terms and conditions under which its facilities will be extended to serve applicants for service within its certificated area.</p> <p>(2) This line extension policy shall have uniform application and shall provide the proportion of construction expense to be borne by the utility in serving the immediate applicant shall be not less than five times the annual exchange revenue of the applicants.</p> <p>(3) If the cost which the servicing utility must bear under subsection (2) above (or has provided in its tariff) equals or exceeds the estimated cost of the proposed extension, the utility shall construct it without cost to the subscribers initially served. If the estimated cost of the proposed extension exceeds the amount which the utility is required to bear, the excess cost may be distributed equitably among all subscribers initially served by the extension. However, no portion of construction shall be assessed to the applicant for the provision of new plant where the new plant parallels and reinforces existing plant or is constructed on or along any public road or highway and is to be used to serve subscribers in general except in those instances where the applicant requests that facilities be constructed by other than the normal serving method. The company's tariffs shall provide that such excess may be paid in cash in a lump sum or as a surcharge over a period of five years or such lesser period as the subscriber and company may mutually agree upon.</p> <p>(4) Line extension tariffs shall also contain provisions designed to require that all subscribers served by a line extension during the first five years after it is constructed shall pay their pro rata share of the costs assignable to them.</p> <p>(5) No company shall be required to extend facilities for new service unless the right-of-way necessary for the construction of line extension is provided by the applicant or group of applicants. Where pole attachments may be made in lieu of new construction costs, the company may charge the subscriber the expense or rental charges for such attachments, provided that the applicant may elect to pay</p>	<p>25-4.067 Extension of Facilities - Contributions in Aid of Construction.</p> <p>(1) Each telecommunications company shall make reasonable extensions to its lines and service and shall include in its tariff filed with the Commission a statement of its standard extension policy setting forth the terms and conditions under which its facilities will be extended to serve applicants for service within its certificated area, <u>to the extent such tariffs are required to be filed with the Commission.</u></p> <p>(2) This line extension policy shall have uniform application and shall provide the proportion of construction expense to be borne by the utility in serving the immediate applicant shall be not less than five times the annual exchange revenue <u>that would be generated by providing basic local telecommunications service</u> of the applicants.</p> <p>(3) If the cost which the servicing utility must bear under subsection (2) above (or has provided in its tariff) equals or exceeds the estimated cost of the proposed extension, the utility shall construct it without cost to the subscribers initially served. If the estimated cost of the proposed extension exceeds the amount which the utility is required to bear, the excess cost may be distributed equitably among all subscribers initially served by the extension. However, no portion of construction shall be assessed to the applicant for the provision of new plant where the new plant parallels and reinforces existing plant or is constructed on or along any public road or highway and is to be used to serve subscribers in general except in those instances where the applicant requests that facilities be constructed by other than the normal serving method. The company's tariffs shall provide that such excess may be paid in cash in a lump sum or as a surcharge over a period of five years or such lesser period as the subscriber and company may mutually agree upon.</p> <p>(4) Line extension tariffs shall also contain provisions designed to require that all subscribers served by a line extension during the first five years after it is constructed shall pay their pro rata share of the costs assignable to them.</p> <p>(35) No company shall be required to extend facilities for new service unless the right-of-way necessary for the construction of line extension is provided by the applicant or group of applicants. Where pole attachments may be made in lieu of new construction costs, the company may charge the subscriber the expense or rental</p>	<p>This rule should be revised to reflect that the revenue to be considered in determining whether CIAC is required is the revenue from the provision of basic local service. Subsections (3) and (4) are deleted as they are more properly covered in tariffs or in published terms and conditions.</p>

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PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>excess construction costs as though the service were provided without the use of attachments.</p> <p>(6) Except as provided in filed tariffs, the ownership of all facilities constructed as herein provided shall be vested in the telecommunications company and no portion of the expense assessed against the applicant shall be refundable by the company.</p> <p>(7) Nothing in this rule shall be construed as prohibiting any utility from establishing an extension policy more favorable to customers as long as no undue discrimination is practiced between customers under the same or substantially the same circumstances and conditions.</p> <p>(8) In the event that a company and applicant are unable to agree in regard to an extension, either party may appeal to the Commission for a review.</p> <p><i>Specific Authority 350.127(2), 364.10 FS. Law Implemented 364.025, 364.03, 364.07, 364.08, 364.15 FS. History- Revised 12-1-68, Amended 3-31-76, Formerly 25-4.67, Amended 3-10-96.</i></p>	<p>charges for such attachments, provided that the applicant may elect to pay excess construction costs as though the service were provided without the use of attachments.</p> <p>(46) Except as provided in filed tariffs, the ownership of all facilities constructed as herein provided shall be vested in the telecommunications company and no portion of the expense assessed against the applicant shall be refundable by the company.</p> <p>(57) Nothing in this rule shall be construed as prohibiting any utility from establishing an extension policy more favorable to customers as long as no undue discrimination is practiced between customers under the same or substantially the same circumstances and conditions.</p> <p>(68) In the event that a company and applicant are unable to agree in regard to an extension, either party may appeal to the Commission for a review.</p> <p><i>Specific Authority 350.127(2), 364.10 FS. Law Implemented 364.025, 364.03, 364.07, 364.08, 364.15 FS. History- Revised 12-1-68, Amended 3-31-76, Formerly 25-4.67, Amended 3-10-96.</i></p>	

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PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.079 Hearing/Speech Impaired Persons.</p> <p>(1) The telephone directory published by each local exchange telephone company (LEC) shall:</p> <p>(a) List, with other emergency numbers at the beginning of the directory, Telecommunications Devices for the Deaf (TDD) numbers for emergency services, which shall be denoted by the universal symbol for the hearing/speech impaired, i.e., a picture of an ear with a slash across it;</p> <p>(b) List the company's business office TDD number, which shall also be denoted by said universal symbol, for communicating with hearing/speech impaired persons;</p> <p>(c) At the option of and without charge to TDD users, have a special notation by each TDD user's number indicating TDD or TDD plus voice capability;</p> <p>(d) At the option of and without charge to hearing/speech impaired customers, not list the number of any hearing/speech impaired customer who requests that it not be published.</p> <p>(2) Each LEC shall provide directory and operator assistance to TDD users. The numbers for these services shall be listed in the front of the directory and denoted by the universal symbol.</p> <p>(3) Each LEC shall compile informational literature about the services it makes available to hearing/speech impaired persons and shall maintain this literature for public inspection in the company's business office. Each company shall send this literature at no charge to anyone requesting it and shall include this literature or a summary of it, once a year, in the company's informational mailings.</p> <p>(4) Intrastate toll message rates for TDD users shall be evening rates for daytime calls and night rates for evening and night calls. These discounts shall be offered by all LECs.</p> <p>(5) Each LEC shall, pursuant to tariff, provide specialized customer premises equipment (CPE), for lease or sale, to hearing/speech impaired persons. This specialized CPE shall be priced to cover fully allocated costs without inclusion of a rate of return on investment component. Each LEC shall provide at least one type of each of the following categories of specialized CPE:</p>	<p>25-4.079 Hearing/Speech Impaired Persons.</p> <p>(1) The telephone directory published by each local exchange telephone company (LEC) shall:</p> <p>(a) List, with other emergency numbers at the beginning of the directory, Telecommunications Devices for the Deaf (TDD) numbers for emergency services, which shall be denoted by the universal symbol for the hearing/speech impaired, i.e., a picture of an ear with a slash across it;</p> <p>(b) List the company's business office TDD number, which shall also be denoted by said universal symbol, for communicating with hearing/speech impaired persons;</p> <p>(c) At the option of and without charge to TDD users, have a special notation by each TDD user's number indicating TDD or TDD plus voice capability;</p> <p>(d) At the option of and without charge to hearing/speech impaired customers, not list the number of any hearing/speech impaired customer who requests that it not be published.</p> <p>(2) Each LEC shall provide directory and operator assistance to TDD users. The numbers for these services shall be listed in the front of the directory and denoted by the universal symbol.</p> <p>(3) Each LEC shall compile informational literature about the services it makes available to hearing/speech impaired persons and shall maintain this literature for public inspection in the company's business office. Each company shall send this literature at no charge to anyone requesting it and shall include this literature or a summary of it, once a year, in the company's informational mailings.</p> <p>(4) Intrastate toll message rates for TDD users shall be evening rates for daytime calls and night rates for evening and night calls. These discounts shall be offered by all LECs.</p> <p>(5) Each LEC shall <u>inform persons inquiring about specialized customer premises equipment for hearing/speech impaired persons of Florida Telecommunications Relay, Inc., which provides such equipment at no cost.</u> pursuant to tariff, provide specialized customer premises equipment (CPE), for lease or sale, to hearing/speech impaired persons. This specialized CPE shall be priced to cover fully allocated costs without inclusion of a rate of return on investment component. Each LEC shall</p>	<p>This rule should be revised as noted so that subsection (5) will reflect current practice. LECs no longer routinely provide specialized customer premises equipment for hearing or speech impaired persons at their cost because Florida Telecommunications Relay, Incorporated (FTRI) provides such equipment at no cost to qualifying persons.</p> <p>In addition, AT&T has a waiver for subsection (5) based on FTRI's ability to provide such equipment at no cost.</p>

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>(a) Audible ring signalers; (b) Visual ring signalers; (c) TDDs; (d) Volume control handsets.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.02, 364.025, 364.03, 364.04 FS. History—New 4-5-88, Amended 6-3-90, 5-8-05.</i></p>	<p>provide at least one type of each of the following categories of specialized CPE:</p> <p>(a) Audible ring signalers; (b) Visual ring signalers; (c) TDDs; (d) Volume control handsets.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.01(4), 364.02, 364.025, 364.03, 364.04 FS. History—New 4-5-88, Amended 6-3-90, 5-8-05.</i></p>	

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-4.116 Telephone Number Assignment Procedure.</p> <p>Each company shall maintain written standard operating procedures for the assignment of telephone numbers. The standard operating procedure shall be applied in a non-discriminatory manner to requests for assignment of telephone numbers.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.14, 364.16 FS. History—New 2-9-87.</i></p>	<p>25-4.116 Telephone Number Assignment Procedure.</p> <p>Each company shall maintain written standard operating procedures for the assignment of telephone numbers. The standard operating procedure shall be applied in a non-discriminatory manner to requests for assignment of telephone numbers.</p> <p><i>Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.14, 364.16 FS. History—New 2-9-87.</i></p>	<p>This rule should be deleted as unnecessary since it adds little, if anything, to the federal requirements.</p>
<p>25-9.034 Contracts and Agreements.</p> <p>(1) Wherever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution. Accompanying each contract shall be completed and detailed justification for the deviation from the utility's filed regulations and standard approved rate schedules. If such special contracts are approved by the Commission, a conformed copy of the contract shall be placed on file with the Commission before its effective date.</p> <p>The provisions of this rule shall not apply to contracts or agreements governing the sale or interchange of commodity or product by or between a public utility and a municipality or R. E. A. cooperative, but shall otherwise have application.</p> <p>(2) Each utility shall make provision to file with the Commission a conformed copy of all such special contracts which are currently in effect and which have not been previously filed.</p> <p>(3) If the number and size of such special contracts warrant, they may be placed in a separate binder.</p> <p><i>Specific Authority 366.05(1), 367.121 FS. Law Implemented 366.05(1), 367.041(2) FS. History—Amended 6-27-73, Repromulgated 1-8-75, Formerly 25-9.34.</i></p>	<p>25-9.034 Contracts and Agreements.</p> <p>(1) Wherever a special contract is entered into by a utility for the sale of its product or services in a manner or subject to the provisions not specifically covered by its filed regulations and standard approved rate schedules, such contract must be approved by the Commission prior to its execution. Accompanying each contract shall be completed and detailed justification for the deviation from the utility's filed regulations and standard approved rate schedules. If such special contracts are approved by the Commission, a conformed copy of the contract shall be placed on file with the Commission before its effective date.</p> <p>The provisions of this rule shall not apply to contracts or agreements <u>entered into by telecommunications companies or agreements</u> governing the sale or interchange of commodity or product by or between a public utility and a municipality or R. E. A. cooperative, but shall otherwise have application.</p> <p>(2) Each utility shall make provision to file with the Commission a conformed copy of all such special contracts which are currently in effect and which have not been previously filed.</p> <p>(3) If the number and size of such special contracts warrant, they may be placed in a separate binder.</p> <p><i>Specific Authority 366.05(1), 367.121 FS. Law Implemented 366.05(1), 367.041(2) FS. History—Amended 6-27-73, Repromulgated 1-8-75, Formerly 25-9.34.</i></p>	<p>This rule should be revised.</p> <p>As is clear from the citations in the "Law Implemented" section, this rule was never intended to apply to telecommunications companies. The Commission at one time required incumbent local exchange companies to file quarterly Contract Service Arrangement Reports, but lifted that requirement in 2001. <i>See In re: Elimination of certain reporting requirements for incumbent local exchange telecommunications companies</i>, Docket No. 010634-TL, Order No. PSC-01-1588-PAA-TL (July 31, 2001). The proposed change clarifies the rule's intended scope and makes it consistent with the Commission's order.</p>

ATTACHMENT C

PROPOSED RULE AMENDMENTS AND DELETIONS

Existing Rule	Proposed Amendments to Rule	Comments
<p>25-9.044 Change of Ownership.</p> <p>(1) In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classifications and regulations of the former operating company (unless authorized to change by the Commission), and shall, within ten (10) days, issue and file a notice adopting, ratifying, and making its own all rates, rules, classifications and regulations of the former operating utility on file with the Commission and effective at the time of such change of ownership or control.</p> <p>(2) New utility. Within thirty (30) days after the filing of such adoption notice by a public utility which then had no tariff on file with the Commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or make application to the Commission for such other tariff as it may propose to put into effect in lieu thereof.</p> <p>(3) Utility already in business. Within thirty (30) days after the filing of such adoption notice by a public utility which then had a tariff on file with the Commission, said utility shall issue and file in its own name rate schedules and regulations on additional or revised sheets of its existing tariff, or by a complete reissue of its existing tariff, which shall set out the rates and regulations of the predecessor utility then in effect and adopted by it, or make application to the Commission for such other rates and regulations as it may propose to put into effect in lieu thereof.</p> <p><i>Specific Authority 350.127(2), 364.335, 367.121 FS. Law Implemented 364.04 FS. History—Repromulgated 1-8-75, Formerly 25-9.44.</i></p>	<p>25-9.044 Change of Ownership.</p> <p>(1) In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classifications and regulations of the former operating company (unless authorized to change by the Commission), and shall, within ten (10) days, issue and file a notice adopting, ratifying, and making its own all rates, rules, classifications and regulations of the former operating utility on file with the Commission and effective at the time of such change of ownership or control.</p> <p>(2) New utility. Within thirty (30) days after the filing of such adoption notice by a public utility which then had no tariff on file with the Commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or make application to the Commission for such other tariff as it may propose to put into effect in lieu thereof.</p> <p>(3) Utility already in business. Within thirty (30) days after the filing of such adoption notice by a public utility which then had a tariff on file with the Commission, said utility shall issue and file in its own name rate schedules and regulations on additional or revised sheets of its existing tariff, or by a complete reissue of its existing tariff, which shall set out the rates and regulations of the predecessor utility then in effect and adopted by it, or make application to the Commission for such other rates and regulations as it may propose to put into effect in lieu thereof.</p> <p><u>(4) Regarding public utilities that are telecommunications companies, this rule shall apply only to rate-of-return regulated local exchange telecommunications companies.</u></p> <p><i>Specific Authority 350.127(2), 364.335, 367.121 FS. Law Implemented 364.04 FS. History—Repromulgated 1-8-75, Formerly 25-9.44.</i></p>	<p>This rule should be revised as noted to indicate that as to telecommunications companies, this rule applies only to rate-of-return regulated local exchange telecommunications companies.</p>

ATTACHMENT D

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ATTACHMENT D

AFFIDAVIT OF WILLIAM E. TAYLOR

I. Qualifications

1. My name is William E. Taylor. I am Senior Vice President of NERA Economic Consulting, Inc. (NERA), head of its telecommunications economics practice and head of its Boston office. I received a B.A. degree in economics, magna cum laude, from Harvard College in 1968, a master's degree in statistics from the University of California at Berkeley in 1970, and a Ph.D. in Economics from Berkeley in 1974, specializing in econometrics and industrial organization. I have taught and published research in the areas of theoretical and applied econometrics industrial organization, microeconomics and telecommunications economics at academic institutions (including the economics departments of Cornell University, the Catholic University of Louvain in Belgium, and the Massachusetts Institute of Technology) and at research organizations (including Bell Laboratories and Bell Communications Research, Inc.). My research has been published in peer-reviewed journals such as *Econometrica*, the *American Economic Review*, the *International Economic Review*, the *Journal of Econometrics*, *Econometric Reviews*, the *Antitrust Law Journal*, and *The Review of Industrial Organization*, and I have contributed to *The Encyclopedia of Statistical Sciences*. I have served as a referee for these journals (and others) and the National Science Foundation, as an Associate Editor of the *Journal of Econometrics*, and as a commentator on the PBS Nightly News Hour. I have testified in federal and state courts as an economic and statistical expert and have participated in telecommunications regulatory proceedings before state public service commissions, the Federal Communications Commission, the Department of Justice, the Canadian Radio-Television and Telecommunications Commission, the Indonesian antitrust authority and the New Zealand Commerce Commission.

2. In 2006, NERA prepared a report, [W.E. Taylor, H. Ware and J. David, *Intermodal Competition in Florida Telecommunications*, July 2006] which was submitted to the Commission by its sponsors: BellSouth Telecommunications, Inc., Embarq Florida, Inc., Verizon Florida LLC, and Windstream Florida, Inc. We have updated that study [W.E. Taylor and H. Ware, *Intermodal Competition in Florida Telecommunications*, March 2008].

II. Purpose and Conclusions

3. The purpose of my affidavit is to provide my assessment of the competition tests in the Proposed Rule requested in the Joint Telecommunications Companies' Petition to Initiate Rulemaking. For the reasons explained below, I conclude that they are economically sound and that they will benefit Florida's telecommunications consumers. Under the Proposed Rule, the Commission would apply the competition tests on a market-by-market basis to determine whether sufficient competition exists to streamline regulation by eliminating specific regulations. These tests would ensure that no single competitor could exercise market power to the detriment of consumers or other competitors, so that rules whose justification depends upon the presence of market power would no longer be necessary. Indeed, as I discuss below,

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the tests are more stringent than necessary to show that sufficient competition exists in a given market and that the rules in question are not simply unnecessary but in the presence of effective competition, they are harmful to customers and competitors.

III. Economic Principles

4. Before assessing the competition tests, I will explain the economic principles on which the analysis is based. First, I discuss the concept of market power because in the absence of market power — when no firm has the ability to increase prices above competitive levels (or decrease output or quality) — there is no longer a reason to substitute regulatory rules for market discipline. Although the concept of market power necessarily addresses firms' inability to raise prices above competitive levels, it bears emphasis that the Joint Telecommunications Companies' petition does not seek changes to Florida's price regulations. Second, I will outline the relevant telecommunications markets, both in terms of geography and products in which the analysis should be applied.

A. Analysis of market power

5. Two conditions are necessary for a firm to exercise market power. First, there must be little or no competition from existing firms producing substitute products in the relevant market. If substitutes are available (or if competitors have sufficient capacity to step in and meet consumer demands for substitutes), then an effort by the firm to exercise market power—to increase prices above competitive levels or decrease output or quality—would not be profitable, because customers would switch to those alternatives.
6. Second, for a firm to be able to exercise market power, entry into the market by firms not currently in the market must be difficult. Where barriers to entry are low, even where current competitors or alternative products or services are limited, attempts to increase price above the competitive level would stimulate entry by new firms offering competitive products at a competitive price, and the attempt to increase price would not be sustainable. Thus, a firm can exercise market power only if *both* of the above conditions hold. If competitors provide or have the capacity to provide competitive alternatives, *or* if barriers to entry are low, then a firm cannot profitably sustain a supra-competitive price increase.

B. Analysis of relevant markets in telecommunications

1. Geographic markets

7. Economists typically consider firms at different locations to be in the same market when a potential price increase by one firm (assuming other firms maintain their current prices) would be unprofitable because customers would shift to the products of firms at other locations:

The geographic limit of a market is determined by answering the question of whether an increase in price in one location substantially affects the price in another. If so, then both locations are in the same market. [Dennis W. Carlton

and Jeffrey M. Perloff, *Modern Industrial Organization*, 4th Edition, Boston, MA: Addison-Wesley, 2005, at 648.]

This approach takes into account transportation costs and transactions costs, factors that are not relevant in today's telecommunications market in Florida for at least two reasons: (1) technological factors, such as the advent of IP-based technology and Voice over Internet Protocol (VoIP), allow competitors with switches located hundreds of miles away from a given local customer to serve that customer; thus, attempts by one carrier to raise prices above competitive levels in an area where it had a large proportion of customers would induce expansion or entry from other carriers operating elsewhere in the state, which could render the price increase unprofitable; and (2) carriers already operate throughout the state, charging essentially similar prices for their services in all areas; thus, the prices charged by an Incumbent Local Exchange Carrier (ILEC) in areas with little current competition are constrained by the same prices that constrain prices elsewhere in the state. For example, many wireless competitors already offer statewide or even nationwide pricing plans; thus prices charged in a given area of the state are affected by prices in other areas.

8. Given the variety and geographic dispersal of competitors across the State, there is little doubt that supra-competitive pricing in any area would generate a competitive response from carriers providing telephone service in adjoining areas or elsewhere. For example, within their footprint, cable companies can rapidly upgrade to voice service once they have deployed broadband access—as is the case for the vast majority (about 94 percent) of Florida households; VoIP providers can locate their switches almost anywhere and serve customers in the state using what has become virtually ubiquitously available broadband connections; and both fixed and mobile broadband carriers can expand their service areas by adding radio towers and transmitters to their existing networks. Finally, Competitive Local Exchange Carriers (CLECs) frequently offer service (using resale, UNEs or commercial agreements) in geographic areas where they have no local access facilities.

2. Product markets

9. The relevant product market is composed of the services competing with the service at issue. A hypothetical provider of a service is unlikely to be able to raise its price above market levels when substitutes are available from other sources because any attempt by the provider to raise its price above competitive levels would likely cause customers to shift consumption (partially or wholly) away from the service at issue and towards substitutes supplied by other firms; such an attempt would also induce providers of the substitutes to increase their output of competing services. If the net effect of these market adjustments would be to render the firm's price increase unprofitable, then the set of such substitutes to which customers shift would constitute the relevant economic product market for the firm's service. Put differently, the relevant product market is the set of services (and substitute services) that a firm would have to control to be able to increase prices for one of the services without losing enough customers to products or services outside the set to render the price increase unprofitable.

IV. Analysis of Subsection (1) of the Proposed Rule

10. To determine whether a market should be subject to streamlined regulation, the Joint Telecommunications Companies propose Subsection (1) – “Determination of Whether a Market Should be Subject to Streamlined Regulation.” The determination of whether a market should be subject to Streamlined Regulation first specifies a geographic market and deems that market competitive (for the purpose of these proposed rule changes) if:
1. At least three (3) local service access alternatives are present within the market. For purposes of this rule, local service access alternative means wireline, wireless, broadband, cable, or other technology approved by the Commission; and
 2. At least two-thirds (2/3) of households within the market have access to at least three (3) different providers using any local service access alternative, including the telecommunications company seeking Streamlined Regulation.

A. Subsection (1) of the Proposed Rule will protect consumers.

11. If a firm passes the test defined in Subsection (1) of the proposed rule, an effort by the firm to exercise market power—to increase price above competitive levels or decrease output or service quality—would not prove successful because enough customers would be able to switch to those alternatives to render the effort unprofitable. In other words, the proposed rule would ensure that the specified regulations are eliminated only in markets where competition disciplines the ILECs’ behavior.
12. This conclusion is assured by the industry’s cost characteristics:
- Because telecommunications services are produced with high fixed costs and low variable costs, demand erosion from attempted price increases above competitive levels would make such attempts unprofitable, thus eliminating market power. Firms with high fixed and/or sunk costs must charge prices that are well in excess of their marginal costs in order to earn normal profits (*i.e.*, sufficient to attract and maintain investors).
 - Therefore, when such a firm loses customers to competition, its revenues fall much faster than its costs. If the firm attempted to increase prices, the lost profits (revenue minus avoided cost) from even a small decrease in customers can easily exceed the extra revenue obtained from the price increases on customers that remain.
 - These cost characteristics also mean: (1) the industry has fewer firms than other industries that are closer to the text book concept of “perfect competition”; (2) market power is constrained when the share of a formerly “dominant” firm is still high by conventional standards; and (3) it is especially important to base the assessment of market power on current and prospective competitive factors, not historical market shares for declining products.

The implications of recognizing that wireline telecommunications departs widely from the textbook model of perfect competition are profound. When fixed and sunk costs are low, a

competing product or service has to be a very close substitute to discipline the incumbent's prices: *i.e.*, a small price increase has to produce a disproportionately large loss in volume to be unprofitable, because when such a firm loses volume, the revenue loss is almost completely offset by cost savings. In contrast, firms such as facilities-based wireline carriers cannot sustain large volume losses, because the lost revenue greatly exceeds the costs savings. That is, competing telecommunications products do not necessarily need to be very close substitutes for wireline services in order for attempts at supra-competitive pricing to be thwarted. Put another way, firms with large proportions of fixed or sunk costs need to retain large volumes of output in order to spread their fixed costs.

13. Seen in this light, 2007 volume losses such as those represented by the 15 percent of households that have completely "cut the cord" are far from trivial. [See Figure 13 of the *NERA Report*]. This substantial percentage—based on the same source the Federal Communications Commission (FCC) uses—reflects trends acknowledged by the FCC in its last report on competition for mobile communications:

[A] growing number of wireless customers have "cut the cord" in the sense of canceling their subscription to wireline telephone service. According to one 2006 survey, 11.8 percent of adults, or one out of every 8, lived in households with only wireless phones in the second half of 2006, up from 7.8 percent in the second half of 2005, and triple the percentage (3.5 percent) in the second half of 2003. [FCC, Twelfth CMRS Report, February 4, 2008, ¶ 292.]

According to the National Health Interview Survey on which the FCC bases the above statement: by the first half of 2007 about 13.6 percent of households had only wireless phones ["Wireless Substitution: Early Release of Estimates From the National Health Interview Survey," January – June 2007 by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics]; and if the trend in the NIH data since 2004 continues, more than 15 percent of households may now have only wireless phones.

14. Moreover, this number will likely grow as wireless plans become more attractive and populations with high wireless propensities, *e.g.*, young adults, increase. [FCC Twelfth CMRS Report, ¶ 246] Finally, the debilitating impact of rather modest losses in volumes has implications for the development of viable wholesale markets as well. A difference between intermodal and CLEC competition is that when customers switch to intermodal alternatives, ILECs lose retail revenues and receive no increase in wholesale revenues, as customers, lines and minutes move entirely off the ILEC networks.
15. In addition, intermodal competition among different platforms providing voice services—such as wireline and wireless—substantially eliminates concerns about coordinated prices even with only two or three competitors in a given area. Wireless providers would not coordinate their prices with affiliated wireline providers because they face competitive pressure from other unaffiliated wireless carriers. Similarly, cable telephone providers would not coordinate their prices with LECs because their cost structures and competitive pressures (from satellite as well as from LECs entering the video market) are different from those of LECs.

16. Thus, if at least three telecommunications platforms are present in a geographic market and at least two-thirds of the households have access to at least three different providers, no provider would possess market power. Regulatory rules whose justification requires the presence of market power would thus no longer be necessary, and such a market should be deemed competitive for the purpose of determining regulatory rules.

B. The proposed test is more stringent than necessary.

17. The genesis of the test is the analysis of market power, which is generally undertaken for the purpose of deregulating prices. However, in the current context, the proposed rule changes do not relax price regulation. Rather, the proposal simply moves the rules under which ILECs provide service towards the rules that apply to the firms and platforms against which they compete (*i.e.*, wireless, cable and VoIP providers), many of which are in unregulated markets. In economics, such a move towards streamlined regulation would be justified simply by the *presence* of competition, irrespective of whether that competition was sufficient to constrain prices in the market. Asymmetric regulatory rules distort competition and the outcome of such competition is not necessarily one in which the most efficient firm that best serves its customers succeeds.

18. In addition, the proposed test is more stringent than necessary because it focuses only on existing competition: the presence and current availability of actual platforms and competitors. It ignores the effects of entry and expansion into adjacent markets by existing competitors and potential entry by new competitors. Standard economic analysis of market power takes such entry into account: for example, the antitrust enforcement agencies consider a potential uncommitted entrant to be in the market if it would likely enter “within one year and without the expenditure of significant sunk costs of entry and exit, in response to a ‘small but significant and nontransitory’ price increase.” [Department of Justice and Federal Trade Commission: *Horizontal Merger Guidelines* § 1.32]

C. Telecommunications companies should be allowed to request Streamlined Regulation for any geographic area subject to competition.

19. The proposal to allow a telecommunications company to select the geographic area to which to apply the test would give the carriers the flexibility to seek symmetrical treatment for any area in which they believe they face substantial competition. Moreover, the *effect* of many of the proposed rule changes is system-wide: for example, it would make no sense to apply different accounting rules [*e.g.* §§ 25-4.0185, 25-4.0201, 25-14] to different MSAs or exchanges served by an ILEC.

20. Limiting the test to a predefined geographic market would be harmful. For example, requiring that the test be applied to small areas such as individual exchanges would run the risk of perpetuating unneeded regulations and distorting competition, because competition typically takes place across broad areas in telecommunications which are not necessarily aligned geographically with an ILEC’s network. Wireless providers in particular compete across broad geographic areas and offer the same services and prices under the same terms

and conditions in rural areas as in other areas. Similarly, cable telephone and ILEC bundled plans are based on market conditions across wide geographic areas and are offered without differences across those areas. These plans thus constrain prices and service quality across broad geographic areas. These factors mean that the minority of consumers that live in low density (rural) areas are protected by competition in the more densely populated areas.

21. Nevertheless, if the test is not passed for a broad geographic area, the Commission should consider data for smaller areas lest it run the risk of handicapping a competitor in the very areas in which competitors have focused their efforts. Thus, mandating that the test be passed for broad areas such as an entire service area or Metropolitan Statistical Area (MSA) would be too restrictive as well. The company in question is in the best position to gauge whether particular rule changes could or should be applied to a smaller geographic area, in the event that the test is not passed for the company's footprint in Florida.

D. The proposed test correctly focuses on “local service access alternatives.”

22. The product market in the proposed test is economically appropriate: “local service access alternatives” is the relevant product market because all providers attempt to capture as much of their customers’ overall demand for communications services as they can. They do so because of the following fundamental economic considerations:

- Economies of scope—which imply that profits increase as firms capture more of the overall bundle of services that can be provided via a given platform.
- Consumer demand for bundled services and “one-stop shopping.”
- Network convergence—under which formerly disparate platforms such as cable, wireline and wireless now can provide similar bundles of voice, data and video services.
- Churn—turnover of the customer base—is costly because customer acquisition costs tend to be high and customers that buy more services from a given firm are less likely to switch their services to other firms.

Under the proposed Competition Test, customers in the market have access to three or more local service platforms, and at least two-thirds of the households in the market have access to three or more providers. Accordingly, because the bulk of customers currently have access to viable substitutes for all ILEC telecommunications services, competition will discipline prices, terms and conditions and service quality offerings for *all* of the services currently subject to regulation.

E. Business services should be deemed competitive if two-thirds of households have access to three different providers.

23. The proposed test is based on the competitive alternatives available to households, rather than business locations. However, a test based on the availability to households will ensure

that sufficient competition exists for business customers. First, if most households have two competitors available, we would expect to see that most businesses in the same area have two competitors as well because: (1) businesses tend to locate in relatively close proximity to potential customers; and (2) telecommunications providers will generally deploy their networks to take advantage of economies of scale and of scope—e.g., to be able to serve both residential and business customers. Thus, if they serve residential customers in an area, they are apt to serve businesses there and in nearby areas as well. For example, we would expect to see wireless towers deployed based on total network demand—e.g., total residential and business customers. In addition, a cable company that has deployed hybrid-fiber-coaxial technology to serve residential customers will have a strong incentive to employ—and, if need be, extend—those facilities to serve business customers in the area.

24. Second, the areas in which businesses may locate separately from residential customers are apt to present a sufficient concentration of business so as to make it profitable for entrants to serve business customers, even if there are few residential customers. For example, in urban settings, there may be distinct business districts and businesses in suburban areas may locate in industrial parks or shopping malls, but such locations will attract entry and competition because of the concentrations of business customers. Revenues from business locations are generally higher than revenues from residential locations. Moreover, the cost to serve business locations is generally lower than that for residential locations because businesses tend to locate in more dense areas in city centers, so that average loop lengths for business customers are shorter than for residential customers. The net effect is that the profit opportunity from serving business customers is generally larger than from residential customers, and competition for business customers is generally more developed than competition for residential customers.
25. Finally, the proposal in question is to eliminate asymmetric regulatory rules, not to change pricing flexibility. It is difficult to understand how the proposed rule changes could possibly be applied to residential customers and not to business customers as well. As a result, if a market is competitive based on residential access to alternative carriers — so that removing the rules would benefit residential customers — there would be no harm in extending the rule changes to encompass business customers as well.

V. Analysis of Subsection (2) of the Proposed Rule: Determination of Whether a Telecommunications Company Should be Subject to Streamlined Regulation

26. Under Subsection (2) of the proposed rule, a telecommunications company not otherwise entitled to Streamlined Regulation in all of its markets would be eligible for Streamlined Regulation in all of its markets if at least two-thirds of its access lines are located in areas determined to be competitive under the proposed Subsection (1). The proposed rule also notes that Streamlined Regulation cannot be applied to rate-of-return-regulated telecommunications carriers. This rule is in the public interest because it is important that — to the extent possible — rule changes pertain to each company’s entire footprint in Florida.

A. Rules should be set at the footprint level, if at all possible

27. The current Commission rules apply to all geographic areas in a carrier's footprint in Florida. Despite possible differences in population, teledensity and competitive presence across Florida markets, when the Commission adopted the rules in §§ 25-4, 25-9 and 25-14, it adopted them without reference to different geographic markets within a carrier's service territory. It is not difficult to understand the reason for this: most of the rules in question cannot be applied to anything less than the total company. For example:

- § 25-4.0185 **Period Reports**: These reports are performed at a company level, and some components pertain to the network as a whole and not to particular exchanges or MSAs.
- § 25-4.0201 **Audit Access to Records**: Management and financial audits apply to the company as a whole and cannot meaningfully be applied to smaller geographic areas.
- § 25-4.012 **System Maps and Records**: While maps and records could be confined to particular exchanges or MSAs, the resulting reports would be incomplete because equipment often services customers in multiple exchanges and MSAs.
- § 25-4.210 **Service Evaluations and Investigations**: Service evaluations pertain to an entire company.
- § 25-9: If a company must provide particular tariff filing information for some geographic areas, it is probably less costly to provide it for the company as a whole. For example, for § 25-9.005 (3) (b), the effect of the rate change on the company's costs and rate of return cannot meaningfully be calculated on any basis less than the total company.
- § 25-14: Accounting rules must pertain to an entire company.

Thus, Streamlined Regulation for particular geographic areas within a carrier's footprint would not likely solve the problem for which it was intended. If the carrier cannot implement an accounting change (for example) state-wide, it would not implement it at all, so that the accounting system would remain state-wide (as it is today).

28. It is common in discussions of regulatory streamlining for regulators to express concern about the geographic granularity to which the reduced regulation would apply. Typically, however, the issue is price deregulation, and the regulator's concern is that pockets of customers may have few competitive alternatives and that an ILEC might be able to price discriminate in some way that took advantage of this lack of competition. These pockets are negligible in Florida: see the *NERA Report: W.E. Taylor and H. Ware, Intermodal Competition in Florida Telecommunications* (March 2008). Moreover, even if these pockets were thought to be important for price discrimination, they are not important for the regulatory relief being requested here. Operating under a dual regulatory regime when most parts of a company's service area pass the Subsection (1) test would be costly and unnecessary.

29. Consequently, it is hard to imagine how relaxing regulatory rules (e.g., an accounting requirement) state-wide could disadvantage the small number of customers who had no competitive alternative. Whatever change an ILEC might make in response to the relaxed accounting requirements, it would make the change state-wide, and customers without competitive alternatives would be protected by the competition experienced by the bulk of other customers who do have competitive alternatives.
30. Competitors price and market their services in broad geographic areas — for example, wireless, cable and VoIP packages are marketed state-wide if not nationally. Thus, their prices (and other terms and conditions) and those of the ILECs that compete with them would tend to be the same in parts of the state that may not pass Subsection (1). Accordingly, if two-thirds of lines are in areas served by a Florida company that meet the standard for Subsection (1) of the proposed rule, then it is likely that the entire area would be protected by competition.

VI. Analysis of Subsection (4) of the Proposed Rule: The Nature of Streamlined Regulation

31. Asymmetric regulatory rules distort the competitive process and ultimately harm the customers they were intended to protect. The Commission cannot (and should not) extend these rules to cover wireless carriers, cable companies and VoIP suppliers so the only way to move towards regulatory symmetry is to remove rules from wireline ILEC regulation.
32. There are two types of consumer benefit that would flow from such a reduction in asymmetric regulatory rules. First, regulatory rules impose costs on carriers and their customers and removing those rules eliminates those costs. In competitive markets, there is no corresponding harm from the elimination of such rules because the availability of competitive alternatives provides the protection that customers rely on in the many other unregulated markets in which they purchase goods and services.
33. Second, and much more important, asymmetric *ex ante* economic regulation, particularly in markets opened to competition, necessarily imposes costs on society in the form of the inherent market, technology and investment distortions that stem unavoidably from economic regulation of any service — retail or wholesale. These distortions are particularly acute in current telecommunications markets where retail markets are subject to effective competition, where regulatory authority differs across competing platforms and where the markets are characterized by rapid technological change and competing platforms or technologies subject to lock-in or path dependence. Such regulation does not merely transfer welfare among suppliers but inevitably distorts technical choices, which can have large and irreversible welfare effects on consumers, reducing economic efficiency and productivity by distorting the competitive market outcome and driving the market to an inefficient platform or technology.
34. Good examples of regulatory rules that distort market outcomes are the service quality rules in §§ 25-4.071, 25-4.072, 25-4.073, and 25-4.074. When customers have competitive alternatives, those rules are unnecessary because competition will force firms to provide the

level of service quality that customers want. Worse than unnecessary, however, these rules are actually harmful to customers. While we all know that customers prefer better service to worse, we know very little about the added cost to provide marginally better service or customers' willingness to pay for marginally better service. No one knows if customers are willing to pay the cost of having 80 or 90 percent of their calls answered within 30 seconds. And if ILECs are required to provide this level of service quality while other carriers are not, ILECs may be placed at a serious cost disadvantage relative to their intermodal competitors.

35. The classic example of these distortions is U.S. regulation of surface transportation in the 1950-1980 time period and the resulting inefficient mix of railroad, truck and barge infrastructure investment and, ultimately, traffic. Although the railroads were facing substantial intermodal competition from trucking by the mid-1950s, the railroads were saddled with outdated subsidy requirements and pricing restrictions. By the 1970s, every major Northeast railroad had gone bankrupt and the number of operating track miles dropped dramatically. In telecommunications, regulatory rules that raise the costs or that artificially constrain the terms and conditions or service quality choices of regulated wireline carriers tilt the competitive process in favor of technologies, platforms and firms that are not subject to those rules. If consumers' choices among wireless, coaxial and fiber platforms remain altered by asymmetric regulation, the results of the artificial competition would not represent fairly the needs and tastes of Florida consumers, any more than the current share of railroads in surface transportation represents current consumer preferences. Streamlined Regulation for ILECs would reduce the likelihood of such outcomes in telecommunications.

William E. Taylor
WILLIAM E. TAYLOR

Sworn to and subscribed before me on this 11th day of March, 2008, by WILLIAM E.

TAYLOR, who is personally known to me or has produced MA.
drivers license as identification.

Silvia Santos
NOTARY PUBLIC - Signature

Silvia Santos
NOTARY PUBLIC - Printed Name

Sept. 22, 2011
Commission # and Date of Expiration

Silvia E. Santos
Notary Public
Commonwealth of Massachusetts
My Commission Expires
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March 2008

Intermodal Competition in Florida Telecommunications

Prepared for: AT&T Florida., Embarq Florida, Inc., TDS Telecom, Verizon Florida LLC, Windstream Florida, Inc.

By

**William E. Taylor
Senior Vice President**

**Harold Ware
Vice President**

NERA
Economic Consulting

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I. Summary

In 2006, we reported on the fundamental transformation taking place in the communications industry that was bringing competitive choices for voice and broadband consumers throughout Florida.¹ In this report, we analyze more recent data and demonstrate that the trends we identified in 2006 have continued and that competition for communications services in Florida has intensified.² These continuing trends make even more clear that asymmetrical regulation of communications providers in Florida harms both competition and consumers, and that the need for updating and streamlining Florida's regulation of wireline telephone services is now urgent.

Until recently, different networks were constructed to provide different services: telephone networks carried switched voice traffic and private line services; coaxial cable transmitted television signals; and cell towers relayed wireless voice calls. All of this has changed since the long-awaited "network convergence" has provided the technological catalyst for facilities-based "intermodal competition" throughout the country including, of course, Florida. Convergence has brought at least three formerly disparate industry sectors into direct competition with each other by allowing each of their different network platforms to provide similar bundles of communications services. For example, cable companies now provide video, broadband Internet and other data services, *and* voice; mobile wireless networks provide voice, data, short text messaging, *and* video services; and wireline services platforms provide voice, DSL, Internet, instant messaging, VoIP, *and* now video.

Several platform providers have been competing with the traditional wireline carriers to serve Florida consumers. Cable companies such as Comcast, Bright House Networks and Cox have deployed broadband and telephony services to large portions of the State, and have experienced great success in attracting customers to their bundled products. Wireless service is ubiquitous in Florida and many residents are replacing wireline service with wireless, both through line substitution and usage substitution. Since we completed our 2006 report, these platforms have become even more widespread and have captured ever larger numbers of customers. The spread of broadband throughout Florida enables residents to receive service from numerous independent VoIP providers such as Vonage and Skype. Moreover, emerging services such as Wi-Fi, WiMAX and broadband over power lines (BPL) promise to intensify the competition.

The Florida Public Service Commission in 2006 recognized the need to consider these intermodal alternatives to wireline service when assessing the state of competition, noting that "[w]ireless, VoIP, and broadband services are fulfilling the expectations of competition and represent a significant portion of today's communications market in Florida."³ The Commission went on to state:

¹ NERA, *Intermodal Competition in Florida Telecommunications*, July 2006 ["NERA 2006 Report"].

² Some of these results were reported in *Intermodal Competition and Telecommunications Deregulation in Florida* at the 34th Annual PURC Conference, University of Florida, February 16, 2007.

³ *Florida PSC 2006 Competition Report*, p. 2.

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Wireless and, to a lesser extent, VoIP services have become a significant portion of the voice communications market ... [E]vidence suggests that these intermodal competitors are successfully providing competitive alternatives to both residential and business subscribers ... [Both residential and business] customers may obtain functionally equivalent services via wireline telephony, wireless telephony, VoIP, or cable telephony.⁴

Accordingly, our analysis does not rely upon market share measures because these measures are severely limited given their static, backward-looking nature, and because it is nearly impossible to gather complete and accurate share data. Rather, the paper examines the dynamics of the highly competitive communications market and how the market now extends beyond the traditional wireline companies to encompass a host of intermodal competitors.

As discussed in detail below, FCC data for Florida⁵ show that intermodal competitors have made substantial progress since our last report:

- At year-end 2000, there were about 3.4 million more mass market (residence and small business) wireline access lines than total wireless subscribers and mass market high-speed broadband lines.
- Only four years later, at year end 2004, there were 6.9 million *fewer* mass market wireline lines than total wireless subscribers and mass market broadband lines.
- By year end 2006, there were about 8.5 million fewer combined ILEC and CLEC residential lines than combined residential wireless and residential broadband lines.⁶
- After a period of rapid growth, interstate switched access minutes of use for the major Florida carriers declined 29 percent from 2000 to 2006; over the same period, local usage fell about 34 percent, from 3,200 calls per line per year to only 2,100.

The impact of intermodal competition is even more pronounced than these data alone suggest: wireline access lines would have been growing under historical competitive conditions because the Florida population has continued to grow at least as fast as it did historically. Thus, factoring in this growth, we estimate that Florida local exchange companies served about 3.56

⁴ *Id.* at 66.

⁵ Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2000-2006* (“FCC December 2000-December 2006 Local Competition Reports”) and Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, *High Speed Services for Internet Access: Status as of December 31, 2000-2006* (“FCC December 2000-December 2006 High-Speed Internet Reports”). More detailed data are provided below.

⁶ Beginning in 2005 the FCC changed how it reports switched voice lines and broadband lines. It started reporting residential lines alone instead of mass market (residential and small business lines). From June 2005 forward the FCC grouped small business lines with those of larger business customers. Thus, to assess mass market trends we separate our analysis of certain FCC data into two segments—data through December 2004 and data for June, 2005 through December 2006. Other reporting changes occurred during 2005 and 2006. See Section III.A below.

million fewer residential wireline access lines than expected at year end 2006 based on population growth. This implies a shortfall of more than three times the observed decline of about 1 million lines. We find a similar but even more dramatic discrepancy between expected and observed local usage trends. These shortfalls are also much larger than those shown in our prior report based on data through year end 2005.

Intermodal competition is strong and growing in all parts of the State, including rural areas. For example, our analysis shows that:

- Every Zip Code area in the state has at least three broadband providers with lines in service and, 99 percent of Zip Codes have four or more such providers.
- Cable companies' networks pass 94% of households in the state and can provide broadband service to virtually all (99.8%) of the homes passed.
- Cable telephony is available to about 86 percent of cable homes passed and about 81 percent of total households in the state. These figures are substantially higher than the corresponding figures we reported in our 2006 report.
- At least two wireless carriers are available to 99 percent of households in the state, and 99.9 percent of households have at least one wireless carrier available.
- Intermodal competition is having a major impact on the communications market. While Florida cable providers are experiencing great success in attracting voice and broadband customers nationally and in Florida, a significant and increasing number of people are substituting wireless for wireline services in Florida.
- Multiple competitive alternatives are available in areas of Florida served by each of the major incumbent wireline carriers in the state, with each incumbent experiencing heavy line losses and lost usage as a result.

The significance of these developments is underscored by an MIT Communications Futures Program working paper that found, if intermodal competition is strong—as we have shown in Florida—then “[i]n adopting a ‘go slow’ approach to telecom deregulation, policymakers risk repeating the mistakes of the past.”⁷ As the report states:

The costs of late, slow, or piecemeal deregulation can be quite high. Obsolete regulations ...can decrease consumer welfare substantially. These losses ... are paid not only by consumers in lower quantity and quality..., foregone innovations, [less] choice, [and] often by taxpayers ... as the government may end up bailing out failing incumbents ... and their ... workforces. Ultimately,

⁷ Professors Charles H. Fine and John M. de Figueiredo, *Can We Avoid Repeating the Mistakes of the Past in Telecommunications Regulatory Reform?*, Working Paper 2005-001, MIT Communications Futures Program, Massachusetts Institute of Technology, March 21, 2005, p 5.

deregulation that is too late can drive the incumbent(s) into bankruptcy, and bestow monopoly power on the newly dominant former entrant(s).⁸

More specifically, the MIT paper shows that the costs of delaying regulatory reform in industries experiencing intermodal competition have been extremely high. For example, although the railroads were facing substantial intermodal competition from trucking by the mid-1950s, they were saddled with outdated subsidy requirements and pricing restrictions. Thus, “the railroads were unable to sustain investment and attract investors. Over time, the railroads’ collapse reduced social welfare and cost taxpayers billions in repeated bailouts.”⁹ By the 1970s, every major Northeast railroad had gone bankrupt and the number of operating track miles dropped dramatically. Delayed banking deregulation in the face of entry and intermodal competition by money market funds generated similarly deleterious effects in that industry.¹⁰

In discussing the application of their findings to telecommunications, the authors of the MIT paper conclude:

[T]he history of trucking and railroads has the potential to become an apt analogy for the communications sector today. The results of severely delayed regulatory relief were felt by hundreds of thousands of rail workers, communities ... denied competitive alternatives, and shippers.... The failure of Government to respond to change and foster rail deregulation proved a “lose-lose” situation for railroads, their industrial customers, and consumer welfare generally.¹¹

... [W]hen unconstrained entrants have been able to leverage their advantaged regulatory position to drive incumbent(s) into decline, then deregulation can arrive “too late” for welfare maximization, but is appropriate “as soon as possible” to minimize additional welfare losses.¹²

This pattern is consistent with what seems to be unfolding in today’s telecommunications marketplace. Consumers are confronted with an increasingly wide array of communications options from wireless providers,

⁸ *Id.*, p. 10.

⁹ *Id.*, p. 14.

¹⁰ *See Id.*, p. 19 in which the authors explain that

Similar to what we saw in the railroad industry, in banking an economic shock (rampant inflation) also created a new competitor: money market mutual funds (MMMF’s). MMMF’s had many of the same properties as simple savings and checking accounts offered by banks and S&L’s, but offered higher interest rates to depositors compared with what the S&L’s were allowed to pay. The primary response of policy makers to the resulting distress to the banks was NOT to allow banks to respond directly to the competitive threat from the MMMF’s and pay higher interest rates to depositors.

Rather, policy makers tinkered around the edges of regulation and allowed more risky loan practices that contributed to the massive and costly savings and loan failures and bailouts that “cost taxpayers hundreds of billions of dollars.” Again the message is that markets work more effectively than regulation.

¹¹ *Id.*, pp. 27-28.

¹² *Id.*, p. 10.

*from cable TV operators, and from new entrants offering low-cost (or free!) VoIP service.*¹³

Finally, they make it clear that policy makers must act promptly:

Further, since ... the telecommunications industry today operate[s] at much faster clockspeeds than ... the rail industry fifty years ago, the window of opportunity for timely (“in the zone”) deregulation in telecommunications is likely to be short compared to that for railroads. Although 1996 may have been “too early” for such deregulation, when the conditions are right, deregulation should be comprehensive and quick. Delaying regulation beyond this zone could well prove to be “too late,” resulting in severe and unnecessary losses in social welfare, causing the incumbent telephone carriers to go the way of the railroads.¹⁴

When entrants have established themselves to be economically viable and have *begun* to take market power and share from incumbents, the industry is ‘in the zone’ for timely deregulation.¹⁵

Policy makers should reduce the asymmetric regulation faced by the ILECs in light of the changes wrought by convergence and intermodal competition. These changes have eliminated historical market boundaries, brought formerly distinct industry sectors into direct competition with each other, and thus undermined the historical rationales for regulation.

The discussion that follows supports the need for updated and streamlined regulation by examining the forces behind intermodal competition in Florida and demonstrating that its sustained growth will continue for the foreseeable future.

II. Technological Forces Are Driving Network Convergence and Intermodal Competition

Historically, different networks were designed and deployed to carry different types of traffic. The wireline public switched telephone network and mobile telephone networks were optimized to transport basic voice communications, while cable networks were optimized to transport video, and the Internet was designed to transport packet-based data traffic. Today, these technologies are “converging” so that providers can offer multiple types of services over a single network. Thus, with convergence, the same services are provided over various types of networks such as traditional cable systems, traditional “telephone” networks and mobile wireless networks. In short, convergence refers to the provisioning of similar bundles of voice,

¹³ *Id.* p. 10. The authors add that “Unlike many of these competitors, incumbent telephone companies must often seek state regulatory approval and sometimes engage in protracted tariff proceedings if they wish to respond to the price changes of unregulated rivals. That is, the incumbent’s natural competitive pricing and product portfolio response to entrants can be delayed because of these regulatory proceedings;” emphasis added.

¹⁴ *Id.*, p. 28.

¹⁵ *Id.* pp. 9-10; emphasis added.

data, Internet access, TV, and other communications and entertainment services by different types of network providers.

Three fundamental factors have driven convergence: (1) technological change (such as the advent of two-way, digital, broadband networks and IP technology) that has allowed all kinds of wired and wireless networks to be used for any kind of service; (2) consumer demand for bundled services; and (3) competition among providers seeking gains from improved efficiency, through economies of scale and scope, and the promise of increased revenues and lower churn rates.

Because convergence enables different types of platforms to provide increasingly similar bundles of services, traditional wireline carriers must now compete with: (1) Internet and broadband service providers; (2) cable companies that have made substantial investments in their networks to provide video, data and voice services; (3) wireless services providers; (4) VoIP providers; and (5) other providers using emerging technologies. These industry developments have resulted in dramatic line losses to wireline local exchange carriers in Florida.

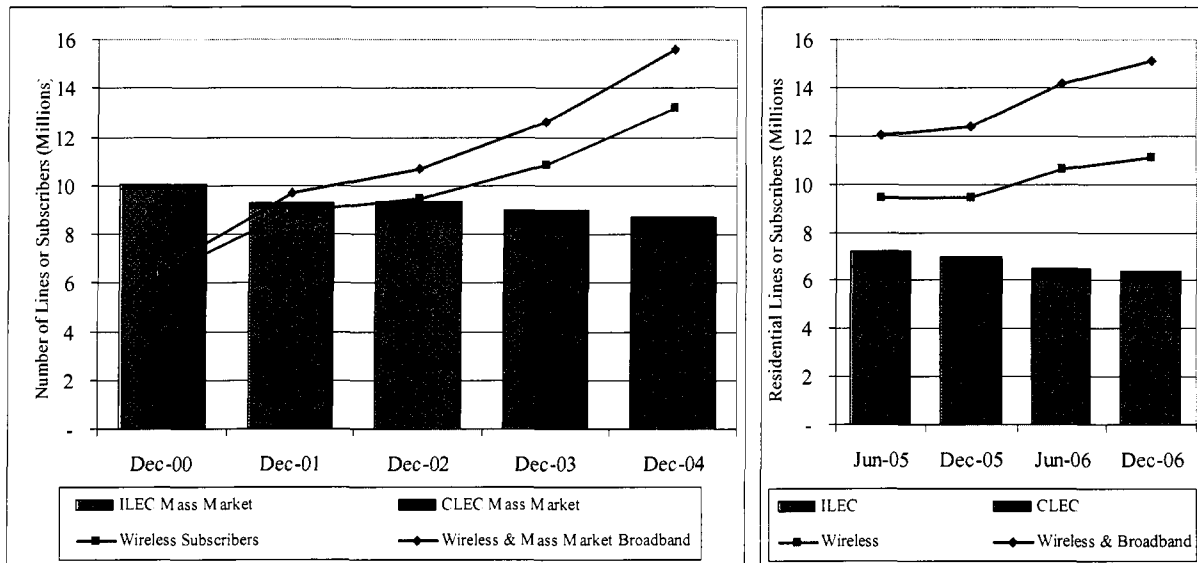
III. Intermodal Competition Has Dramatically Affected Florida's Wireline Carriers

Evidence that intermodal services are substitutes for and compete with LEC services includes data showing that: (1) the growth of wireless, broadband and cable telephony services has been associated with reductions in the number of wireline access lines; and (2) the growth rate of CLEC wireline services has been smaller than it was prior to 2000, before intermodal competition began its acceleration. In this section we explore these general trends. In Section IV we look more deeply at the factors underlying the growth of intermodal alternatives to LEC services.

A. Gains by Wireless and Broadband Have Been Associated with Wireline Losses

Intermodal competition from cable companies, wireless providers, broadband services providers and VoIP providers has caused local exchange carriers to experience losses in access lines and usage. At the same time, wireless subscribers and broadband lines have grown so dramatically that they now far exceed the number of traditional switched access lines. Figure 1 below depicts just how dramatic these trends have been in Florida.

Figure 1. Intermodal Competition for Mass Market Customers in Florida (2000-2006)



Note: Starting in June 2005, Residential Broadband data exclude Small Business lines. Starting in 2005, Wireless Subscribers data is for Residential customers only (75% of total subscribers).

Source: FCC December 2000 - December 2006 Local Competition and High-Speed Internet Reports.

As illustrated in Figure 1, FCC data show that Florida is experiencing widespread and growing intermodal competition, from year end 2000 through year end 2004, when the FCC reported data for mass market (residential and small business) LEC lines:

- Residence and small business conventional wireline (*i.e.*, ILEC + CLEC) access lines in the state declined by almost 1.3 million lines, or about 13 percent, from December 31, 2000 to December 31, 2004, when they would have been expected to grow because of the growth in state population.¹⁶
- In contrast, over the same interval:
 - The number of wireless subscribers increased by over 100 percent or 6.8 million new subscribers;
 - The number of residential and small business broadband lines increased by about 2.2 million lines or almost ten-fold; and
 - By December 31, 2004, the total of wireless subscribers and mass market broadband lines reached 15.6 million (or about 80 percent higher than the total number of mass market ILEC and CLEC lines)

¹⁶ As discussed below, not only population, but other possible determinants of line growth, such as employment and Gross State Product, increased over this period as well.

- The FCC changed its approach to reporting LEC lines and broadband lines in 2005, when it started reporting residential lines alone instead of mass market residential and small business lines.¹⁷ Nevertheless, it is clear from the chart on the right side of Figure 1 that the growth in intermodal options—here measured by estimated residential wireless subscribers and reported broadband high speed lines—and the corresponding decline in residential LEC lines shows that intermodal alternatives continue to grow and replace conventional wired lines. More specifically, according to FCC data for Florida *in only 18 months* from June 2005 through December 2006: Total LEC residential lines fell by almost 940,000 or 13 percent¹⁸;
- Residential broadband lines increased by over 1.4 million or 55 percent;
- Residential wireless subscribers increased by over 1.6 million or 17 percent¹⁹;
- Thus, by year end 2006 we estimate that total residential wireless subscribers and broadband lines reached about 15.1 million compared to only 6.3 million total LEC residential lines.

Note that Figure 1 actually *understates* the impacts of intermodal competition because the FCC data on which it is based group cable company coaxial telephone lines with other CLEC provided lines. For example, although state-specific data are not available, FCC data show that “CLEC” coaxial cable telephone lines grew nationally from 308,000 at year-end 1999 to 3.7 million lines at year-end 2004, to almost 6.8 million lines in December 2006, only 2 years later, when other CLEC lines declined from 29.2 million to 21.9 million lines.²⁰ Thus, had we included the coaxial cable lines with other forms of intermodal competition, we would have seen a larger reduction in traditional wireline access lines. Moreover, as shown by the National Cable & Telecommunications Association (“NCTA”) data discussed below the FCC data underreport the number of cable telephone lines.

¹⁷ Additionally, wireless subscribers data starting in 2005 are not directly comparable with earlier data because the newer data allocate subscribers to states based on NPA (area) codes, whereas the older data were assigned to states based on billing address.

¹⁸ We examine changes in total LEC lines because FCC reporting changes that moved MCI and AT&T lines from the CLEC to ILEC category to account for the AT&T/SBC and AT&T/BellSouth mergers and the Verizon/MCI merger imply that changes in the relative numbers of CLEC and ILEC lines over the period covered here are misleading. See footnote 5 of the December 2006 FCC Local Competition Report; thus, we do not report the change in ILEC lines.

¹⁹ The FCC reports total wireless subscribers in the Local competition reports. We estimate the number of residential subscribers based on the following finding reported by the FCC: “25 percent of wireless users were business customers, with the remaining 75 percent being ordinary consumers.” Federal Communications Commission, *Annual Report and analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Twelfth Report* (“Twelfth CMRS Report”), FCC 08-28, released February 4, 2008 report at footnote 633, citing: *10-Year Wireless Projections*, KAGAN WIRELESS TELECOM INVESTOR, June 6, 2005, at 2.

²⁰ See FCC December 2006 Local Competition Report, Table 5, “Competitive Local Exchange Carrier Lines by Type of Technology.”

B. Florida Switched Access Lines and Network Usage Are Well Below Expected Levels Based on Historical Trends

The *Florida PSC 2004 and 2006 Competition Reports* show that total residential switched access lines have been declining in the state since 2001.²¹ According to these data, from 2001 to 2006, ILEC residential lines fell by almost 1.7 million lines while CLEC residential lines increased by about 86,000 lines. Thus, total residential switched access lines fell by 1.6 million lines, from about 8.3 million to about 6.7 million. During this same time, Florida's population increased by 12.4 percent.²² Thus, this decline has resulted in a level of lines well below what one would expect based on the continued population growth in Florida.

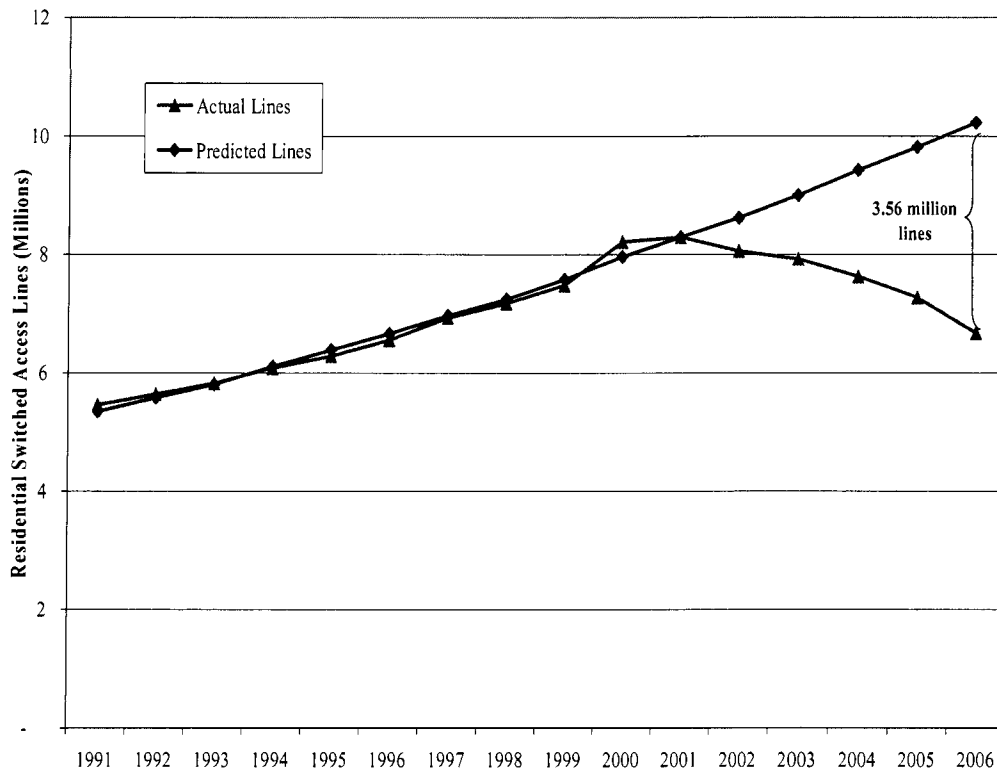
By statistically estimating the historical (1991 to 2001) relationship between residential lines and population, we can forecast what the number of lines would have been in subsequent years in the absence of intermodal competition. As can be seen in Figure 2, growth in the number of lines was closely correlated with population growth from 1991 to 2001, but although population growth continued to be at least as strong from 2001 to 2006, the number of lines fell well below what we would have expected based on this population increase. By 2006, the shortfall amounted to 35 percent below the expected level, or 3.56 million residential access lines.²³

²¹ See Table 1 in the 2004 report and Table 2 in the 2006 report

²² Other possible determinants of line growth increased over this period as well. Employment in the State increased from about 7.6 million to about 8.7 million and Florida Gross State Product grew from \$497.4 billion to \$714 billion (in current dollars). Population data from Office of Economic & Demographic Research, The Florida Legislature, Demographic Estimating Conference Database, updated July 2005, available at <http://edr.state.fl.us/population/web10.xls>; Employment data from the Florida Agency for Workforce Innovation, Labor Market Statistic, available at <http://www.labormarketinfo.com/library/laus/historical/histsa.xls>; and Gross State Product data from Bureau of Economic Analysis, U.S. Department of Commerce, available at <http://www.bea.gov/bea/regional/gsp/>.

²³ Total residential switched access lines for 1997-2006 are from the *Florida PSC Competition Reports 1997-2006*. We obtained data on ILEC residential lines (including AT&T Florida, Verizon and Embarq) from ARMIS, FCC Report 43-08, *The ARMIS Operating Data Report*, Table III, "Access Lines in Service by Customer," and trended the Florida PSC data back to 1991 using the ARMIS data. Since Embarq only began reporting to ARMIS in 1997, we obtained a series of residential lines for 1991-1996 from Embarq, which we added to the ARMIS data. A linear specification is used to estimate lines. The resulting equation is $y = 0.9577x - 7343653.5$, with an R^2 of .9879, where x = population and y = estimated access lines.

Figure 2. Actual and Predicted Florida Residential Switched Access Lines. (1991-2006)

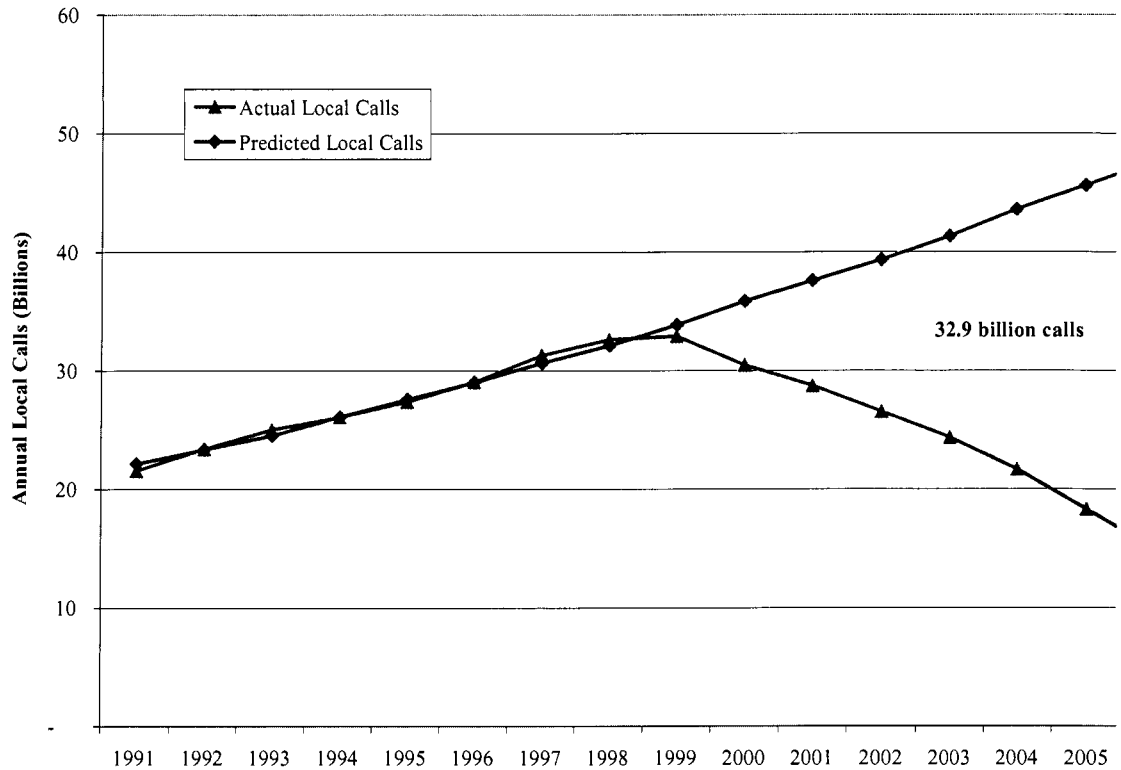


Similarly, intermodal competition has had a substantial impact on local network usage. According to FCC ARMIS data concerning AT&T Florida and Verizon, the number of local calls per year has been declining in Florida since 1999. Through 2006, annual local calls had fallen from 32.9 billion to 14.9 billion, or 55 percent. As with access lines, this dramatic decline places the level of local calling well below what one would expect based on population growth. Estimating usage trends based on population trends, we find that local calling volumes closely tracked population growth from 1991 to 1999.²⁴ Beginning in 2000, however, actual and predicted annual local calls diverge, with the predicted level increasing with the population, while the observed level instead declines substantially. By 2006, the difference amounts to 69 percent, representing 32.9 billion calls per year.²⁵ These trends are depicted in Figure 3 below.

²⁴ Not surprisingly, the data suggest that call substitution preceded line substitution.

²⁵ Local calls are from ARMIS, FCC Report 43-08, *The ARMIS Operating Data Report*, Table IV, "Telephone Calls" and include AT&T Florida and Verizon. A linear specification is used to estimate calls. The resulting equation is $y = 5.03499695x - 44593536$, with an R^2 of .9829.

Figure 3. Actual and Predicted Florida RBOC Annual Local Calls. (1991-2006)



C. Intermodal Competition Is Occurring Throughout the State

The trends in intermodal competition demonstrated statewide in Figures 1-3 are not geographically isolated. As shown in Tables 1 and 2 as well as Figures 4 and 5 below, intermodal competitors are present in the service areas of each of the five major incumbent carriers and have had a significant impact on those carriers’ lines and network usage:

- In areas served by AT&T Florida: cable telephony is available to about 84 percent of cable homes passed,²⁶ cable modem service (and therefore, VoIP service provided by independent providers such as Vonage or Skype) is available to almost 100 percent of cable homes passed and wireless service is available (from three or more carriers) to virtually all households. Since 2001 as these options expanded, AT&T Florida residential access lines have declined by over 1.3 million lines (or 30 percent), from 4.4

²⁶ This number is likely to be understated because, according to a Comcast customer service representative contacted by an AT&T researcher on March 12, Comcast had deployed service to several areas not yet indicated on its web site. Since our data are based on 2007 data from the Warren Cable Fact Book, and information from company web sites, we did not pick up this recent development. The rapid pace of cable telephone deployment means more generally that our data are likely to understate the true availability of that service.

million to 3.1 million, and AT&T Florida's network usage has experienced a similar decline.

- In areas served by Verizon: cable telephony is available to over 93 percent of cable homes passed, cable modem service is available to 100 percent of cable homes passed and wireless service (from three or more carriers) is available to virtually all households. As these options have expanded since 2001, Verizon residential access lines have declined by about 616,000 lines (or 36.5 percent), from 1.69 million to 1.07 million, and Verizon's network usage has similarly experienced a decline.
- In areas served by Embarq: cable telephony is available to about 86 percent of cable homes passed, cable modem service is available to 99 percent of cable homes passed and wireless is available from three or more carriers to virtually all households. Since 2001, Embarq residential access lines have declined by about 400,000 lines (or 26 percent), from 1.53 million to 1.13 million, and Embarq's network usage has experienced a similar decline.
- In areas served by Windstream: cable telephony is available to a growing percentage of cable homes passed, and, more importantly, cable modem service is available to 89 percent of cable homes passed (a figure that has also been growing since our 2006 report) and wireless is available to virtually all households. In contrast, since 2001, Windstream residential access lines have declined by about 6,800 lines (or 9 percent), from about 74,600 to about 67,900, and its network usage, while not in actual decline, has experienced a substantial reduction in its growth rate since 2000, compared to that seen in the 1995-to-2000 period.
- In areas served by TDS Telecom (TDS), cable modem service is available to about 100 percent of households passed and wireless service is available from three or more carriers to nearly 100 percent of households. TDS's residential access lines have declined by about 1,500 (or 14 percent) since 2001. Although TDS did not see a decline in usage over the period from 2000 to 2006, its growth rate has dropped dramatically compared to what it experienced from 1995 to 2000.

Tables 1 and 2 summarize the availability of cable and wireless services, respectively, in the incumbent carriers' territories. As discussed in Section IV below, cable advanced services are now being deployed in areas of the state that have heretofore had low availability. The data in Table 1 contain a snapshot of deployments as of 2007, but that snapshot does not capture ongoing deployments of services. For example, the largest cable provider in Windstream's service area is Comcast, which has announced its intentions to make telephony service available to the vast majority of its systems nationwide.

**Table 1
Advanced Cable Services Are Widely Available in Each Incumbent's
Service Territory in Florida**

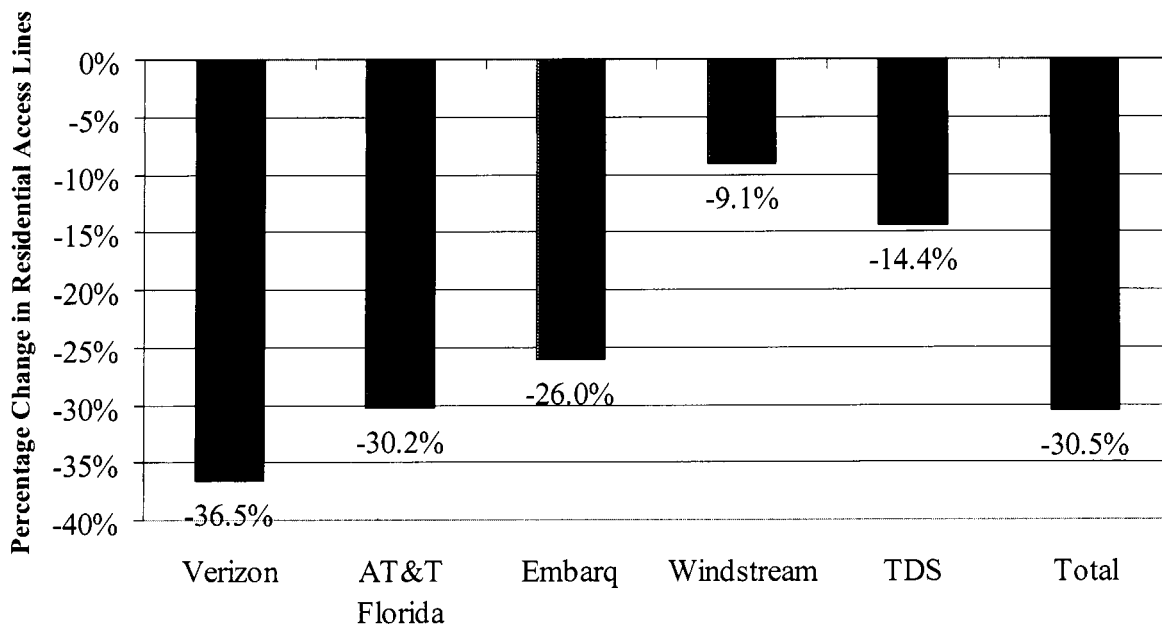
Incumbent	Homes Passed			Percent of Homes Passed	
	Total	Broadband Ready	Telephony Ready	Broadband Ready	Telephony Ready
AT&T Florida	3,816,765	3,815,960	3,191,304	100.0%	83.6%
Verizon	1,493,241	1,493,241	1,395,986	100.0%	93.5%
Embarq	1,289,880	1,280,518	1,112,371	99.3%	86.2%
Windstream	32,458	28,975	4,961	89.3%	15.3%
TDS	8,826	8,822	2,567	100.0%	29.1%
Other	32,667	31,157	28,139	95.4%	86.1%
Total	6,673,837	6,658,673	5,735,328	99.8%	85.9%

Source: Warren Communications News, *Cable Fact Book*, GIS Format, and company web sites.

Table 2					
Wireless Service is Widely Available in Each Incumbent's Service Territory in Florida					
Incumbent	Total Households	Households With 2 or more Carriers Available	Households With 3 or more Carriers Available	Percent of Households with 2 or More Carriers Available	Percent of Households with 3 or More Carriers Available
AT&T Florida	4,035,889	4,026,984	4,003,775	99.8%	99.2%
Verizon	1,538,180	1,537,804	1,536,859	100.0%	99.9%
Embarq	1,390,884	1,389,644	1,373,901	99.9%	98.8%
Windstream	71,852	70,924	59,075	98.7%	82.2%
TDS	9,969	9,969	9,892	100.0%	99.2%
Other	43,482	42,130	33,667	96.9%	77.4%
Total	7,090,256	7,077,455	7,017,169	99.8%	99.0%
Source: Provider websites (service coverage maps) and Census block group information.					

As discussed above, each of the major incumbent carriers in the state has experienced line and usage losses (or at least a significant decrease in the growth of usage) in conjunction with the spread of intermodal competition. Figure 4 depicts the percentage change in residential access lines for each of the four large incumbents since 2001. As displayed in the Figure, the decline in residential lines ranges from about 9 percent for Windstream to over 36.5 percent for Verizon.

Figure 4. Percentage Change in Residential Access Lines. (2001 to 2007)

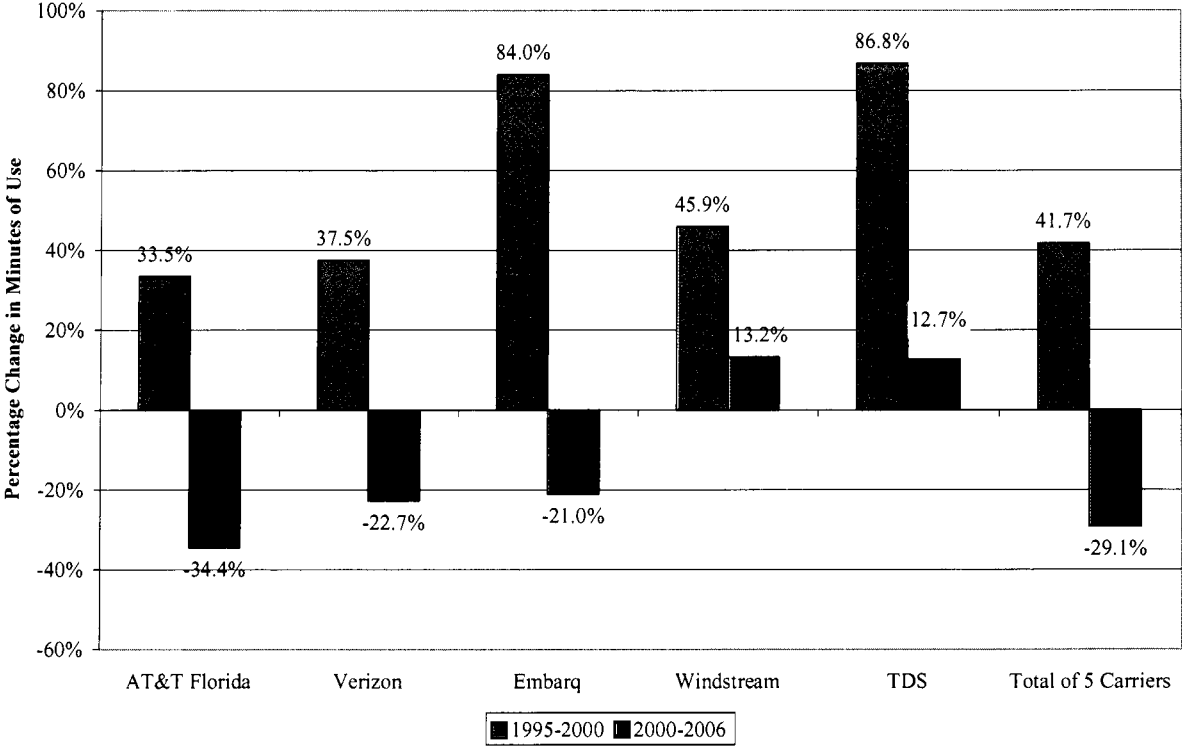


Note: Percent change from May 2001 to year-end 2007.
 Source: Data provided by individual companies.

Figure 5 below depicts the trends in interstate switched access minutes of use for the five major Florida incumbents as reported by the National Exchange Carrier Association. Following large percentage increases for each carrier from 1995 to 2000 (ranging from 34 percent to 87 percent), AT&T Florida, Verizon and Embarq minutes of use declined between 21 percent and 34 percent through 2006 and the growth in Windstream and TDS minutes of use declined, from 46 and 87 percent in the early period to about 13 percent each, respectively, in the later period.²⁷

²⁷ In the 2000-2005 period, AT&T Florida saw declines in each year, while Verizon and Embarq each saw a slight increase in 2004 before continuing declines in 2005. The one year increase for these two companies may be due to retroactive true-ups from the prior year or to changes in accounting for CLEC minutes, and thus does not appear to show a reversal of the ongoing trend in reduced wireline usage.

Figure 5. Cumulative Percentage Changes in Switched Access Minutes of Use. (1995 to 2000 and 2000 to 2006)



Source: FCC, National Exchange Carrier Association, Network Usage Data.

D. Intermodal Competition Affects Wireline Prices

As described above, intermodal competitors have already taken a significant fraction of output from Florida wireline carriers. The relevant question in assessing competition is: how much substitution to intermodal providers is enough for the market to control the price of wireline telecommunications services?

Wireline telecommunications technology has a large proportion of fixed and sunk network costs that do not vary with the number of customers. Firms with high fixed or sunk costs must charge prices that are in excess of their marginal costs to earn normal profits. Therefore, when such a firm loses customers to competition, its revenues erode much faster than the costs that it can avoid. If the firm attempted to increase prices, the lost profits (revenue minus avoided cost) from even a small decrease in customers can easily exceed the extra revenue obtained from the price increases paid by the customers that remain.

Starting with a hypothetical small but significant and nontransitory price increase (e.g., five percent) that economists routinely assume in assessing market power, Professor J. Hausman²⁸ poses the following question: What fraction of volume must a firm lose to make such

²⁸ Hausman, Jerry A., "Regulated Costs and Prices in Telecommunications," in Gary Madden (ed.), *International Handbook of Telecommunications Economics*, Volume 2: Emerging Telecommunications Networks, 2003, p.

a price increase unprofitable? For a five percent price increase, the answer is given by the formula:

$$\text{Critical fraction} = \frac{0.05}{\left(1.05 - \frac{mc}{p}\right)}$$

where p is the current price and mc denotes marginal cost. Professor Hausman suggests that for wireline companies, marginal cost is about 20 percent of price (with the remainder accounting for the mark-up required to recover fixed or sunk costs). In this example, the critical fraction produced by the equation would be about 6 percent. In other words, under the conditions considered by Professor Hausman, if a wireline provider were to raise price and lose six percent or more of its volume to facilities-based alternatives such as wireless and VoIP providers, even a modest five percent price increase would be unprofitable.

The implications of recognizing that wireline telecommunications departs widely from the textbook model of perfect competition are profound. When fixed and sunk costs are low, a competing product or service has to be a very close substitute to discipline the incumbent's prices, which means that a small price increase has to produce a disproportionately large loss in volume to be unprofitable, because when such a firm loses volume, the revenue loss is almost completely offset by a reduction in costs. In contrast, firms such as facilities-based wireline carriers cannot sustain large volume losses, because the lost revenue greatly exceeds the costs savings — because such a large portion of costs are fixed or sunk. That is, competing telecommunications products do not necessarily need to be very close substitutes for wireline services in order for attempts at supra-competitive pricing to be thwarted.

IV. Intermodal Competitors Are Present and Growing Throughout Florida

A. Broadband

1. Broadband Competition and the Development of a Single Converged Communications Market

The spread of broadband services provides a key indicator of effective intermodal competition from cable providers and VoIP providers. As shown below, cable companies have typically deployed advanced digital two-way hybrid fiber coaxial technology, used that to offer broadband Internet access and then progressed to offer “cable telephony” services. This strategy has enabled them to capture a significant share of demand for high-speed Internet access and, more recently, has enabled the provision of low-cost cable company Internet-protocol (IP)

226 and Hausman, Jerry, “From 2-G to 3-G: Wireless Competition for Internet-Related Services,” in Robert W. Crandall and James H. Alleman, eds., *Broadband: Should We Regulate High-Speed Internet Access*, Washington D.C.: AEI-Brookings Joint Center for Regulatory Studies, 2002, pp. 126-127.

telephone services, and independent VoIP provider telephony services. The strategy has also enabled the cable companies' popular "triple play" bundle of video, broadband and voice services. This has, in turn, led the phone companies to accelerate their own network upgrades—first to DSL, and more recently, to video services. Competition for broadband has lowered prices and increased the speed and quality of Internet access. The competition will become even more intense because the two formerly distinct communications sectors are now part of a single, more dynamic market.

2. Broadband Competition Is Flourishing in Florida

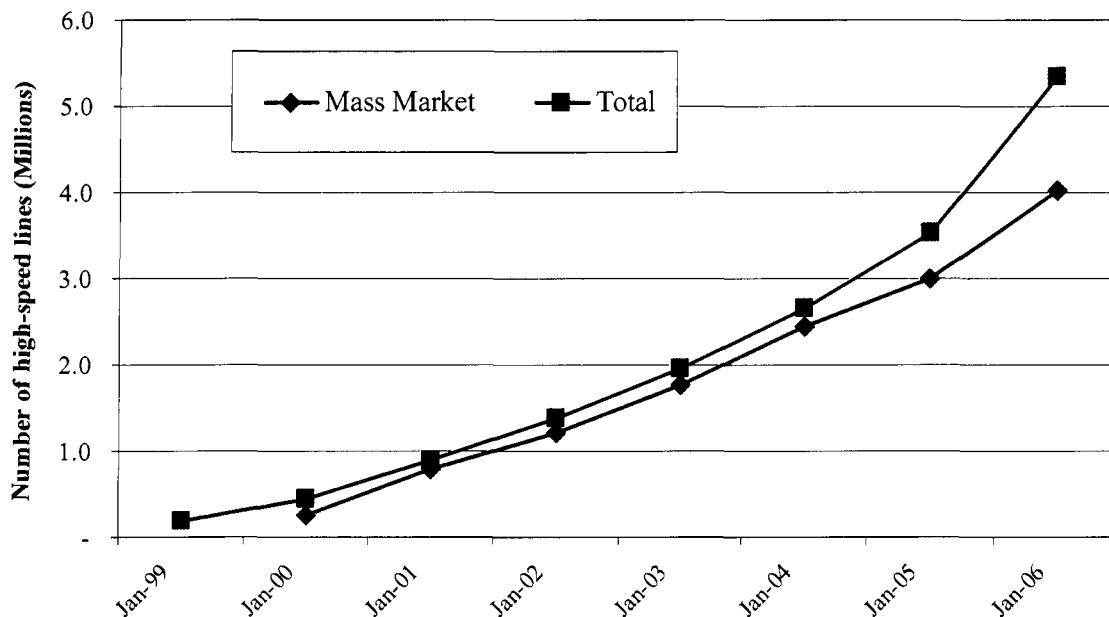
High-speed Internet service is now available throughout Florida. By the end of 2005, 24 percent of Zip Codes in Florida had 2 to 6 high-speed Internet service providers, 18 percent had 7 to 9 providers and the remainder had 10 or more. More recent FCC data for year end 2006 show even more wide-spread availability of broadband services in Florida. FCC data reveal that every Zip Code in the state has three or more high speed providers with lines in service and that 99 percent of all Zip Codes have four or more such providers.²⁹ DSL and cable broadband are both widespread. The FCC recently reported that high-speed DSL connections were available to 89 percent of the Florida households where ILECs can provide local telephone service, while high-speed cable modem service was available to 97 percent of the households where cable system operators can provide cable TV service.³⁰ The most recent available data for October 2007 show that almost 100 percent of homes passed by cable have high-speed cable modem service available. (See Table 1 above.)

²⁹ See *FCC December 2006 High-Speed Internet Report*, Table 17.

³⁰ *FCC December 2006 High-Speed Internet Report*, Table 14. As discussed below, another source shows that 98 percent of homes passed by cable have access to cable broadband.

Florida High-Speed Providers by Zip Code (As of year end 2005). As displayed in Figure 6 below, Florida has seen tremendous growth of both mass market and total high-speed Internet lines, with high-speed lines increasing almost thirty-fold from December 1999 through December 2006. A recent Florida PSC survey found that by the end of 2006, broadband penetration as a percent of the population had reached 53 percent in Florida,³¹ above the national average of 47 percent.³²

Figure 6. Florida Broadband Line Growth (1999-2006)



Note: Mass Market defined as residential & small business from 12/31/00 through 12/31/2004 (not available before then), and residential-only after 12/31/04.

The number of separate entities offering high-speed Internet services in the state has grown dramatically as well—from 16 providers in mid-2000 to 60 at the end of 2006.³³ As of the end of 2006, there were 22 ADSL providers (mostly wireline carriers), 10 coaxial cable providers, 10 optical fiber Internet service providers, 10 fixed wireless Internet service providers and 8 providers using other technologies.³⁴

³¹ Florida Public Service Commission, *Consumer Survey Results, January-December 2006* (“Florida PSC 2006 Survey”), p. 6.

³² Horrigan, John & Smith, Aaron (June 2007). Data Memo: Home Broadband Adoption 2007 (Pew Internet & American Life Project), page 1. Retrieved February 22, 2008, from http://www.pewinternet.org/pdfs/PIP_Broadband%202007.pdf

³³ See *FCC June 2000 and December 2006 High-Speed Internet Reports*, Tables 4 and 8, respectively.

³⁴ See *FCC December 2006 High-Speed Internet Report*, Table 8.

The growth in broadband availability and subscribership is not limited to urban areas. Although the Florida Public Service Commission found broadband penetration to be lower in rural areas than urban (71 percent vs. 48 percent in the second half of 2006), rural areas displayed growth of 21 percentage points in penetration since the second half of 2004.³⁵ As the Commission noted, “the increase of broadband users is present across all age levels and income groups and for both urban and rural respondents.”³⁶ Moreover, the evidence shows that broadband services are readily available to rural consumers. As shown above, the FCC found that no Zip Code in Florida had fewer than 3 broadband providers with lines in service. Of Florida consumers using dial-up connections at the time of the *Florida PSC 2005 Survey*, only 5 percent cited inability to obtain the desired type of broadband as the reason for not upgrading their connection.³⁷

Cable modem service continues to be the major source of broadband in Florida. As of December 2006, cable accounted for about 41 percent and ADSL accounted for about 35 percent of the over five million high-speed lines serving Florida.³⁸

The data indicate that Florida consumers are substituting broadband connections for switched access lines. About 25 percent of survey respondents who disconnected a second telephone line cited broadband replacement as the reason. For the additional 20 percent who cited “no longer wanted or needed” as the reason for disconnecting a second line, it seems likely that new technologies such as broadband and wireless played a role in making their second telephone line obsolete.³⁹

As shown by households that have shifted to cable’s triple play or cable telephony, or who have “cut the cord” in Florida, primary lines also have been dramatically affected by intermodal competition.

3. Messaging Services Enabled by Broadband (and Dial-Up) Lines and Wireless Devices Have Caused Significant Displacement of Wireline Usage

As people increasingly communicate via the Internet – such as through e-mail and instant messaging (“IM”) – their use of wireline services is declining. Internet communication has proliferated in the last several years, particularly since broadband services have become more widely available. One survey found that the average American Internet user spends three hours a day online, with much of that time devoted to work and more than half of it to communications.⁴⁰ A recent Pew survey found that: “internet users have high regard for the

³⁵ *Florida PSC 2006 Survey*, Figure 19.

³⁶ *Id.* at 31.

³⁷ Note that total Internet penetration rate (including dial-up) has reached 63 percent in rural areas. *Id.*, Figure 9.

³⁸ The remaining 24 percent is served by other types of technology. See *FCC December 2006 High-Speed Internet Report*, Table 9.

³⁹ *Florida PSC 2005 Survey*, Figure 39.

⁴⁰ San Jose Mercury News, *Survey Details U.S. Internet Use*, December 30, 2004.

internet as a tool of communication; 85% of both men and women say they consider the internet to be a good way to interact or communicate with others in their everyday lives.”⁴¹ Pew also reports that about 90 percent of Internet users communicate via email and over 80 percent use the Internet to communicate with friends and family. Over 40 percent of Internet users send IMs, greetings and invites; over 30 percent use text messaging; and over 20 percent participate in chats or discussions.⁴²

The use of Internet communications is sizable and still growing. For example, one source estimates that there are about nine billion e-mails per day in the United States alone.⁴³ Other sources report that 80 million people use IM in the United States; about seven billion IMs are sent each day worldwide;⁴⁴ and worldwide IMs will grow over four-fold from 2004 to 2008, while IM users will increase from 320 million to 592 million over the same period.⁴⁵

Although it is difficult to determine exactly how much voice traffic has been displaced by these Internet communications, it is clear that they substitute for a substantial number of wireline phone calls. Consumers who would once pick up the phone to communicate now often find it more convenient and less expensive to communicate via the Internet. J.D. Power found that “among high-speed Internet users, instant messaging displaced 20 percent of local calls and email displaced 24 percent of such calls. Among dial-up Internet users, instant messaging displaced 18% of local calls, and email displaced 23% of local calls.”⁴⁶ According to a recent Frost & Sullivan report:

[I]t is worth noting that some indirect substitution of switched voice traffic is also occurring from data services delivered over both wireless and IP platforms. Email has been the dominant IP application, which has had an adverse impact on...voice calling. Instant Messaging (IM) is another application that has gained in popularity as a result of free versions available from mass providers such as Yahoo, Microsoft and AOL. Text messaging or SMS has been the application on the wireless side, which has impacted both wireline as well as wireless voice calling, and hence had some substitution impact on switched wireline (and wireless) traffic.⁴⁷

⁴¹ Pew Internet & American Life Project, *How Women and Men Use the Internet*, December 28, 2005, p. 17.

⁴² *Id.*

⁴³ Legal Tech Newsletter, *E-Mail and Records Management in the Legal Environment*, November 14, 2003, cited in UNE Fact Report 2004, Oct. 2004, p. I-6.

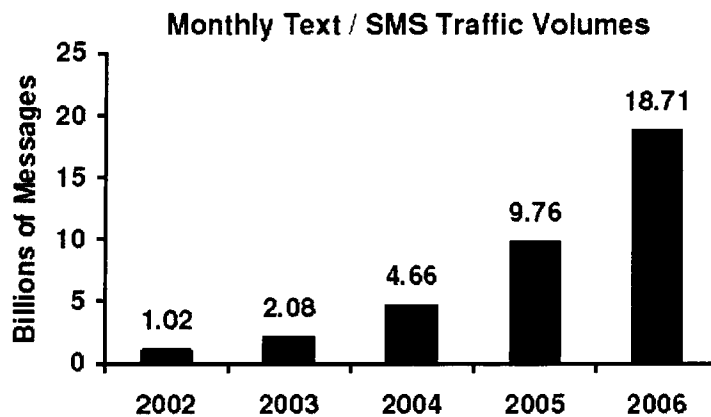
⁴⁴ WEBPRONEWS, *AOL Announces That Instant Messaging Is More Popular Than Ever*, August 2004, available at <http://www.webproneWS.com/news/ebusinessnews/wpn-45-20040824AOLAnnouncesthatInstantMessagingisMorePopularthanEver.html>.

⁴⁵ See F. Esker, *Employers finding business applications for instant messaging*, New Orleans CityBusiness, May 29, 2006.

⁴⁶ See *Florida 2004 Competition Report*, p. 10. (citing J.D. Power & Associates, *2003 Residential Internet Service Provider Study*, August 2003).

⁴⁷ Frost & Sullivan, *Trends in Wireline Substitution – North American Markets*, 2005, p. 1-6.

E-mails and IMs are not limited to wireline broadband networks. Apart from the fact that these types of communications can be (and are) made using dial-up connections over a common wireline, an increasing number of wireless devices enable these forms of communication. BlackBerries, “smartphones,” text messaging on mobile phones, and the newly arriving “3G” (and “4G”) wireless services are blurring the boundaries between mobile voice and data services. Recent data show that about 39 percent of U.S. mobile subscribers have used text messaging and about 6.3 percent, have used mobile IM.⁴⁸ According to the FCC, and as shown in the following chart reproduced from their most recent report on mobile communications: “...monthly text messaging traffic grew to 18.7 billion messages during December 2006, up from 9.8 billion messages during December 2005 and the 4.7 billion messages during December 2004.”⁴⁹



B. Cable Telephony

1. Recent Developments Have Stimulated Entry and Expansion by Cable Companies and Have Brought Advanced Two-Way Cable Services to the Vast Majority of Households

Cable providers have made substantial investments to upgrade their infrastructure to provide two-way digital services. Recent National Cable & Telecommunications Association (“NCTA”) reports reveal the substantial size and the dramatic competitive effects of these investments in network upgrades:

Cable operators invested another \$12.4 billion in 2006 capital expenditures to upgrade their infrastructure, bringing the industry-wide total to more than \$110 billion spent since Congress passed the 1996 Telecommunications Act. Cable’s high-speed, interactive, hybrid fiber-coaxial network provides the backbone for an expanding array of services that include broadband Internet access, burgeoning

⁴⁸ Twelfth CMRS report, at pp. 94 and 95.

⁴⁹ Twelfth CMRS report, at p. 7.

programming lineups — including more children’s and family tiers — interactive video on demand (VOD), and powerful facilities-based and wireless telephone services. These offerings are being packaged into consumer-friendly bundles, saving U.S. households billions of dollars.⁵⁰

Homes passed by cable’s high-speed internet service reached 119 million in 2006, according to estimates by Kagan Research, representing 94 percent of all U.S. homes.⁵¹

A quarter century after the initial breakup of the original AT&T telephone monopoly, true competition has come to the market for phone service, thanks to cable’s facilities-based offering. Gaining both powerful features and cost efficiency by utilizing digital Voice over Internet Protocol (VoIP) technology on the same hybrid fiber-coaxial network that carries video and Internet data signals, cable telephone service is high in both quality and affordability.⁵²

As the NCTA accurately observed, cable network upgrades are significant because they allow cable companies to “deliver an extensive array of advanced services through a single connection to the home... over a two-way network... [including] high-speed Internet access, High-Definition Television (HDTV), digital cable, Video-on-Demand (VOD) and digital voice service.”⁵³ Increased expenditure in network upgrades has translated into substantial growth in cable voice subscribers. As **Figure 7** shows, the number of residential cable voice customers has grown rapidly in recent years, increasing from 1.3 million in the second quarter of 2001 almost ten-fold to 12.1 million by the middle of 2007. Moreover, the NCTA reported that three months later, in September 2007, cable companies were serving 13.7 million residential voice customers.⁵⁴

⁵⁰ National Cable & Telecommunications Association, *2007 Industry Overview*, April 24, 2007, p. 7.

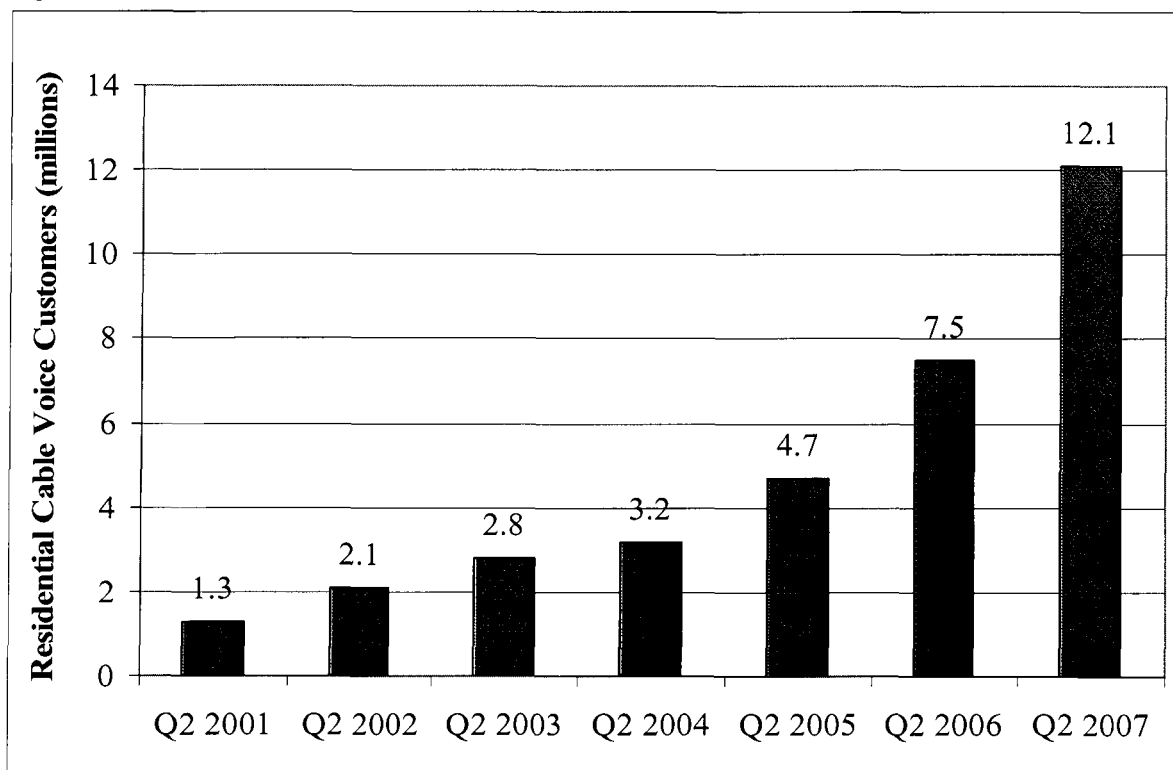
⁵¹ *Id.*, p. 11.

⁵² *Id.*, p. 13.

⁵³ National Cable & Telecommunications Association, *2005 Mid-Year Industry Overview*, p. 8.

⁵⁴ <http://www.ncta.com/Statistic/Statistic/Statistics.aspx>, accessed February 28, 2008.

Figure 7. Residential Cable Voice Customers



Source: National Cable and Telecommunications Association Web Site

Besides spending billions to upgrade to two-way digital networks, cable companies have embraced a number of technological developments to enter and expand into two-way communications, including the deployment of softswitch technology, which allows them to offer packet-switched telephony or VoIP.⁵⁵ Because of these technological developments, cable telephony costs have fallen dramatically—first with reductions in the costs to cable companies of circuit-switched telephony and, more recently, with the introduction of less costly IP-based technologies. These cost reductions have greatly facilitated cable entry and expansion in voice telephony. As a December 2005 In-Stat report noted:

[T]he provisioning of both VoIP and circuit-switched cable telephony gets cheaper every year.... [A] current circuit-switched cable telephony customer costs a cable MSO, like Comcast or Cox, approximately \$375 to activate. This cost has dropped considerably over the past few years, from \$600 in 2000....

[T]he estimated cost for a premise powered VoIP-based cable telephony solution is approximately \$280 per subscriber.⁵⁶

⁵⁵ See, e.g., A. Breznick, *Cox Accelerates Switch to IP Telephony Service*, Cable Digital News, April 1, 2005, available at <http://www.cabledatcomnews.com/apr05/apr05-3.html>.

⁵⁶ M. Paxton, *Cable Telephony Service: VoIP Drives Subscriber Growth*, In-Stat, December 2005, p. 28.

Bernstein Research observed that

[T]he so-called “Halo Effect” [of VoIP] owes to the marginal economics of bundling. Cable operators can offer voice and data services over a pre-existing video infrastructure. As a result, the incremental cost of each service is extremely low. Cable operators can therefore offer consumers a very attractive bundled “triple play” price, while still earning compelling, and indeed accretive, margins and returns on investment.⁵⁷

In light of these economic factors, cable companies have expanded IP-based technology to compete for substantial and increasing numbers of voice subscribers. As noted by the Florida Public Service Commission:

A major trend in the VoIP world is the accelerating growth of voice services, particularly VoIP services, provided by traditional cable television companies. Cable providers have taken advantage of their broadband platforms to launch VoIP services to compete with traditional ILEC providers. VoIP services began to appear as an adjunct to cable broadband offerings in the second half of 2005, and the push intensified in 2006 as more cable franchise areas began to offer voice communications. Comcast, Time Warner Cable, and Cablevision lead the way nationally. Comcast, Bright House Networks, Cox Communications, Knology, and Time Warner Cable are cable providers deploying VoIP in Florida. The cable industry has pushed to bundle voice, data, and video services together in a single offering for consumers in anticipation of traditional telecommunications providers entering video markets. At this stage, cable providers have made greater gains in the communications market nationwide than the traditional telecommunications companies have made in entering the video service markets.⁵⁸

Bernstein Research expects continued cable VoIP growth. For example in April 2007, it forecasts that about “25% of the country will be VoIP enabled for the *first time* in 2007,” which means that cable VoIP availability would grow from 70 million homes passed nationwide in 2006 to 92.3 million in 2007.⁵⁹ It also pointed out in early 2007 that:

The center of gravity in the VoIP market has shifted away from the start-up providers (most notably Vonage) towards the cable operators (most notably Comcast)... We’re no longer in the realm of “innovators” and “early adopters;” VoIP has gone mainstream.

Given the inevitable time lags between availability and full-scale marketing, the total impact is likely to be significantly greater, as a large percentage of homes

⁵⁷ C. Moffet, *et al.*, *Cable and Satellite: ~40% of Cable VoIP Customers “New” to Broadband*, Bernstein Research, July 6, 2006, p. 2.

⁵⁸ *Florida PSC 2006 Competition Report*, p. 14 (footnotes omitted). As noted in the *Report*, Comcast has acquired Time Warner Cable’s Florida operations.

⁵⁹ See Bernstein Research, *VoIP: The End of the Beginning*, April 3, 2007, p. 1, and Exhibit 3, p. 4; emphasis added.

ostensibly passed in 2006 will experience their first real marketing pressure in 2007.

What is perhaps most surprising, however, is that cable is, as an industry, only a little more than half finished with its roll-out, suggesting that – for cable, at least – the best is yet to come. Although reported coverage for operators like Comcast points to coverage in the 60-70% range, the marketing time-lag before the triple play is actively marketed suggests an effective coverage rate of just 50% or so for the industry as a whole. Among the majors, only Cablevision and Cox have completed deployment; others – like Comcast ... and Bright House [the second largest cable provider in Florida] – have a long way to go before they call their deployments complete. As an industry, cable is still in its early roll-out phase.⁶⁰

Given the pace with which the cable companies have been expanding their advanced offerings in Florida, described in the next section below, it is clear that cable broadband and VoIP will have a major impact on the competitive landscape of the state.

2. Cable Telephony and Broadband Are Available Throughout Florida

Cable companies present a potent competitive challenge to wireline companies in Florida today because: (1) they cover almost the entire population of the state (94 percent of households are passed by cable systems),⁶¹ (2) with a penetration rate of 81 percent of homes passed (above the national average of 71 percent), they have already garnered a large customer base to which they can sell their voice and Internet services as well;⁶² and (3) they have already deployed broadband services to 99.8 percent of the homes they pass and deployed telephony services to 86 percent of their homes passed (see Table 1, above), which implies that 94 percent and 81 percent of total homes in the state have access to these two services, respectively.

Almost 100 percent of homes passed by cable in Florida have been upgraded to provide cable broadband service; and almost 97 percent of the homes passed by cable outside of MSAs were upgraded to provide cable broadband service. The widespread availability of cable broadband is extremely significant because it means that: (1) even the minority of Florida households not yet passed by cable telephone service could be upgraded to have that service available at relatively low incremental costs; and (2) as previously discussed, once cable companies have upgraded their systems to provide broadband, VoIP providers such as Vonage can serve these homes.

⁶⁰ *Id.*, pp. 1-2.

⁶¹ Warren Communications News, *Cable Fact Book*, GIS Format and Census block group information. See Tables 1 and 2.

⁶² See Warren Communications News, *Television & Cable Factbook 2008*, p. F-3, “U.S. Cable Penetration State by State.”

3. Florida Cable Providers are Experiencing Great Success with Their Telephony Services

Florida cable providers have experienced great success in attracting voice customers. For example, Bright House, which deployed cable telephony in June and October 2004 in its Tampa Bay and Central Florida systems, had nearly 500,000 Digital Phone subscribers in about three and a half years in its “Florida footprint,”⁶³ a penetration rate of close to 25 percent of homes passed in October 2006.⁶⁴ In response to the success of Digital Phone, Bright House introduced a new calling plan, Florida Unlimited that provides customers with anytime calling throughout Florida for as low as \$28.95 per month.⁶⁵

Published national data show that Florida’s cable companies have been making dramatic inroads into the telephony business in those areas where they have made the service available. For example:

- During its recent 4th Quarter 2007 earnings call Comcast reported that:

[O]ver the past three years we've been able to grow our CDV [Comcast Digital Voice] business very significantly. Today, we are the fourth largest residential phone company in the country with 4.4 million customers or about 10% of the available homes.

Almost 28% of our video customers currently take a phone from Comcast. We added 2.5 million Comcast digital voice customers in 2007, which is 61% more than we added in 2006.

[A]nd we've been adding approximately 600,000 new customers for each of the last four quarters. We expect to be able to add as many CDV customers in 2008, as we did in 2007.

We grew total phone revenue to \$1.8 billion, an \$815 million increase in 2007, as we expanded the ability of our service by nine million homes to 42 million homes or 86% of our footprint. We're seeing the benefits of our scale in the cost side of this business as well. . . .we are seeing real operating efficiencies and it will only get better.

Our direct cost-per-subscriber declined 40% in 2007, due to lower per unit rates for long distance in internet connection cost and improved network reliability, which resulted in lower customer contact rates. . . .

⁶³ See St. Petersburg Times, “Bay area assists Verizon FiOS boom,” January 29, 2008. By mid 2006 Bright House passed about 2,048,000 homes in its Florida footprint.

⁶⁴ We estimate a penetration rate of 14.8 percent based on data on homes passed from Table 3 of our 2006 report.

⁶⁵ Bright House Networks Press Release, *More than 225,000 Florida Families Switch to Bright House Networks Digital Phone: Now Announcing a Florida Unlimited Calling Plan*, May 2, 2006. The price was still available on March 5, 2008 according to their web site.

We continue to see strong growth in our CDV service, and see no reason why we can't double our business and achieve 20% to 25% penetration over the next couple of years. CDV is the cornerstone of our bundling efforts, and we believe we are still in the very early innings. At the end of the fourth quarter, about 16% of our total video customers had three services, and that's up from just 6% a year ago, in all 54% of our customers taking two or more services compared to 45% in 2006.

In addition to seeing continued success with our unlimited local and long distance service, we began introducing more service choices like an unlimited local offer, which includes per minute long distance ... in order to address a wider potential customer base. We are also very excited about rolling out CDV product enhancements in the second half of 2008 that will be first in the marketplace, which will take advantage of our totally IP infrastructure.⁶⁶

- Comcast Chairman and CEO, Brian Roberts points to Cox, another large Florida provider, as a barometer of Comcast's future penetration rates: "As I look to Cox ... which has been in the Internet telephony business for a lot longer than Comcast... they have some markets that have reached 50%."⁶⁷ In July 2006, Cox reported telephone penetration of 33 percent of total cable customers and 24 percent of homes passed.⁶⁸ More recently, Cox, which describes itself as the "pioneer of the three-product bundle of digital telephone, video and Internet services," stated that it ended the fourth quarter of 2007 with 62 percent of its residential subscribers taking two or more services; reached 2.38 million telephone subscribers; and "focused on phone in 2007; employees answered the call by delivering 357,000 additional residential phone customers."⁶⁹
- Mediacom ended the first quarter of 2006 with 46,000 voice subscribers, virtually all attained in the preceding two quarters. This represents penetration of VoIP-capable homes of 2.9 percent in only six months.⁷⁰ By the end of 2007, the company reported that:

Telephone revenues rose 71.4%, primarily due to a 76.2% year-over-year increase in phone customers. Phone customers grew by 20,000, as compared to a gain of 22,000 in the prior year period, ending the year with 185,000 customers, or 7.3% penetration of estimated marketable phone

⁶⁶ See Comcast Corporation Q4 4007 Earnings Call Transcript, available at http://seekingalpha.com/article/64684-comcast-corporation-q4-2007-earnings-call-transcript?source=homepage_transcripts_sidebar&page=4, accessed March 2, 2008.

⁶⁷ See E. Savitz, *At Last, a Bright Cable Picture*, Barron's, May 15, 2006.

⁶⁸ See Cox Communications Press Release, *Cox Digital Telephone to be Available in all Cox Markets by End of Year*, July 13, 2006.

⁶⁹ See Cox Communications Press Release, *Greater Than 62% of Cox Customers Now Bundling Services*, February 13, 2008.

⁷⁰ See Pike & Fischer, Broadband Advisory Services, *VoIP Deployment & Strategies Update: Cable Operators*, July 2006, p. 9.

homes. As of December 31, 2007, Mediacom Phone was marketed to nearly 90% of the Company's 2.84 million estimated homes passed.⁷¹

- Smaller, more regional providers with a Florida presence are achieving similar results. For instance, Knology prior to its PrairieWave acquisition, ended the third quarter of 2006 with over 160,000 voice subscribers, representing penetration of 21 percent of homes passed.⁷²

4. Competition from Advanced (Telephone and Broadband) Cable Services Will Continue to Increase

The availability of cable telephony in Florida will undoubtedly increase over the next several years. As shown in Table 1 above, Florida cable providers have completed upgrading virtually 100 percent of their systems to provide high speed Internet access, which means that they have made this service available to almost 100 percent of the households passed by their networks. Once this step is completed it is relatively easy to add telephone service. When Comcast makes Digital Voice available throughout its Florida systems, 98 percent of homes passed by cable in the state will have cable company-provided voice service available.

Although we were not able to find state-specific forecasts of cable telephony penetration, the available data imply that penetration will increase in Florida. First, the NCTA and FCC data we presented above show strong growth of cable telephone services. For example, the NCTA data show that the number of residential subscribers grew from 1.3 million in the second quarter of 2001 to 13.7 million residential telephone subscribers by September 2007, with most of that growth coming in the last two years.

Second, since we completed our report in 2006, cable telephone service availability in Florida has grown by over 23 percent. Moreover, the cable companies have achieved substantial penetration gains over time in those areas where they have made telephone services available. See discussion of major Florida cable companies above. See also Figure 7 of our 2006 report that shows cable providers that have offered voice services for a longer duration have achieved significant penetration rates, although even some relatively new entrants have already achieved substantial penetration rates.

Third, market research reports and company releases forecast continued rapid growth in cable telephony subscribers. Pike & Fisher estimated in the first quarter 2006 that “with practically every major MSO now deploying IP telephony service, cable operators are now adding about 250,000 customers each month.”⁷³ Leichtman Research estimated third quarter 2007 growth of 380,000 net additions per month. At an investor conference in September 2007, Comcast announced its goal of raising its telephone service penetration from 8 percent in the

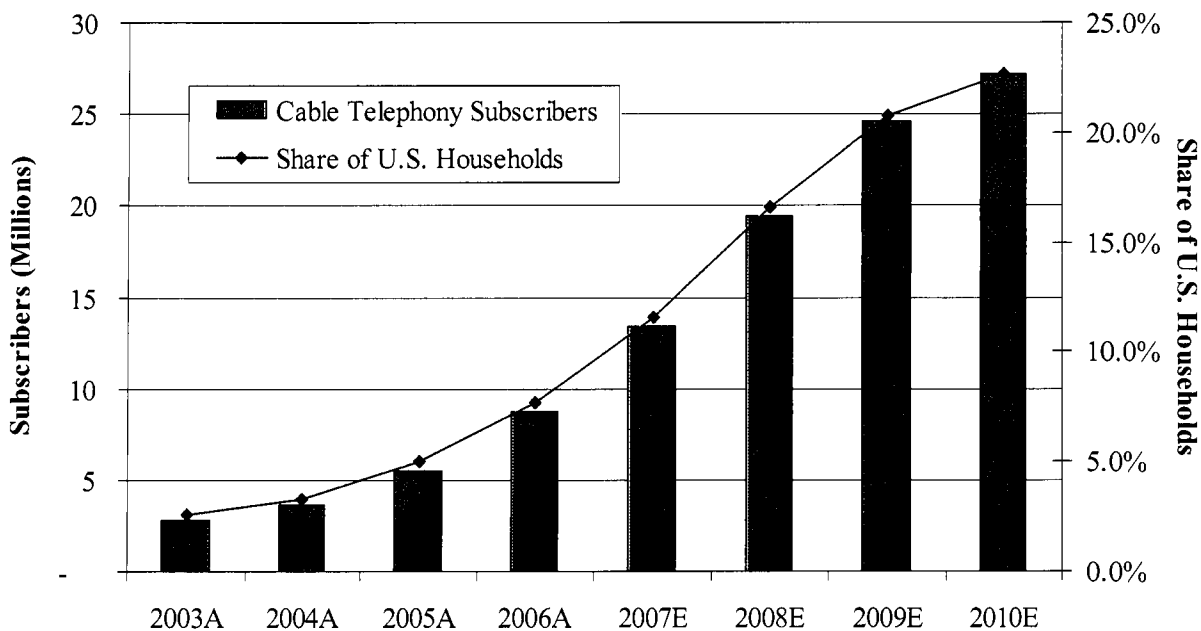
⁷¹ “Mediacom Communications Reports Results for Fourth Quarter and Full Year 2007,” <http://phx.corporate-ir.net/phoenix.zhtml?c=98270&p=irol-newsArticle&ID=1112378&highlight=>, accessed March 2, 2008.

⁷² See Knology Inc. SEC, Form 8-K, January 8, 2007, p. 8.

⁷³ *VoIP Deployment & Strategies Update: Cable Operators*, Broadband Advisory Services, Pike & Fischer, April 2006, p. 3.

second quarter 2007 to 20-25 percent by year-end 2009.”⁷⁴ Bernstein Research estimates that cable telephony subscribers will grow to over 27 million cable telephony subscribers (or 22.7 percent of U.S. households) by year-end 2010. These predicted growth trends are illustrated in Figure 8 below.

Figure 8
Cable Telephony Subscribers
2003 - 2010



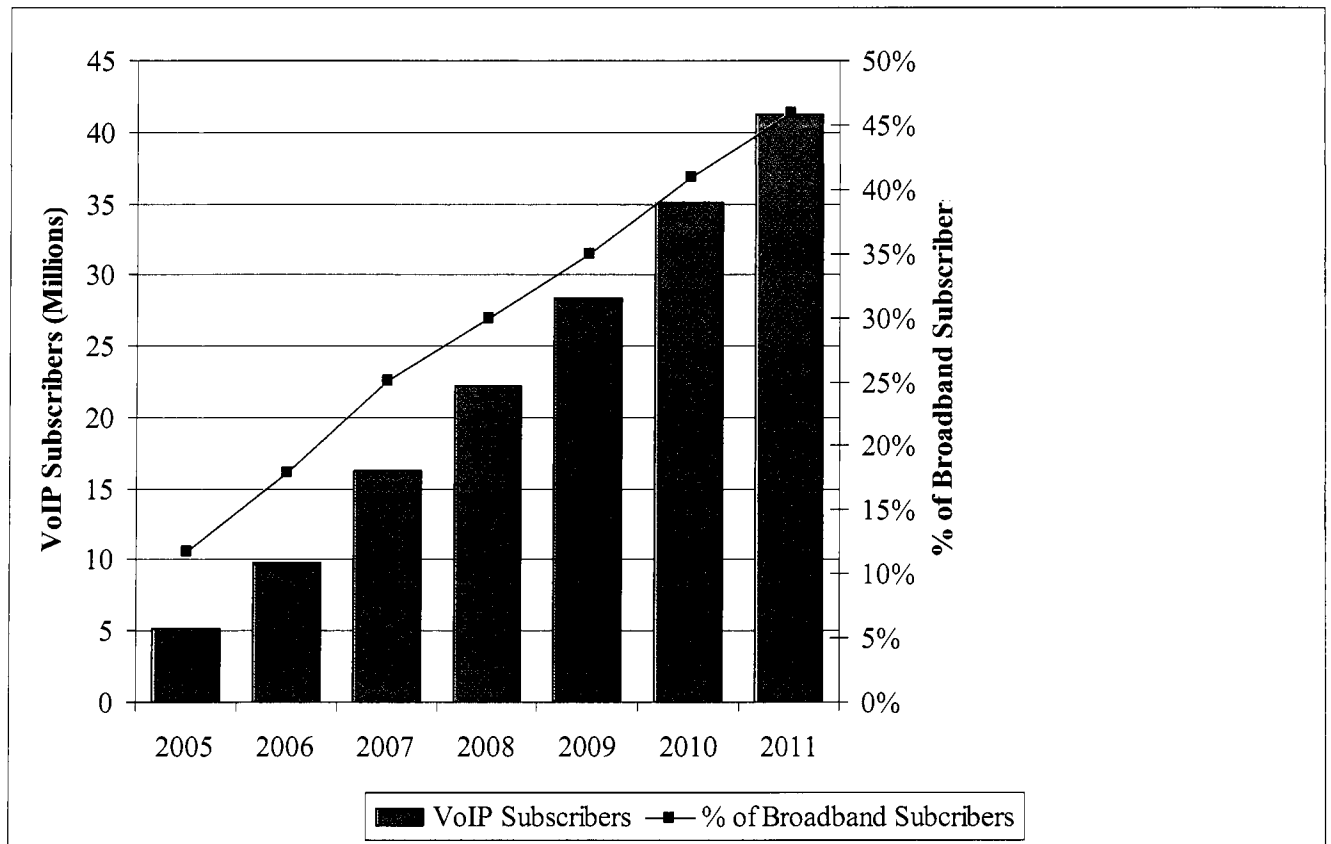
Source: C. Moffett, *et al.*, Bernstein Research, *VoIP: The End of the Beginning*, April 3, 2007, Exhibit 8.

Similarly the spread of broadband has stimulated and is expected to continue to stimulate the growth of VoIP—especially as provided by cable MSOs. Figure 9 below provides a forecast of VoIP over broadband. According to the forecast, cable MSOs make up and will continue to account for the majority of total (cable plus “over the top”) VoIP subscribers.⁷⁵

⁷⁴ Comcast expected to be the fourth largest residential phone company by the end of 2007. See Comcast, *Merrill Lynch Media and Entertainment Conference*, September 17, 2007, p. 15.

⁷⁵ Source: eMarketer, April 2007. <http://www.emarketer.com/Article.aspx?id=1004829>

Figure 9: US Residential VoIP Subscribers



5. Competition From Cable Providers Is Affecting Wireline Carriers.

Analysts' reports show that the gains by cable companies have come at the expense of traditional wireline companies. Bernstein characterizes each of the lines gained by cable providers as a line lost by a traditional carrier, stating "not surprisingly, VoIP's gain has come at the telcos' expense."⁷⁶

Losing a voice customer to cable is especially damaging in today's marketplace, in which competition takes place for the consumer, or the bundle, rather than for one type of service, because the loss of a voice customer likely entails the loss of a DSL (or dial-up customer) and a potential (or even existing) video customer.⁷⁷ For example, Bernstein Research recently found that approximately 40 percent of cable VoIP subscribers are new cable modem subscribers.⁷⁸

⁷⁶ *Id.*, p. 7 and Exhibits 11 and 13.

⁷⁷ Additional reasons why losses to cable telephony are particularly painful to wireline carriers include (1) the wireline carrier receives no offsetting wholesale revenue as it would if it lost the customer to a UNE or resale-based CLEC, and (2) a large proportion of wireline costs are fixed with respect to the number of customers, so when a wireline customer switches to cable, the reduction in revenue is not offset by a reduction in costs.

⁷⁸ C. Moffet, *et al.*, *Cable and Satellite: ~40% of Cable VoIP Customers "New" to Broadband*, Bernstein Research, July 6, 2006.

Additionally, as discussed below, research shows that customers who cut the cord are more likely to obtain broadband service from the cable company than from the telephone company.

Florida cable companies are offering competitive bundles to consumers today. A sampling of the cable companies' "triple play" bundles is depicted in Table 3.

Table 3 Voice, Internet and Video "Triple Play" Bundled Service Offerings for Residential Customers in Florida				
Provider	Comcast	Cox	Cox	Bright House
Plan	Cable, High Speed Internet and Digital Voice	Cox Bundle	Standard Cable, High Speed Internet Preferred Tier & Digital Telephone Unlimited	Digital Combo Plus
Price per month	\$99.00	\$89.85	\$125.64	\$99.95
Voice service features:				
Local Minutes	Unlimited	Unlimited	Unlimited	Unlimited
Long Distance Minutes				
Number of features	12	14	14	17+
Internet service features:				
Number of features	3	4+	4+	4+
Note: Comcast's Triple Play is at a promotional rate of \$99.00/month for 12 months. Bright House's Digital Combo Plus is at a promotional rate of \$99.95 for 12 months. Cox Bundle is at a promotional rate of \$89.85 for six months. Source: Provider websites.				

LEC customer losses have led to price competition in the provision of both Internet and telephony services, competition that is expected to continue (and expand into video services). For example, Bernstein Research observed that "the Bells appear to be responding to the VoIP threat with price cuts" on their calling plans as cable companies have begun to achieve significant market share in part due to their "aggressive pricing."⁷⁹ Competition between the telephone companies and the cable companies extends to their broadband offerings: "The battle for broadband subscribers heated up in 2005, as phone companies began offering lower-priced services to attract consumers who may be less tech-savvy."⁸⁰

⁷⁹ J. Halpern, et. al., *Quarterly VoIP Monitor: The "Real" Price Gap for VoIP Driving Rapid Subscriber Growth*, Bernstein Research, July 22, 2005, pp. 3 and 5.

⁸⁰ M. Reardon, *BellSouth cuts DSL pricing*, Cnet News.com, January 9, 2006, available at http://news.com.com/BellSouth+cuts+DSL+pricing/2100-1034_3-6024736.html.

As the telephone companies expand their video offerings in the state, cable companies will likely compete even more aggressively. According to a March 2008 story on *PalmBeachPost.com*:

The war for TV, Internet and telephone customers is escalating this year as phone companies push deeper into cable's territory and cable firms prepare a high-tech counterattack, promising new video features and greater online speeds.

The ultimate winner will be consumers benefiting from more competition, analysts say. People should expect a marketing frenzy this year, with promotions for speedier Internet connections and broader offerings of high-definition TV programming.

"It's turning into a customer-oriented marketplace, and both sides see it as an all-or-nothing game now," said Jeff Kagan, an industry analyst based in Atlanta. . . .

Cox spokesman David Grabert....said Verizon has "pulled out all the stops" and is spending heavily to get each new customer."

"We're definitely holding our own," Grabert said. "It's expensive for them to overcome that inertia the cable companies already have. It's really them that has [sic] the challenge of keeping up with us."⁸¹

In the face of price competition and LEC entry into video, cable companies are expanding their offerings into the wireless services area, through strategic alliances and exploration of new technologies and by offering higher speed broadband and enhanced video services. In late 2005, for example, cable providers Time Warner Cable, Comcast, Cox and Advance/Newhouse (parent of Bright House Networks), in conjunction with Sprint Nextel, announced a joint venture enabling them to offer the "quadruple play" of video, voice, Internet and wireless services. The venture has rolled out the service in 33 markets, including Bright House's Central Florida division. Although expansion to other markets seems to be frozen for now because of the complexities of the current joint provisioning process, the cable companies remain interested in offering wireless services.⁸²

Cable providers are also investigating new technologies to deliver traditional services. For example, Cable Digital News reports that "CableLabs is exploring an industry-wide initiative tentatively titled 'CableRoam' to deliver data and voice services to customers over Wi-Fi, WiMAX, home Wi-Fi and other wireless broadband technologies."⁸³

⁸¹ David Ho, "TV, Internet, phone service fight grows," Palm Beach Post-Cox News Service, March 02, 2008,

⁸² Sprint announced in November 2007 that it was halting the introduction of the service into additional markets. See, Mutlichannel News, *Taking the Time to Pivot*, June 23, 2007 and *Sprint Freezes Pivot*, November 5, 2007.

⁸³ See A. Breznick, *Cable Weighs Wireless Broadband Push to Fight Telcos*, Cable Digital News, April 1, 2006, available at <http://www.cabledatcomnews.com/apr06/apr06-2.html>.

These developments are significant for at least two reasons. First, they are compelling evidence that cable companies compete with the LECs today. Second, they exemplify how technological developments are stimulating further competition: as the LECs deploy more advanced services and networks of their own, they will continue to spur the cable companies to compete even more vigorously. For example, in describing AT&T's efforts to market its DSL IP video offering, The Wall Street Journal pointed out that "cable companies aren't waiting for the parade.... [C]ompanies like Comcast and Time Warner are pushing to add a wide range of new features and content to their cable services...."⁸⁴ As the PalmBeachPost.com story points out:

Comcast also is spearheading the counterattack in the Internet speed contest with a new technology to squeeze more bandwidth from existing cable networks. Dubbing it "wideband" technology, Comcast says it will deliver download speeds of up 100 megabits per second to customers over the next two years with the potential to get even faster.

Comcast says some customers should start seeing that technology this year, though the company has not announced details for residential plans.

No. 2 Time Warner Cable Inc. and No. 3 Cox Communications are testing the technology, which is called Docsis 3.0.⁸⁵

C. Mobile Wireless

1. Overview

Major technological advances and cost reductions have enabled wireless carriers to improve service quality, diversify their service offerings, and make them competitive with wireline services. All wireless providers now typically offer free long distance, large bundles (or "buckets") of usage (particularly free night and weekend minutes), and large local calling areas, along with low per minute rates for additional usage, and a number of free vertical features such as call waiting and voice mail. New "family" plans are proving to be very popular.⁸⁶ Wireless carriers have also introduced "basic" or "regional" plans, which provide fewer anytime minutes, for as low as \$30 per month. And some providers now offer free "in-network" calling.⁸⁷ Taken together, inherent mobility, low per minute prices, "free minute" allowances, flat rated pricing, no long distance or roaming charges, and nationwide coverage have positioned wireless carriers

⁸⁴ D. Searcey and P. Grant, *Selling TV Like Tupperware*, The Wall Street Journal, June 29, 2006, B1.

⁸⁵ David Ho, "TV, Internet, phone service fight grows," Palm Beach Post-Cox News Service, March 02, 2008,

⁸⁶ See, e.g., PR Newswire, *Family Wireless Plans Prove Popular with Two in Five U.S. Adult Cell Phone Users Participating, According to New Harris Interactive Survey; Only three percent of those in a family plan have a family member who opted out of their plan*, March 30, 2006.

⁸⁷ One carrier recently introduced a feature allowing its customers spending \$60 per month or more to make free calls to 10 phone numbers of their choice, anywhere in the U.S., wireline or wireless, 24 hours a day. See, e.g., K. Fitchard, *Alltel unveils mother of all free calling plans*, Online Exclusive – Telephony, April 21, 2006.

to capture a significant portion of demand that was traditionally met by wireline service providers.⁸⁸

The FCC reports that the national wireless penetration rate has reached 80 percent of the overall population and “*virtually everyone between the ages of 15 and 69 has a wireless phone.*”⁸⁹ According to one analyst (cited by the Florida PSC), by 2004, 40 percent of total market minutes were wireless, a figure expected to pass 50 percent in 2005.⁹⁰ From 2000 to 2006, the monthly minutes of use (“MOUs”) per mobile subscriber increased from 255 to 714.⁹¹ The FCC notes that “increasing MOUs are a result of the demand-stimulating effect of falling prices and the wider acceptance of and reliance upon wireless service,” and cites one analyst as attributing the growth in MOUs to “increasing adoption of the wireless handset as the primary means of voice communications.”⁹²

According to the Pew Internet Project’s December 2007 survey:

Accompanying [the] changing nature of access – no longer slow and stationary, but now fast and mobile – has been a transformation in how people value their media access tools. When asked how hard it would be to give up a specific technology, *respondents are now most likely to say the cell phone would be most difficult to do without, followed by the internet, TV, and landline telephone. This represents a sharp reversal in how people viewed these technologies in 2002.*⁹³

The data reported by the Pew study show how traditional communications technologies—especially landline phones have been eclipsed by wireless services.

- At year end 2007 only 40 percent of respondents with a landline phone said it would be very hard to give it up, down dramatically from 63 percent in 2002.
- The reverse is true for wireless—in 2007 51 percent said they would find it very hard to give up their cell phone compared to 38 percent who said it would be very hard to give up in 2002

⁸⁸ Tables 7, 8 and 9 below contain examples of the various types of plans that are available to Florida customers.

⁸⁹ Federal Communications Commission, *Annual Report and analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Twelfth Report* (“Twelfth CMRS Report”), FCC 08-28, released February 4, 2008, ¶ 244.

⁹⁰ See *Florida PSC 2005 Competition Report*, p. 38 (citing Horan et al., “Transfer of Coverage: We Favor Wireless and Cable Over Wireline,” CIBC World Markets, May 3, 2005, p. 21).

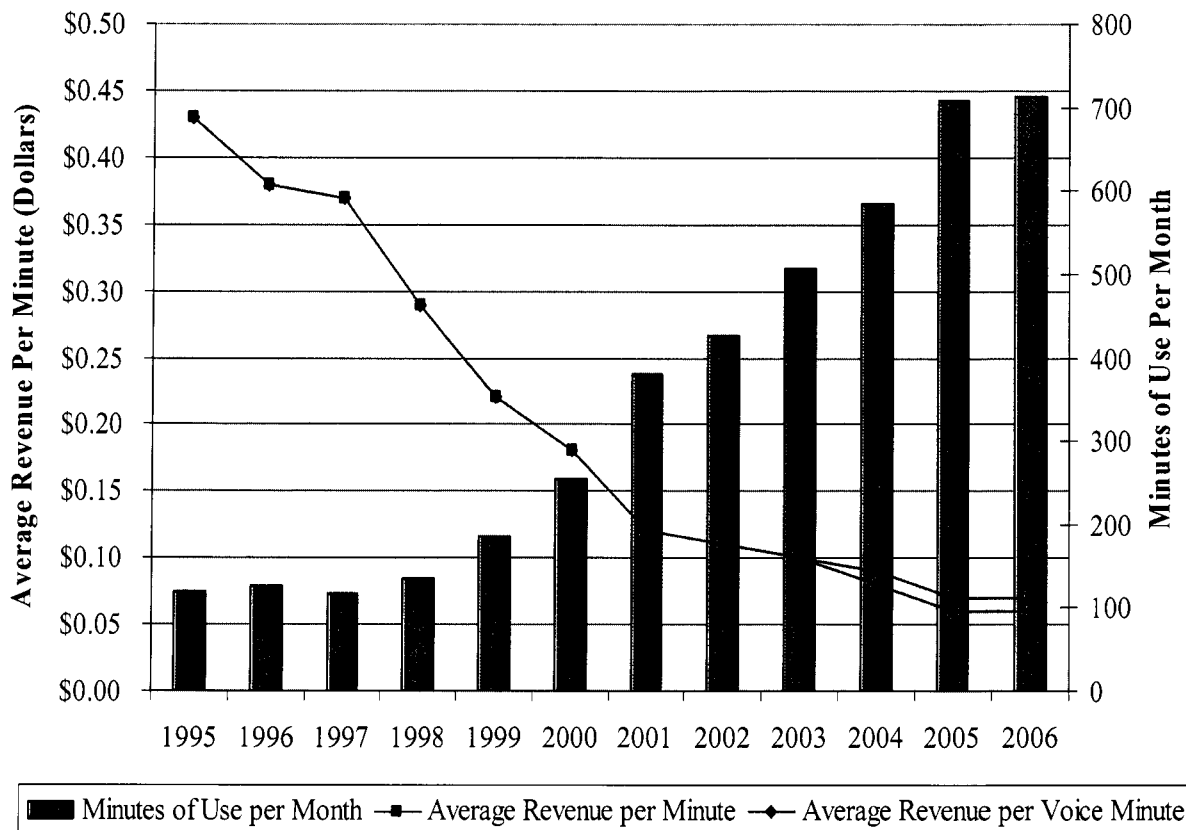
⁹¹ *Twelfth CMRS Report*, Table 14.

⁹² *Id.*, ¶ 169.

⁹³ Data Memo by Pew Internet and American Live Project, Associate Director John Horrigan, RE: MOBILE ACCESS TO DATA AND INFORMATION, March 2008; emphasis added.
www.pewinternet.org/pdfs/PIP_Mobile_Data.Access.pdf.

Figure 10 below illustrates the growth in MOUs per wireless subscriber that has resulted from and contributed to the declining average charges for wireless usage.⁹⁴

Figure 10. Wireless Minutes of Use per Month and Average Revenue per Minute



Source: FCC, 12th Annual CMRS Competition Report, Table 14.

Wireless services also have become more attractive as providers have modified their networks and manufacturers have improved customer equipment to incorporate features such as enhanced data capability, text messaging, color screens, PDAs, greater availability of push-to-talk capability, voice activated speed dialing, speaker phones and cameras. The competitive advantages that these features and other attributes confer on wireless services are demonstrated by the differences in growth between wireless and wireline services. For example, from

⁹⁴ Note that the Bureau of Labor Statistics wireless services price index decreased significantly from the late 1990s through 2001 and continued to fall, although at a slower rate, through the end of 2005; the price index for wireline services, however, stayed relatively constant over this period as declines in toll service prices offset local price increases. Thus, wireless prices have declined by an even greater amount relative to prices for wireline services. Price indexes are from <http://www.bls.gov/>, Series ID CUUR0000SEED03 and CUUR0000SEED.

December 31, 2000 to December 31, 2006 mobile subscribership in Florida grew by an average of about 15 percent per year, while the number of access lines in the state fell by an average of about 2.6 percent per year.⁹⁵

In 2005, the Florida Public Service Commission noted:

Whether an intermodal competitor's service is seen as a substitute or a complement to traditional wireline service depends on how consumers view ... factors such as quality..., availability, price, and convenience. What is undeniable is that the number of wireline access lines in service continues to decline, while the number of wireless and VoIP subscribers is steadily increasing.⁹⁶

In 2006, the Commission recognized correctly that:

[A] factor most likely to contribute to weakened [LEC] residential market performance is the increasing acceptance of intermodal competitors, especially wireless and Voice over Internet Protocol (VoIP) service providers, as adequate substitutes for wireline telecommunications service by the consuming public.⁹⁷

As shown below, this pattern does, in fact, reflect the displacement of wireline services by wireless services.

2. Wireless Service is Available Throughout Florida

Wireless services are available throughout Florida. About 99 percent of households in the state have access to at least three wireless service providers, 97 percent have access to four or more such providers (as shown in Table 4 below).

The areas served by wireless carriers are not restricted to high density urban areas. For example, Table 4 shows that at least 99.5 percent of households in every MSA in the state have at least two wireless alternatives available to them and that 99 percent of households in the rural (non-MSA) areas in Florida have access to 2 or more wireless providers. The ubiquity of wireless service in Florida is confirmed by the *Florida PSC 2005 Survey*, which found that 31 percent of urban respondents were considering switching to wireless-only service, compared to 28 percent of rural respondents.⁹⁸ Clearly, wireless is a viable alternative for rural customers in Florida.

⁹⁵ See *FCC December 2006 Local Competition Report*, Tables 9, 10, and 14.

⁹⁶ *Florida PSC 2005 Competition Report*, p. 62.

⁹⁷ *Florida PSC 2006 Competition Report*, p. 2.

⁹⁸ *Florida PSC 2005 Survey*, Figure 26.

Table 4			
Wireless Services Are Widely Available in Florida			
MSA	Percent of Households Served by:		
	2 or More Carriers	3 or More Carriers	4 or More Carriers
Cape Coral-Fort Myers	100.0%	100.0%	99.9%
Deltona-Daytona Beach-Ormond Beach	99.7%	98.7%	97.5%
Fort Walton Beach-Crestview-Destin	100.0%	100.0%	99.7%
Gainesville	100.0%	99.2%	94.2%
Jacksonville	99.5%	97.8%	95.2%
Lakeland-Winter Haven	100.0%	99.7%	98.7%
Miami-Fort Lauderdale-Miami Beach	99.8%	99.6%	99.4%
Naples-Marco Island	100.0%	99.8%	97.4%
Ocala	100.0%	95.0%	87.9%
Orlando	99.9%	99.2%	97.9%
Palm Bay-Melbourne-Titusville	99.9%	99.7%	98.5%
Panama City-Lynn Haven	100.0%	100.0%	98.7%
Pensacola-Ferry Pass-Brent	100.0%	100.0%	99.5%
Port St. Lucie-Fort Pierce	99.5%	99.4%	99.2%
Punta Gorda	100.0%	99.8%	99.2%
Sarasota-Bradenton-Venice	100.0%	99.9%	99.5%
Tallahassee	100.0%	98.9%	94.4%
Tampa-St. Petersburg-Clearwater	100.0%	99.9%	99.9%
Vero Beach	99.9%	99.4%	98.9%
Non-MSA Area	99.0%	92.1%	75.0%
Total	99.8%	99.0%	97.1%

Source: Provider websites (service coverage maps) and Census block group information.

National data confirm that wireless carriers' footprints now cover extensive stretches of rural areas as well. The FCC recently found that rural areas were served by an average of 3.6 mobile carriers.⁹⁹ According to a 2002 survey of Rural Cellular Association ("RCA") members, there are: (1) an "average of 5.1 wireless competitors in survey participants' markets, having increased steadily from 3.0 competitors in the 1998 *RCA Survey*;" (2) "robust and effective

⁹⁹ For this purpose, the FCC defined "rural" as counties with 100 persons or fewer per square mile. See *Twelfth CMRS Report*, ¶ 105.

competition, increasing year-to-year, in the markets served by RCA members;” and (3) “evidence of increasing customer usage and declining per-minute pricing in rural areas, similar to trends that [have been] seen nationally.”¹⁰⁰ Based on this and other evidence, the FCC concludes “that CMRS providers are competing effectively in rural areas.”¹⁰¹

Wireless providers in Florida are offering a wide variety of packages and services to consumers, including individual, “local,” and “family” plans. Florida consumers consider wireless service to be competitively priced and convenient to use. In the *Florida PSC 2005 Survey*, about 70 percent of respondents considering the switch to wireless-only service cited price and almost 50 percent cited convenience as reasons they were considering dropping their wireline phone.¹⁰² A sampling of the wireless offerings available to Florida residents is provided in Tables 5, 6 and 7.

The plans in Table 5 show that consumers can purchase plans with up to 400 minutes included per month for \$30 or less. These include several low-cost prepaid plans. The popularity of these plans has been growing rapidly and the plans promise to stimulate continued growth of mobile wireless. Although Florida specific data are not available, by the end of 2006, prepaid accounted for roughly 15 percent of major U.S operators’ subscribers,¹⁰³ a figure that is expected to increase to over 50 million in 2010 (or 18 percent of total U.S. wireless lines). A recent article observes that prepaid subscribers generate lower monthly average revenue per user (“ARPU”) – only about \$14 to \$37 depending on plan and provider, and the Yankee Group estimates average monthly ARPU of about \$21, showing that prepaid plans provide a low cost means of obtaining telephone service.¹⁰⁴

¹⁰⁰ *Ninth CMRS Report*, ¶ 110.

¹⁰¹ *Twelfth CMRS Report*, ¶ 110.

¹⁰² *Florida PSC 2005 Survey*, Figure 23.

¹⁰³ *Twelfth CMRS Report*, ¶ 117.

¹⁰⁴ The article noted: “As the U.S. wireless market becomes increasingly saturated, many analysts expect that carriers will continue incremental growth by turning to prepaid customers that they might have scorned in the past. Alltel Corp. is getting back in the prepaid game; Cingular Wireless L.L.C. showed a huge increase in Tracfone prepaid subscribers in the fourth quarter of 2005, contributing heavily to the 1.8 million net additional customers that the carrier gained. T-Mobile USA Inc. scored 1.4 million net adds in the fourth quarter, about one-third of which were prepaid.” See Yankee Group, *North America Mobile Market Forecast, 2Q06*, June 2006 and K. Hill, *Prepaid vs. family plan debate hinges on ARPU*, RCR Wireless News, April 3, 2006.

Provider	Consumer Cellular	Consumer Cellular	Consumer Cellular	T-Mobile	Nextel
Plan	Anywhere Casual	Anywhere 100	Anywhere 400	Individual Basic	Sprint Basic Plan
Price per month	\$10.00	\$20.00	\$30.00	\$29.99	\$29.99
Anytime minutes	0	100	400	300	200
Price per additional minute	\$0.25	\$0.25	\$0.25	\$0.40	\$0.45
No Extra Charge for Long Distance	x	X	X	X	x
Night/Weekend minutes	0	0	0	Unlimited weekends	Unlimited
Call forwarding	x	X	X	x	x
Call waiting	x	X	X	x	X
Caller ID	x	X	X	x	X
Conference Calling	x	X	X	x	X
Voicemail	x	X	X	x	X
Other					Unlimited mobile to mobile for \$5

Note: Not all information available for all plans. Used zip code 33609 for feature information.
Source: Provider websites, accessed 3/5/2008.

Table 6 shows a number of other plans that provide from 450 to 1000 any time minutes and greater off peak usage somewhat for about \$40 per month. Wireless pricing plans are competitive with current wireline service charges in Florida. As a basis of comparison, bundled plans (which are preferred by the majority of Floridians) offered by AT&T Florida and Verizon range from about \$35 to over \$50 for the voice packages. For a la carte customers, the FCC reports that in 2006, the monthly residential telephone rate for local service in three Florida cities, Miami, Tampa and West Palm Beach, ranged from about \$22 to \$25.55. Assuming even \$10 in toll spending (and no vertical features) implies that a la carte Floridians spend over \$30 for wireline phone service.¹⁰⁵

¹⁰⁵ Federal Communications Commission, Industry Analysis & Technology Division, Wireline Competition Bureau, *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, 2007*, Table 1.3. The *Florida PSC 2005 Survey* reports that most respondents prefer bundled packages and that only 28 percent of respondents do not subscribe to additional services other than basic telecommunications services (p. 2). Other estimates of average monthly household telephone spending are higher than those discussed. For example, the FCC reports that Bureau of Labor Statistics surveys found monthly household telephone expenditures to be about \$97 in 2005. (See FCC *Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, 2006*, at iv.) TNS Telecoms survey data for the first quarter of 2006 show that the average household spent about \$37 on local service and \$13 on long distance, for a total monthly spend of \$50. See TNS Telecoms Press Release, *Wired Line Phone Considered Most Important Household Communication Product*, June 22, 2006, available at <http://www.tnstelecoms.com/press-6-22-06.html>. AT&T Florida and Verizon bundled prices from respective websites.

Provider	T-Mobile	Alltel	Nextel	Verizon	AT&T
Plan	Individual Plus	Greater Freedom	Sprint Power Pack 450	Nationwide Basic 450	Talk 450 with Rollover
Price per month	\$39.99	\$39.99	\$39.99	\$39.99	\$39.99
Anytime minutes	1000	700	450	450	450
Price per additional minute	\$0.40	\$0.40	\$0.45	\$0.45	\$0.45
No Extra Charge for Long Distance	X	X	X	x	X
Night/Weekend minutes	Unlimited	Unlimited	Unlimited	Unlimited	5000
Access to 411	X		X	x	
Call forwarding	X	X	X		X
Call waiting	X	X	X		X
Caller ID	X	X	X	x	X
Conference Calling	X	X	X	x	X
Voicemail	X	X	X	x	X
Other		Unlimited mobile to mobile	Unlimited mobile to mobile for \$5	Unlimited in-network calling	Unlimited mobile to mobile
<p>Note: Not all information available for all plans. Used zip code 33609 for feature information. T-Mobile's Individual Plus \$39.99 offer is promotional. Source: Provider websites, accessed 3/5/2008.</p>					

Table 7 provides a sample of family share plans that include from 550 to 900 anytime minutes for about \$60 to \$70 per month for two wireless users.

Table 7: Wireless "Family" Plans for Residential Customers in Florida

Provider	Alltel	T-Mobile	AT&T	Nextel	Verizon
Plan	National Freedom Family	FamilyTime Basic	FamilyTalk 550 w/Rollover	Sprint Power Pack Family Plan	Nationwide Basic Family SharePlan
Price per month	\$59.99	\$59.99	\$59.99	\$59.99	\$69.99
Anytime minutes	900	700	550	550	700
Price per additional minute	\$0.40	\$0.40	\$0.45	\$0.45	\$0.45
Night/Weekend minutes	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Access to 411	X	X		x	x
Call forwarding	X	X	X	x	
Call waiting	X	X	X	x	
Caller ID	X	X	X	x	x
Conference Calling	X	X	X	x	x
Voicemail	X	X	X	x	x
Other	Add up to 3 more lines. Unlimited mobile to mobile calling	Up to 3 additional lines	Maximum 3 lines. Unlimited mobile to mobile calling	Add up to 3 more lines	Add up to 3 more lines. Unlimited in-network calling

Note: Plans include two lines. Additional lines are \$9.99 per month each.

Not all information available for all plans

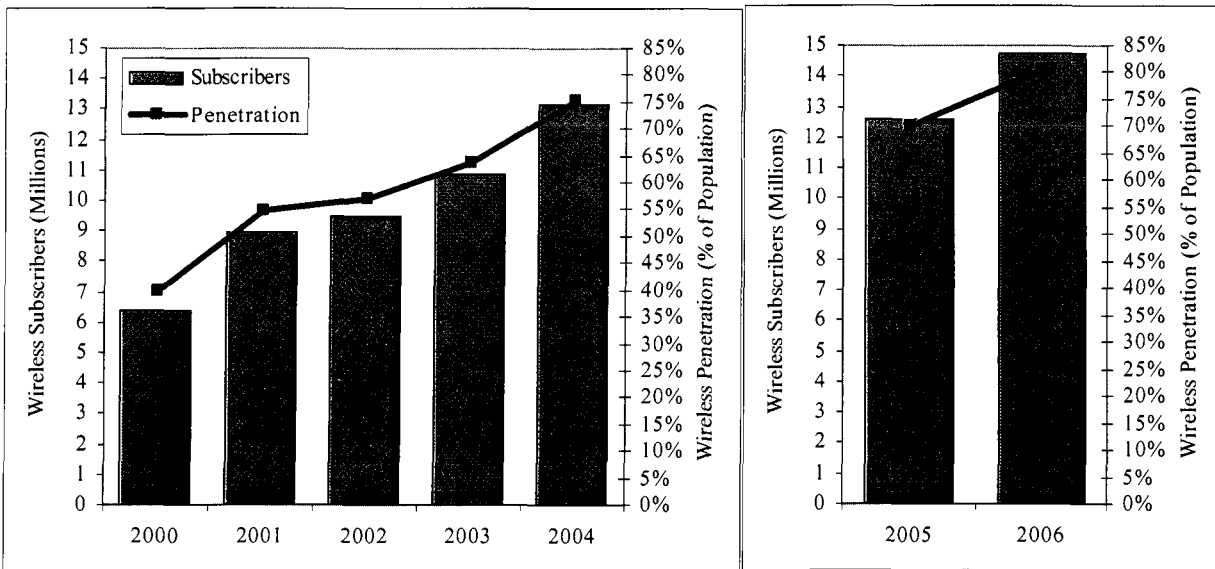
Source: Provider websites, accessed 3/5/2008.

3. Wireless Subscribership is Burgeoning in Florida

The number of wireless subscribers in Florida has grown dramatically, from 6.4 million in 2000 to 14.8 million in 2006. By 2006, wireless penetration in Florida had reached 80 percent and wireless subscribers exceeded traditional lines by about 4.7 million.¹⁰⁶ These trends are illustrated in Figure 11 below.

¹⁰⁶ See FCC December 2006 Local Competition Report, Tables 9, 10 and 14.

Figure 11. Wireless Subscribers and Penetration in Florida. ¹⁰⁷



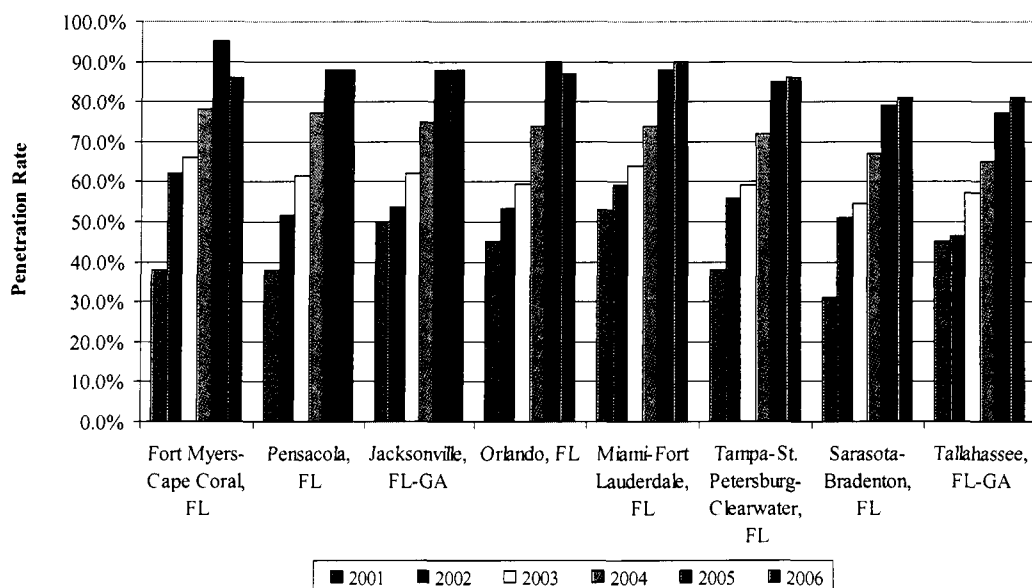
Source: FCC December 2006 Local Competition Report, Table 14 and Demographic Estimating Conference Database, updated July 2005.

The growth in wireless subscribers is occurring throughout Florida. Figure 12 depicts growth in wireless penetration in the Economic Areas in the state.¹⁰⁸ As shown in the Figure, by 2006, no area had penetration of less than 80 percent.

¹⁰⁷ The two periods are shown separately because of the change in FCC reporting practices starting in 2005. However, the upward trend starting in 2005 is consistent with that of the 2000-2004 period.

¹⁰⁸ Economic areas are defined by the Bureau of Economic Analysis. “Each economic area consists of one or more economic nodes—metropolitan areas or similar areas that serve as centers of economic activity—and the surrounding counties that are economically related to the nodes. The main factor used in determining the economic relationships among counties is commuting patterns, so each economic area includes, as far as possible, the place of work and the place of residence of its labor force.” See, e.g., *Redefinition of the BEA Economic Areas*, available at <http://www.bea.gov/bea/regional/articles/0295rea/>.

Figure 12. Wireless Penetration in Florida Economic Areas.



Source: *Seventh-Twelvth CMRS Reports*.

Note that the FCC based its 2006 penetration rates on 2006 Census population data, whereas it based the earlier 2001 to 2005 penetration rates on 2000 Census data. Thus, the 2006 penetration data are not comparable with the prior years' penetration data.¹⁰⁹ The reporting change explains why Fort Myers – Cape Coral shows a (misleading) decline in penetration in 2006. That area was affected dramatically because it experienced a population growth rate of 29 percent from 2000 to 2006, which placed it among the 10 fastest growing metro areas in the US.¹¹⁰

4. Wireless Services Are Being Used As Alternatives to Wireline

Gains in mobile subscribers and usage have come at the expense of wireline carriers. There are three principal ways in which customers can use wireless services in lieu of fixed wireline services: (1) “cutting the cord” (by discontinuing fixed line service and using only mobile phone service); (2) shifting voice traffic (or usage) from fixed to mobile networks; or (3) shifting from using wireline to wireless as one’s “primary” line. All three types of wireline displacement are occurring at a substantial rate.

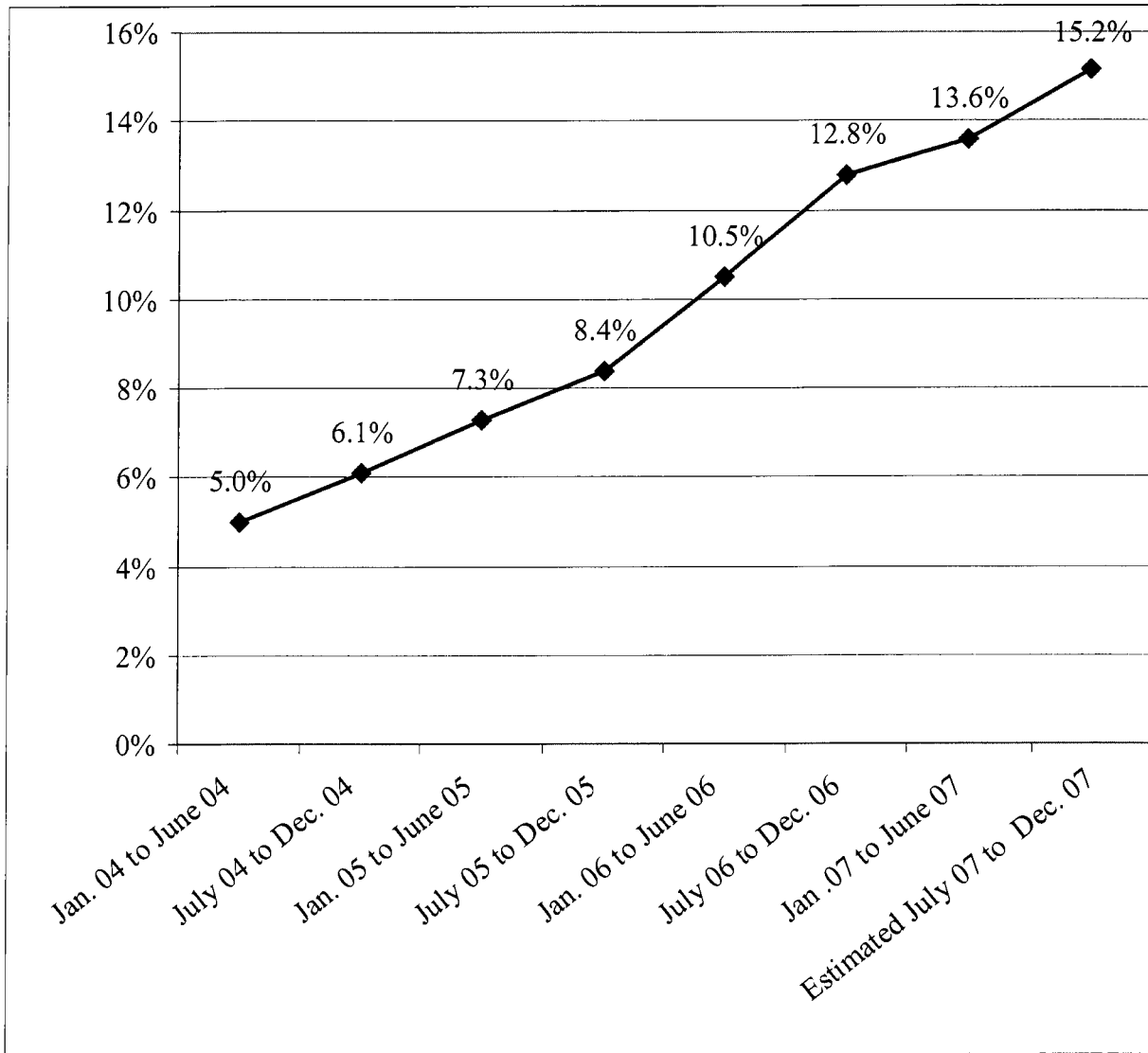
A substantial and growing number of wireline customers have already abandoned their wireline phones altogether. Data from the National Health Interview Survey show that by the

¹⁰⁹ See FCC Twelfth CMRS report at p. 131, which states: “EA penetration rates are not directly comparable with previous year reports since, in previous years, EA populations were based on Census 2000.”

¹¹⁰ See US Census Bureau News Release: “50 Fastest-Growing Metro Areas Concentrated in West and South,” April 5, 2007. <http://www.census.gov/Press-Release/www/releases/archives/population/009865.html>

first half of 2007, about 13.6 percent of households had only wireless phones. As Figure 13 shows, the percentage of households with only wireless services has been growing over time; and if the trend shown since 2004 continues, more than 15 percent of households may now have only wireless phones.

Figure 13. Percentage of Household with Only Wireless Telephone Service



Source: Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January – June 2007 by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics.

Note: We used trend extrapolation to estimate the July 07 to Dec. 07 percentage.

Note also that a 2005 survey found that about 42 percent of respondents reported having a wireline phone, but characterized their mobile phone as their primary phone and only 43

percent reported that their wireline phone is still their primary phone.¹¹¹ In view of the Pew Center finding that the percent of landline phone subscribers who said it would be “very hard” to give up their wireline phone *declined* to 40 percent at year end 2007; whereas the percent of wireless subscribers who said it would be very hard to give up their wireless phone *increased* to 51 percent, it is likely that even more people now view their wireless phone as their primary phone. This implies that an even larger number of consumers than reported above could shift all of their calling to wireless if LECs attempted to raise prices above competitive levels.

As with LEC customer losses to cable providers, wireless substitution is especially damaging to wireline carriers in today’s market, in which providers are competing to serve the customer, or supply the communications bundle, rather than simply provide an access line. A recent Forrester study found that households that disconnect their wireline phone are four times more likely to buy broadband service from cable operators than from phone companies. As stated by Charles Golvin, a Forrester analyst: “The possibility that phone companies can win these customers back is pretty low. Cord cutting and cable modems are a killer for them.”¹¹²

Although Florida-specific data on wireless usage growth are not available, usage in Florida likely mirrors national usage trends. These data are highly informative, particularly when seen in light of the declines in usage in wireline networks. According to the Yankee Group, by 2005, 42 percent of local calls in households with cellular phones were made on wireless phones.¹¹³ This trend in wireless calling is displayed in Figure 14 below. An earlier version of the same study shows that by 2004, 60 percent of long distance calls in such households were made on wireless phones.¹¹⁴

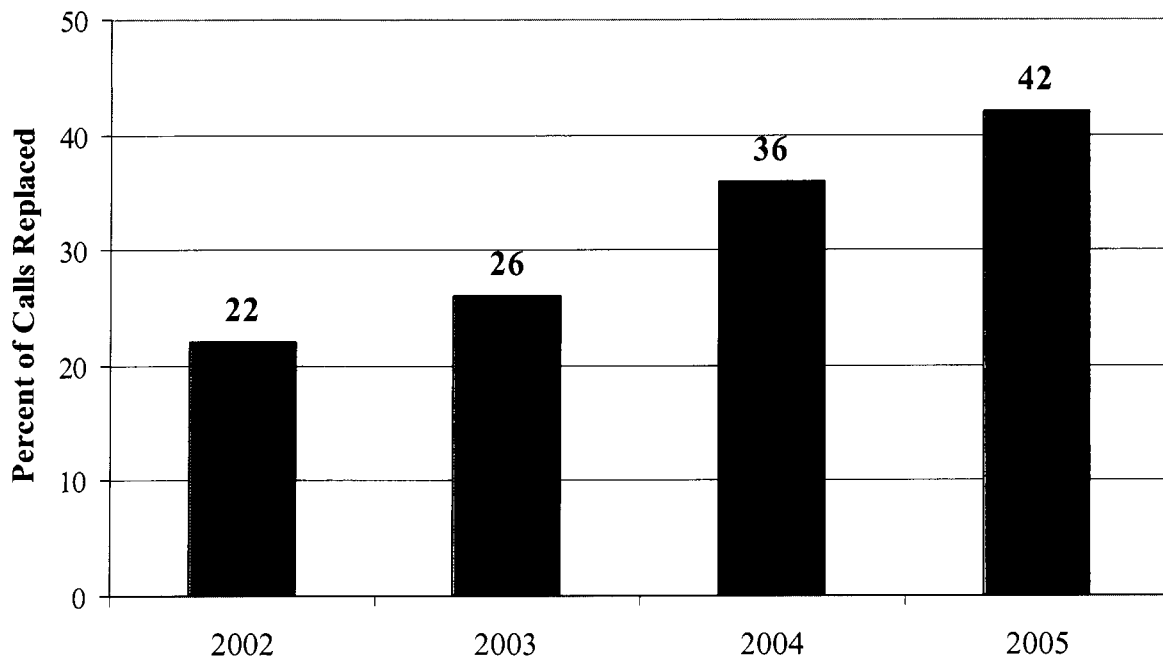
¹¹¹ See L. Yuan, *More U.S. Households Are Ditching Landline Phones for Wireless*, The Wall Street Journal, March 31, 2006.

¹¹² See L. Yuan, *More U.S. Households Are Ditching Landline Phones for Wireless*, The Wall Street Journal, March 31, 2006.

¹¹³ P. Marshall, *Rationalizing Fixed-Mobile Convergence*, Yankee Group, May 2006, Exhibit 2.

¹¹⁴ See K. Griffin, et al., *The Success of Wireline/Wireless Strategies Hinges on Delivering Consumer Value*, October 2004, Exhibit 4.

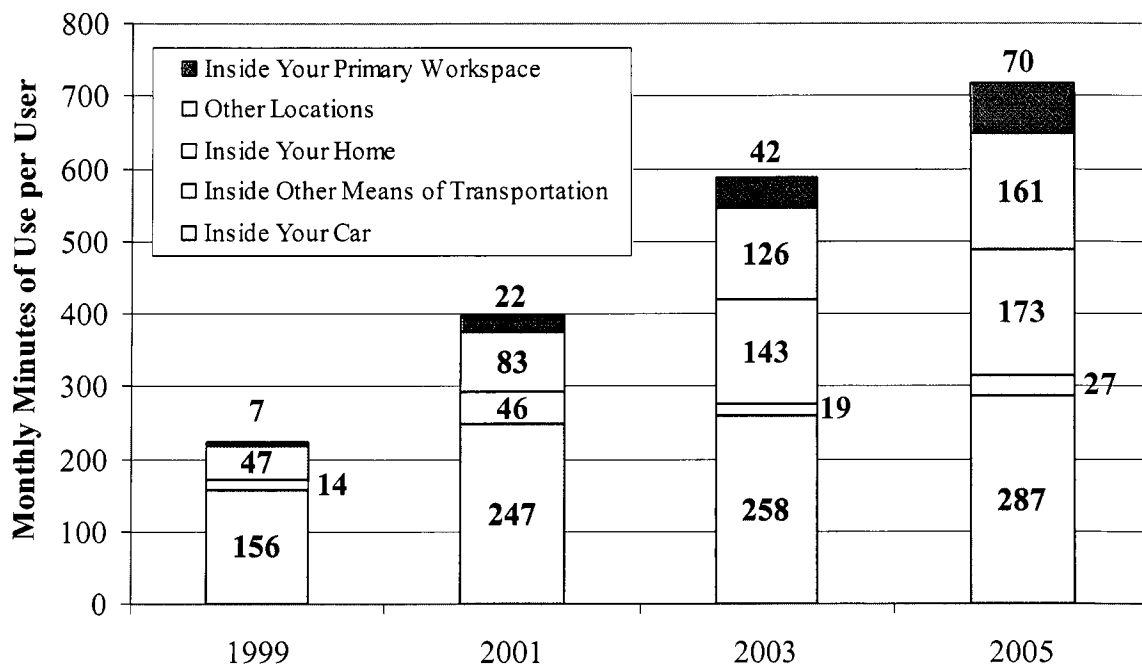
Figure 14
What Portion of Your Local Calls Has Your Wireless Phone Replaced?



Source: P. Marshall, *Rationalizing Fixed-Mobile Convergence*, Yankee Group, May 2006, Exhibit 2.

In addition, the Yankee Group reports that the volume of wireless calls made at home has increased dramatically in the last several years (as displayed in Figure 15 below). Moreover, the growth in calls from other locations, as displayed in this figure, may partly result from consumers shifting calls, *i.e.*, making calls from other locations that they would have made at home absent wireless availability. Thus, some portion of these calls would be displacing wireline calls.

Figure 15
Where Do You Use Your Wireless Phone?



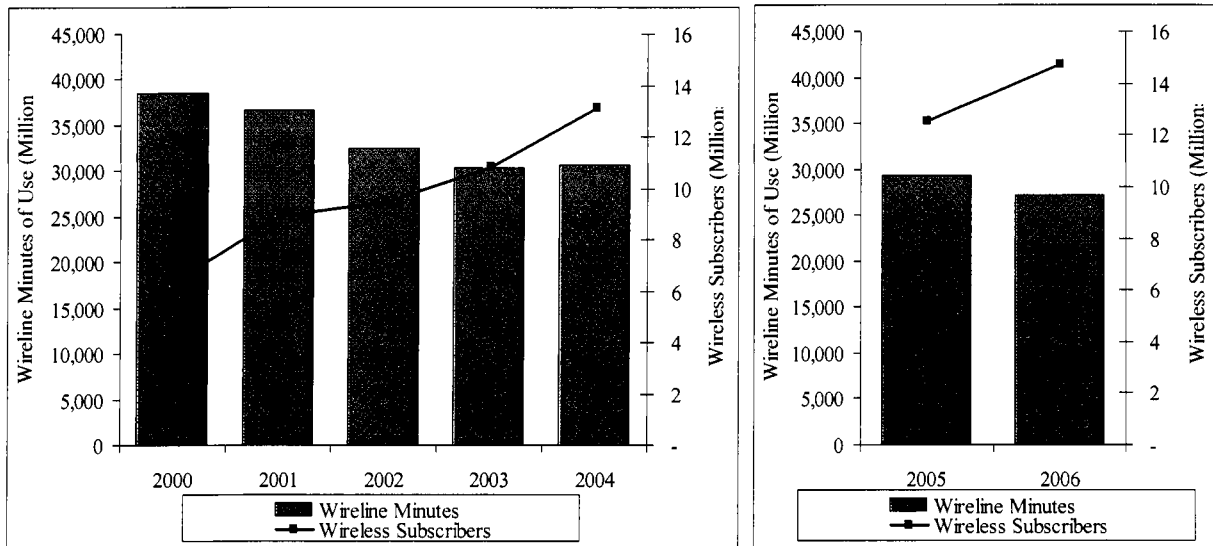
Note: Prior to 2003, Inside Your Car included all means of transportation.

Source: P. Marshall, *Rationalizing Fixed-Mobile Convergence*, Yankee Group, May 2006, Exhibit 2.

Figures 16 and 17 below depict the dramatic impact that this displacement has had on wireline usage in Florida. As Figure 16 illustrates, between 2000 and 2006, wireless subscribers increased by over 130 percent, while wireline minutes of use declined by about 29 percent.¹¹⁵ As noted above, wireless usage is not available for individual states; however, Figure 17 shows how wireline usage has declined as wireless subscribers have grown in Florida.

¹¹⁵ As mentioned above, due to changes in the method by which carriers allocate subscribers to states, a consistent count of wireless subscribers is not available for June 2005. During 2005, the trend in wireline minutes of use continued, declining by about 5 percent.

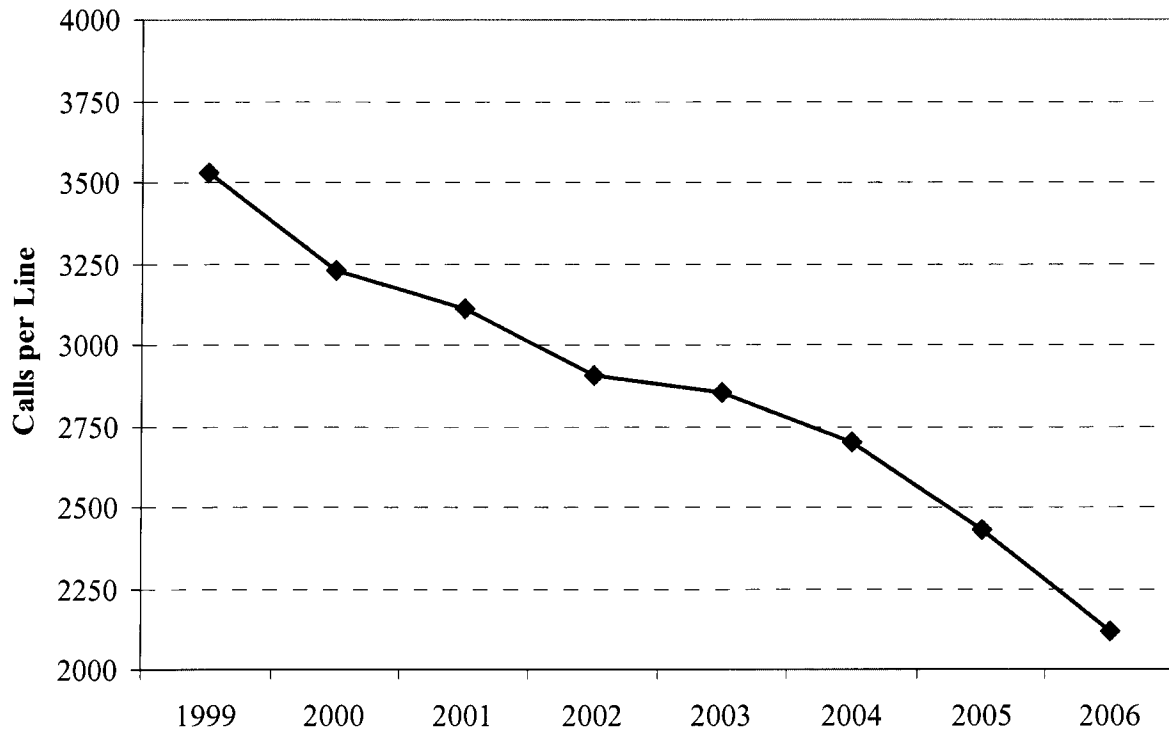
Figure 16. Florida Wireless Subscribers and Wireline Minutes of Use



Note: Minutes of use are interstate switched access minutes for Windstream, AT&T Florida, Embarq and Verizon. Source: FCC, National Exchange Carrier Association, Quarterly Minutes of Use Data; FCC December 2006 Local Competition Report, Table 13.

As wireless usage has increased, Florida LEC wireline usage as measured by number of calls has declined steeply over the past four years. In particular, between 1999 and 2006, local calls per ILEC line fell from about 3,500 to about 2,100 per year, as shown in Figure 17 below:

Figure 17. Local Calls per ILEC Wireline per Year in Florida



Note: Total lines are total switched access lines from ARMIS. Data include AT&T Florida, Verizon and Embarq.
Source: ARMIS, Report 43-08, Tables III & IV

The FCC has concluded in several reports on wireless competition that much of the decline in the wireline sector is due to increased competition from wireless providers. For example it stated in its Ninth and Tenth CMRS Reports:

[The] effects of mobile telephone service on the operational and financial results of companies that offer wireline services....a decrease in the number of residential access lines, a drop in long distance revenues, and a decline in payphone profits.... continued [in 2003], with the four largest LECs losing 4 percent of their access lines, and wireline long distance voice revenues declining further. One analyst stated, “wireless cannibalization remains a key driver of access line erosion.”¹¹⁶

¹¹⁶ *Ninth CMRS Report*, ¶ 213.

...the pressures that wireless growth is placing on companies which offer wireline services continued in 2004.... These trends appear to be due to the relatively low cost, widespread availability, and increased use of wireless service.¹¹⁷

And in its most recent CMRS report, the FCC again explains that the trends in wireless replacement of wireline phones:

... appear to be due to the relatively low cost, widespread availability, and increased use of wireless service. As we discussed in past reports, a number of analysts have argued that wireless service is competitive or cheaper than wireline, particularly if one is making a long-distance call or when traveling. As one analyst wrote, "At currently effective yields, we continue to believe wireless pricing is competitive with traditional wireline pricing. Lower yields, combined with the convenience of mobility, should continue to drive wireline displacement."¹¹⁸

Wireless replacement of wireline service thus places substantial competitive pressure on traditional landline providers.

5. Wireless Service Will Become an Even More Potent Competitor in the Future

Wireless displacement of wireline service is expected to continue to increase for at least three compelling reasons: (1) the proliferation of wireless services has expanded substantially in every one of the last 20 years and shows no sign of abating; (2) a growing number of young people, especially those on college campuses, are using wireless phones in preference to wireline phones, and are likely to continue using them after graduation;¹¹⁹ and (3) as more consumers become accustomed to the characteristics of wireless services such as slightly lower voice quality offset by greater convenience, portability and more features — they will become even more willing to give up wireline.¹²⁰

Analysts are predicting continued growth in wireless displacement of wireline and resulting declines in wireline access lines. For example, JPMorgan estimates that wireless substitution will: (1) reach 20.3 million primary lines, or 18 percent of telephony households, by 2010, and (2) claim 8.5 million non-primary access lines, which in conjunction with broadband substitution, will precipitate non-primary access line losses of 11.7 percent per year. Thus, by 2010 wireless lines will have replaced about 29 million landlines, representing line substitution

¹¹⁷ *Tenth CMRS Report*, ¶ 197-198.

¹¹⁸ FCC Twelfth CMRS report, ¶ 250.

¹¹⁹ See, e.g., Frost & Sullivan, *Trends in Wireline Substitution – North American Markets*, 2005, p. 1-9.

¹²⁰ See, e.g., *Id.*, pp. 1-11 and 1-12.

of 23 percent.¹²¹ In-Stat/MDR forecasts that by 2009, between 23 and 37 percent of wireless subscribers will use their mobile phone as their primary phone, with 30 percent being their “most likely” estimate.¹²²

These expectations are supported by recent surveys, which report that many current wireline users are considering cutting the cord. For example, a recent In-Stat survey found that close to 20 percent of respondents that have wireless service plan to drop wireline service.¹²³ A Harris Interactive survey conducted for the National Consumers League released in mid-2005 found that 39 percent of current wireline customers are likely to go completely wireless in the next two years.¹²⁴ The *Florida PSC 2005 Survey* (Figure 26) reported that close to 31 percent of Floridians are considering switching to wireless only. Although the Florida 2006 Survey did not report data on this issue, it found that “Floridians continue to value the convenience and portability of wireless services.” It also reported that the percentage of residential wireline customers with wireless phones grew from about 62 percent in 2003 to about 75 percent in 2006.¹²⁵ Thus, the potential for wireline customers to switch by simply dropping their wireline phone, or by expanding their usage plan or upgrading to a family share plan has been growing in the state.

Moreover, new pricing plans and service options imply that more consumers will cut the cord. **First**, in late February 2008, the four major cellular carriers Verizon Wireless, AT&T, T-Mobile and Sprint Nextel introduced “all-you-can-eat” pricing. Verizon announced first with a flat rate wireless plan that includes unlimited local and domestic toll usage for \$99.99 per month, and:

Verizon's major competitors reacted in a flash: Within hours, AT&T essentially matched the Verizon dealT-Mobile, generally the cheapest of the major firms, went even further -- its \$99.99 monthly plan includes unlimited calling and unlimited text messaging....¹²⁶

¹²¹ J. Chaplin, *et al.*, *Telecom Services / Wireline, State of the Industry: Consumer*, JPMorgan, January 13, 2006, p. 4 and Tables 57 and 75.

¹²² R. Luhr and D. Chamberlain, *Cutting the Cord: Consumer Profiles and Carrier Strategies for Wireless Substitution*, In-Stat/MDR, October 2005, p. 3.

¹²³ See Business Wire, *In-Stat Survey Shows That Wireline Erosion Will Accelerate; 20% of Households Plan to Cancel or Not Use Wireline Services*, February 6, 2006.

¹²⁴ See National Consumers League Press Release, *National Consumers League Releases Comprehensive Survey about Consumers and Communications Services*, July 21, 2005, available at http://www.nclnet.org/news/2005/comm_survey_07212005.htm.

¹²⁵ Florida Public Service Commission, Division of Competitive Markets & Enforcement Consumer Survey Results: January - December 2006, May 2007, p. 11.

¹²⁶ See: “Phoning Home All-you-can-eat mobile service is the best thing to happen to business travelers in years. *By Joe Brancatelli* Portfolio.com: Business Travel, Tuesday, March 4, 2008; 12:17 PM; WashingtonPost.Com. <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/04/AR2008030401225.html> . The story also points out that: with T-Mobile’s “You must extend your existing contract to qualify. Verizon and AT&T allow existing customers to switch to all-you-can-eat pricing without adding time to their current contracts.”

Sprint [offered a] new option the Simply Everything plan [that] gives subscribers unlimited voice calls, and also includes unlimited data, e-mail and Web surfing for \$99.99 per month. Sprint will also offer a plan for \$89.99 a month that includes unlimited voice and text messaging, undercutting prices on the basic unlimited plans offered by its rivals.¹²⁷

Industry analysts pointed out that these developments could ignite a price war and that such flat-rate pricing plans will appeal to customers considering dropping their wireline phone service, but who may have been worried about possible extra charges for going over their monthly calling allowances.¹²⁸

Second, new options such as T-Mobile's plans, which allow customers to use dual-mode phones to connect to WiFi networks at home or in other locations with no per-minute charges for an extra wireless charge of \$10 per phone per month. Thus, they provide unlimited calling at home for an extra charge of only \$10 per month via a DSL or cable broadband connection. This not only lowers the price of replacing a wireline phone, but it promises to solve mobile wireless service quality problems.

D. VoIP

Although cable VoIP now accounts for most VoIP subscribers in the US, stand-alone VoIP service over existing broadband connections is available to residential and small business customers throughout Florida. Companies such as Vonage, Packet8 and Skype (now owned by eBay) provide VoIP via the cable broadband or DSL connections currently available to households and businesses throughout the state. VoIP is significant for two reasons: First, it greatly facilitates entry by a range of competitors, including:

- Firms specializing in VoIP over broadband that can locate their switches almost anywhere and still compete in Florida;
- Major Internet firms, such as Google, Microsoft and Yahoo, provide free or almost free VoIP messaging services over broadband via software applications, again without having to have their own facilities in the state; and
- Cable companies who can add VoIP to their broadband networks at low incremental costs, as we have described above.

¹²⁷ Pacific Business News, "Losing \$29B, Sprint unveils new 'unlimited' plan." February 28, 2008. <http://www.bizjournals.com/pacific/stories/2008/02/25/daily40.html> .

¹²⁸ See for example: Olga Kharif, BusinessWeek "Say Hello to Unlimited Minutes: Verizon Wireless offers unlimited calls for \$100 a month, others follow suit, and Wall Street shudders at the prospect of a price war, http://www.businessweek.com/technology/content/feb2008/tc20080220_751279.htm?chan=technology_technology+index+page_telecom; and, "Cutting the cord for all-you-can-eat wireless plans" Posted by Marguerite Reardon, March 4, 2008 4:00 AM PST http://www.news.com/8301-10784_3-9884689-7.html . Why is this footnote in bold???

Moreover, as discussed below, new firms provide small businesses with VoIP based telephone services that can be used in place of more expensive multi-line phone systems. The services use software applications at remote servers connected to low cost phones at customers' locations.¹²⁹

Second, these developments will keep downward pressure on prices for conventional voice services. As described in a 2006 *New York Times* article entitled "Online Calling Heralds an Era of Lower Costs":

Competition in the phone business, intensifying this year as Internet-based calling has taken root, has reached the point where many industry experts are anticipating an era of remarkably cheap and even free calls...

Online services like Skype that offer free calls from computer to computer for users with headsets have attracted the tech-savvy and are trying to push into the mainstream. In the process, they are dragging down everyone else's prices and pointing the way toward a time when it will be harder and harder for companies to charge anything for a basic home phone line on its own.¹³⁰

Similarly, an article in *The Economist*, entitled "How the Internet Killed the Phone Business," highlighted the significance of VoIP, and the enormous threat it poses to incumbent telecom operators.

Skype is merely the most visible manifestation of a dramatic shift in the telecom industry, as voice calling becomes just another data service delivered via high-speed internet connections. Skype, which has over 54m users, has received the most attention, but other firms routing calls partially or entirely over the internet have also signed up millions of customers.

The ability to make free or almost-free calls over a fast internet connection fatally undermines the existing pricing model for telephony....as the marginal price of making phone calls heads inexorably downwards.¹³¹

Since all Florida Zip Codes have at least three broadband providers already present, VoIP can be provided to the vast majority of Florida customers right now. Table 8 lists some VoIP providers and their package offerings for residential and small business customers in Florida. All provide some sort of unlimited local and long distance calling plan with monthly prices ranging from \$19.95 to \$29.99, excluding the cost of broadband connection.

¹²⁹ See: Rebecca Buckman, "Internet Phone Service Gets Push: Small Businesses Sign Up for Professional Features on the Cheap," *Wall Street Journal*, March 4, 2008, p. B3.
http://online.wsj.com/article/SB120459705656609395.html?mod=googlenews_wsj

¹³⁰ M. Richtel and K. Belson, *Online Calling Heralds an Era of Lower Costs*, *New York Times*, July 3, 2006, available at <http://www.nytimes.com/2006/07/03/technology/03phone.html?th&emc=th>.

¹³¹ *The Economist*, *How the Internet Killed the Phone Business*, September 17, 2005.

Of course, the millions of Florida customers that already subscribe to broadband for Internet access would incur these charges only incrementally. Even when we include the cost of the broadband connection, these plans are competitive with household expenditures for wireline local and toll services in Florida—which can range to above \$50 per month, depending on type of calling plan and calling volumes.

**Table 8
Florida VoIP Plans**

Provider	Plan	Area Codes or Counties Offered	Monthly Price	Anytime Minutes	Additional Minutes	Long Distance
(a)	(b)	(c)	(d)	(e)	(f)	(g)
Vonage	Residential Premium Unlimited	239, 321, 352, 386, 561, 727, 772, 786, 813, 850, 863, 904, 941, 954	\$24.99	Unlimited	N/A	Included
	Residential Basic 500		\$14.99	500	\$0.04	Included
	Small Business Premium Unlimited		\$49.99	Unlimited	N/A	Included
	Small Business Basic 1500		\$39.99	1500	\$0.04	Included
AT&T	CallVantage Service	Anyone meeting the technical requirements for AT&T Callvantage Service, regardless of their geographic location, can sign up for the service.	\$24.99	Unlimited	N/A	Included
	CallVantage 2-Line		\$49.99	Unlimited (1 line) ¹	N/A	Included
	CallVantage Local		\$19.99	Unlimited Local	N/A	\$0.04
Lingo	Link	Broward, Dade, Indian River, Leon, Manatee, Martin, Monroe, Palm Beach, Pinellas, Polk, Sarasota, St Johns	\$7.95	Unlimited in-Network		
	Small Talk		\$14.95	500	\$0.03	Included
	Chatter Box		\$21.95	Unlimited	N/A	Included
	Global Gabber		\$34.95	Unlimited	N/A	Included (+300 Int'l minutes)
Net2Phone	U.S./Canada Unlimited	239, 305, 321, 352, 386, 407, 561, 727, 772, 786, 813, 850, 863, 904, 941, 954	\$29.99	Unlimited	N/A	Included
	U.S./Canada 500		\$14.99	500	\$0.04	Included
	VoiceLine Basic ²		\$8.99	Unlimited Inbound	N/A	\$0.05
Packet 8	Freedom Choice 500	Anywhere in FL w/ high-speed connection	\$14.99	500	\$0.04	Included
	Freedom Unlimited		\$24.99	Unlimited	N/A	Included
	Freedom Unlimited Global ³		\$29.99	Unlimited	N/A	Included
myphone company.com	Unlimited Local Home Calling	239, 305, 321, 352, 386, 407, 561, 727, 772, 786, 813, 850, 863, 904, 941, 954	\$19.99	Unlimited	N/A	\$0.03
	Unlimited Home US & Canada		\$24.99	Unlimited	N/A	Unlimited
	Unlimited US & Canada + International		\$34.99	Unlimited	N/A	Unlimited

Source: Provider websites.

Notes:

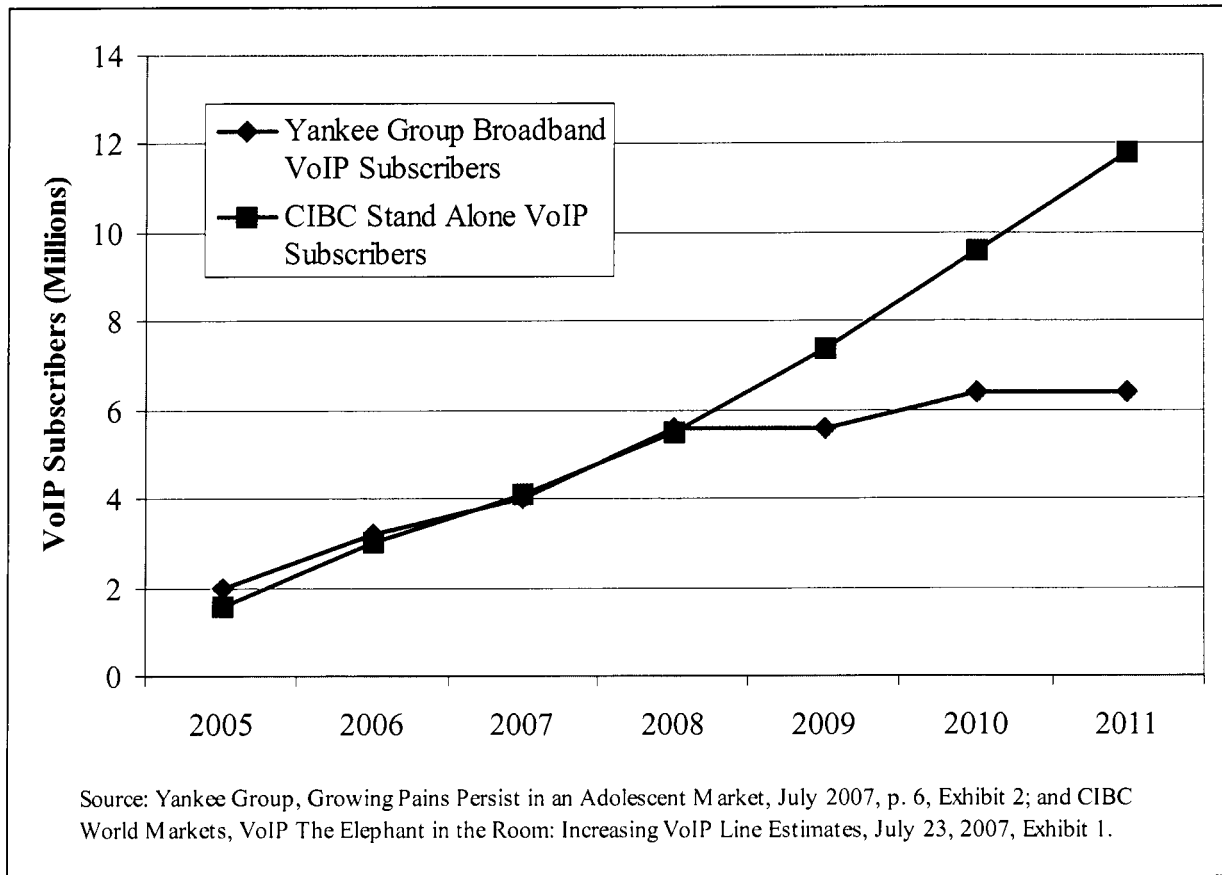
¹ CallVantage 2-line second line includes 500 long distance minutes.

² Net2Phone VoiceLine Basic: Unlimited inbound calls & pay-as-you-go outbound calls.

³ Unlimited global plan includes unlimited calling to select countries in addition to local and long distance.

VoIP growth has been vigorous. For example by early 2008, Vonage was providing service to 2.5 million lines.¹³² Smaller, relatively less well-known VoIP companies are also having success in attracting customers. Thus, recent market research studies estimated that the number of stand-alone (or VoIP over broadband) subscribers would grow from about 4 million in 2007 to 5.5 million in the US in 2008. Their forecasts diverge at that point, as the Yankee Group expects that cable VoIP will capture almost all of the growth in VoIP, while CIBC forecasts stand alone VoIP will reach almost 12 million subscribers by 2011. The forecasts are depicted below in Figure 18.

Figure 18 Stand Alone VoIP/Broadband VoIP Subscribers



S

The low incremental cost of VoIP usage promotes competition among VoIP providers as shown by competition between Skype and Yahoo’s Phone Out. Skype allowed customers to make *free* computer-to-computer “telephone” calls and recently announced free calls to all landlines and cellular phones in the U.S and Canada for all U.S. and Canadian customers for the duration of 2006, in order to increase its U.S. presence. “The move [by Skype] undercuts Yahoo’s rival Phone Out service linked to its instant messenger program. Yahoo itself [had

¹³² See http://www.vonage.com/corporate/index.php?lid=footer_corporate.

previously] undercut Skype when it announced Phone Out for the US in March, which allowed users to call within the US and to more than 30 countries for 2 cents a minute or less.”¹³³

As industry experts correctly predicted, the other Internet companies are entering and attempting to become major influences in the telecommunications market. Such entrants include Google, which offers Google Talk, an application that allows users of Google’s email service to talk and IM for free.¹³⁴ Microsoft has entered the VoIP space in several ways: for example, by teaming with telecommunications vendors to develop IP phones for use with Microsoft’s unified communications offerings, and by purchasing Teleo, an acquisition that has allowed Microsoft to provide voice capability to MSN IM users.¹³⁵

Many customers view VoIP service as a replacement for their telephone line. Approximately 50 percent of Vonage customers maintain their old phone number when they switch to Vonage.¹³⁶ This substitution is driven in large measure by price. Analysts report that third-party VoIP providers offer service “at rates significantly below comparable RBOC prices” and “significant pricing degradation is becoming evident.”¹³⁷ The LECs and, in particular, the RBOCs, have been forced to respond to the competitive threat presented by VoIP providers. As reported in the *New York Times*:

To stem the tide [of defections to VoIP providers], the traditional Bell operating companies have been moving into new businesses like television and strategically dropping the price of traditional phone service. In New York, Verizon recently sent letters to customers offering a calling plan that includes unlimited phone service for \$35 a month, instead of \$60, a 42 percent cut. For people signing up for service through its Web site, AT&T now offers unlimited local and long distance service for \$40, down from \$50 a year ago.

The average user of Internet voice calling, known as ... VoIP, pays \$25 a month for unlimited calling....International calls are most often not included in the flat rate, but those prices are also coming down.¹³⁸

¹³³ C. Nuttall, *Skype in US free calls scheme*, Financial Times, May 15, 2006.

¹³⁴ See Google Press Release, *Google Launches Open, Instant Communications Service*, August 24, 2005, available at <http://www.google.com/press/pressrel/talk.html>.

¹³⁵ See Microsoft Press Release, *Global Telecommunications Providers to Build Innovative Business IP Phones on Microsoft’s Unified Communications Platform*, June 25, 2006 and M. Nakamoto, et al., *The internet’s next big talking point: why VoIP telephony is quickly coming of age*, Financial Times, September 9, 2005.

¹³⁶ See J. Hodulik, et al., *The Vonage Story: The Who, What, Where, and How*, November 24, 2003, UBS Investment Research p. 5 and A. Quinton, et al., *US VoIP Update: Competitive, Regulatory, and Other Issues*, Merrill Lynch, November 25, 2003 p. 9.

¹³⁷ J. Halpern, et al., *Quarterly VoIP Monitor: The “Real” Price Gap for VoIP Driving Rapid Subscriber Growth*, Bernstein Research, July 15, 2005, pp. 5-6 & Exh. 5 and V. Shvets & A. Kieley, *VoIP: State of Play*, Deutsche Bank, June 22, 2005, p. 7.

¹³⁸ M. Richtel and K. Belson, *Online Calling Heralds an Era of Lower Costs*, New York Times, July 3, 2006, available at <http://www.nytimes.com/2006/07/03/technology/03phone.html?th&emc=th>.

VoIP telephone services also provide substantial advantages to small business. For example:

...RingCentral Inc....backed by investment firms including Sequoia Capital and Khosla Ventures, has amassed more than 50,000 customers...usually those with fewer than 10 employees -- who want a full-featured phone system but typically can't afford one.

[It] offers features like multiple extensions and dial-by-name directories because it delivers those services over the Internet, instead of through pricey phone hardware that must be installed and maintained by information-technology professionals.

RingCentral is one of several Internet-phone companies offering such services and undercutting the prices of more traditional business-phone providers. Among the other upstarts is 8x8 Inc. ...that offers a similar low-cost service for small businesses called Packet 8; and, M5 Networks Inc. of New York [which] targets small to midsize companies, though it requires customers to sign up for a dedicated Internet line, which usually costs \$400 to \$1,000 a month.

...The companies are racking up new users because most traditional office phone systems are just "too expensive for a really small customer," says David Lemelin, a senior analyst at research firm In-Stat.

Installing a traditional system can cost thousands of dollars, or even tens of thousands of dollars, depending on company size and other factors. RingCentral offers a monthly plan for as little as \$9.99 a month, with no upfront costs and almost-instant activation. Its most popular service plan costs \$29.99 a month, though unlimited outbound calls cost an extra \$24.99 a month.

According to In-Stat, revenue from "hosted" Internet-phone services for businesses -- or those that don't require any on-premise equipment besides actual phones -- are expected to top \$2.1 billion by 2010, up from \$476 million last year.¹³⁹

¹³⁹ See: Rebecca Buckman, "Internet Phone Service Gets Plush: Small Businesses Sign Up for Professional Features on the Cheap." Wall Street Journal, March 4, 2008, p. B3.
http://online.wsj.com/article/SB120459705656609395.html?mod=googlenews_wsj

E. Emerging Technologies Will Intensify Intermodal Competition

1. Wi-Fi

a. Overview

Wi-Fi, short for wireless fidelity, is a wireless broadband network technology that allows users within range of the network to connect to the Internet via a wireless device such as a laptop. A single Wi-Fi network, or hot spot, has a range of up to 1,000 feet in an optimal open environment and speeds of up to 11 Mbps. Wi-Fi hot spots give travellers in numerous public places such as coffee shops and McDonald's restaurants, hotels and airport lounges access to broadband services, including VoIP.¹⁴⁰

Wi-Fi is also used in homes to connect multiple family computers to each other and to broadband Internet modems, and in businesses to connect employees in different departments and buildings across campuses. Such private network usage is significant because it tends to make the technology more widely available, and greater diffusion drives down costs. Furthermore, as computer makers add Wi-Fi capabilities to laptops, it will likely stimulate further proliferation of Wi-Fi hot spots.

As a result, Wi-Fi is emerging as another potent form of intermodal competition that extends beyond connecting laptops to the Internet at hot spots. For example, both cellular providers and VoIP providers are taking advantage of Wi-Fi to expand their reach and compete more effectively. They do so by employing mobile wireless or portable phones that use Wi-Fi technology and VoIP to route telephone calls for mobile users over the Internet.¹⁴¹ A recent In-Stat/MDR report noted, "In 2007 and 2008, the phone segment will noticeably emerge, driven by embedded Wi-Fi in cellular phones."¹⁴² The service also provides business travellers with the ability to make and receive phone calls from a laptop computer or PDA device, or specialized cordless VoIP phones. We describe the trends in Wi-Fi competition in more detail below.

¹⁴⁰ See the Wi-Fi Alliance at <http://www.Wi-Fi.org>.

¹⁴¹ See D. Biercks, *Demand for Wireless VoIP Applications and Services in the Business Environment*, In-Stat, January 2005 ("In-Stat Wireless Voip"), p. 6.

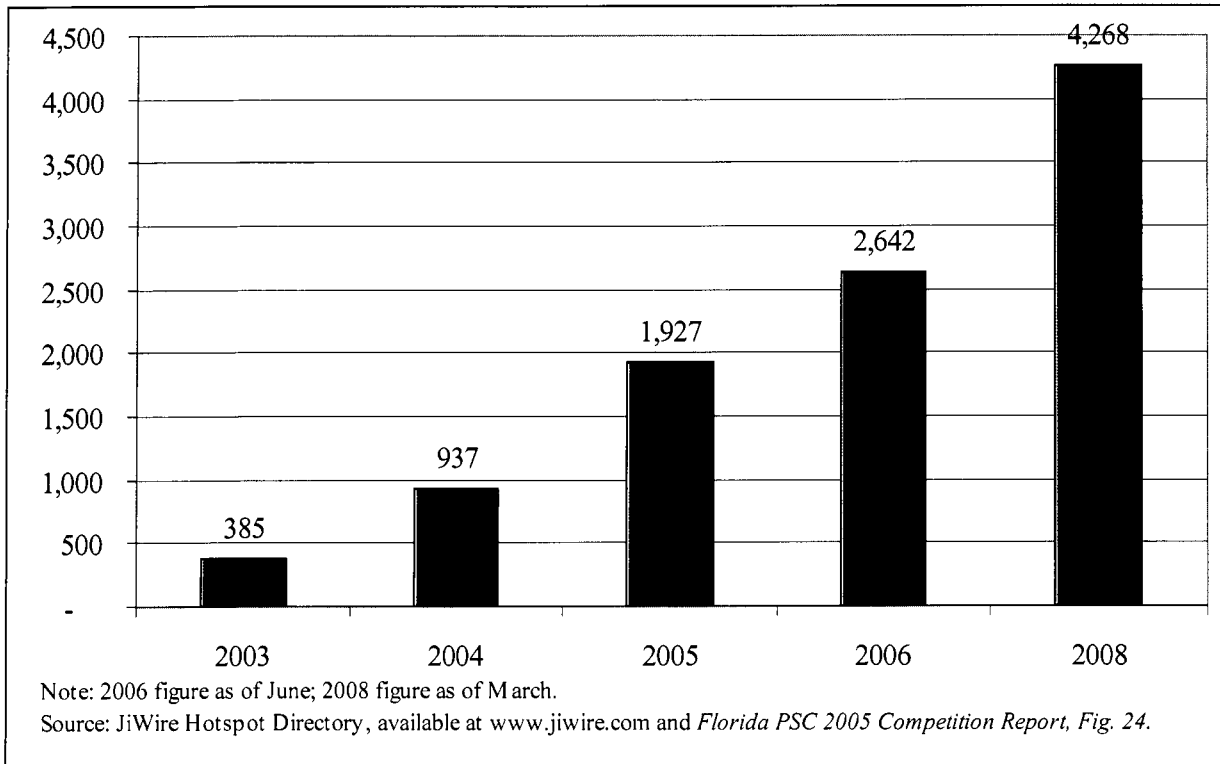
¹⁴² In-Stat Press Release, *Wi-Fi Chipset Market Continues Impressive Growth*, February 28, 2006, available at <http://www.instat.com/press.asp?ID=1598&sku=IN0501813NT>.

b. Wi-Fi Is Widely Available in Florida

As illustrated in Figure 19 below, there were over 2,600 Wi-Fi hotspots in Florida by mid 2006 and the number increased to 4,268 by March 2008. .

Figure 19

Florida Wi-Fi Hotspots



Several municipalities have deployed, or are in the process of setting up, wireless networks. For example, St. Cloud, a suburb of Orlando, was the first municipality in the U.S. to set up a free, citywide, high-speed wireless network.¹⁴³ St. Cloud's "Cyber Spot" has been available in the ? rest of this sentence missing?

As a recent article notes, "In the not-too-distant future, South Florida could be covered in a wireless Internet blanket under which laptop users could check e-mail and surf the Web from sidewalk cafés, parks, libraries and even from their homes." The article discusses several Wi-Fi networks in South Florida. For example, Broward County recently deployed a free network across downtown Fort Lauderdale. Built mostly for use by hundreds of county employees, it is now available for use in many parks and public places for anyone with a wireless-equipped laptop. If the Fort Lauderdale system is successful, Broward County may consider deploying the

¹⁴³ See City of St. Cloud, Florida, at <http://www.stcloud.org/index.asp?NID=402>.

network countywide. Miami-Dade County is planning a wireless network to serve all residents in the County. Miami Beach recently announced that it is also testing a free citywide network.¹⁴⁴

In an undertaking similar in scale to that of a municipal deployment, Florida State University in Tallahassee is deploying Wi-Fi throughout its campus. By May 2005, it had made Wi-Fi available in 75 percent of the outdoor areas on campus and in 90 percent of the library. In May 2005, the network had 132 access points and supported 3,000 total users, 1,500 on a daily basis. The number of users was climbing and could reach as high as 40,000 daily users.¹⁴⁵

In addition to these free and low-cost hot spots and networks, private enterprises, too, are offering Wi-Fi service for a fee. Many hotel chains offer access in their lobbies, and many coffee shops offer Internet access with your coffee. For example, among large chains, Panera Bread is enabling their stores for Wi-Fi access. In 2006, they had over 150 such locations in Florida.¹⁴⁶ McDonalds offers Wi-Fi at numerous locations throughout the state. For example, their web site shows 155 McDonalds hot spots within 55 miles of Tampa, FL.¹⁴⁷

Map 1 below depicts just some of the hotspots throughout Florida, as of 2004.¹⁴⁸ The number is undoubtedly higher since then.

¹⁴⁴ See E. Bolstad, *South Florida could go wireless*, The Miami Herald, February 20, 2006.

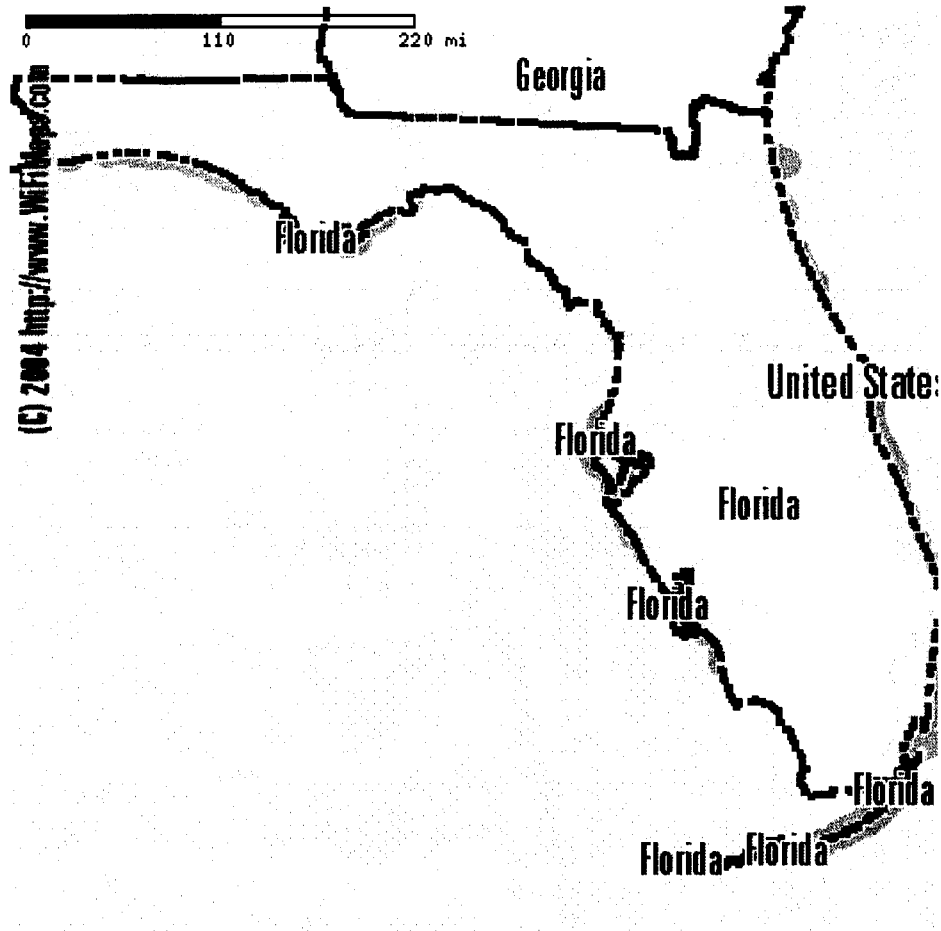
¹⁴⁵ See America's Network, *Florida State commits to Wi-Fi deployment: four-year effort expands to campus classrooms*, May 2005.

¹⁴⁶ See e.g., <http://www.palmbeachpost.com/photo/content/news/photos/wifi/hotspots.html> and *Wi-Fi @ Panera Bread* at <http://www.panerabread.com/wifi.aspx>; <http://www.wififreespot.com/fl.html>.

¹⁴⁷ See <http://www.mcdonalds.com/wireless.html>, visited March 10, 2008.

¹⁴⁸ See <http://www.wifimaps.com/>.

Map 1
Florida Wi-Fi Hotspots



c. Trends in Wi-Fi Will Enhance Competition for Voice Services

In this section, we explain some of the trends in Wi-Fi that are likely to enhance intermodal competition for voice services. First, dual mode devices allow mobile wireless users to access both their wireless networks and Wi-Fi networks.¹⁴⁹ Users of these dual mode devices can conserve their mobile minutes by using a Wi-Fi connection to place VoIP calls. Dual mode phones also enhance coverage by allowing the user to stay connected in more locations—*e.g.*, in certain buildings in which mobile wireless coverage may be limited. The *Wall Street Journal* describes how Wi-Fi is increasing competition:

¹⁴⁹ Examples of dual phones include the HP iPAQ h6315 with T-Mobile service, T-Mobile's MDA III and MDA IV, O2 XDA IIs, Vodafone VPA III, and Orange SVP M2000.

All players are moving ahead [with plans to offer a service with the ability to make Internet calls using a cell phone] despite the risks [to their existing businesses]: T-Mobile and Sprint, both pure cellular carriers, see the new technology as an opportunity to steal customers from landline companies and their bigger wireless competitors, people in the industry say. Switching calls over to the Internet will also allow carriers to expand their coverage inside homes and office buildings, where signals are weak, and to free up capacity on their cellular networks.¹⁵⁰

According to the FCC's most recent CMRS report mobile wireless providers are operating thousands of WiFi hot spots and are offering dual mode mobile phones to provide high-speed Internet access and VoIP over broadband capability:

Several mobile telephone providers have entered the hot spot operation business through acquisitions, partnerships, or independent deployments....T-Mobile offers Wi-Fi access at nearly 8,500 HotSpot-branded locations in the United States, while Sprint Nextel's Wi-Fi network includes more than 8,000 hot spot locations across North America. AT&T offers Wi-Fi connectivity at almost 15,000 hot spot locations in the United States....

To augment their wide-area data service offerings, mobile telephone providers have typically offered WLAN services for high-speed, in-building data access. Certain providers – including T-Mobile, Sprint Nextel, and AT&T – offer at least one dual-mode handset that operates on both cellular and Wi-Fi networks. For example, T-Mobile's Dash™ and Wing™ devices can connect to the company's GPRS/EDGE network and are also Wi-Fi-enabled for high-speed data access. Sprint Nextel's Mogul™ device, introduced in June 2007, offers access to both Sprint Nextel's EV-DO network and Wi-Fi access points.

The iPhone launched by Apple and AT&T in June 2007 runs on AT&T's EDGE network and can connect to any Wi-Fi hot spot for Internet access service. The iPhone can seamlessly switch from an EDGE to a Wi-Fi connection, and will automatically display a list of new Wi-Fi networks in range as the user moves to a new location.

In addition to using Wi-Fi as a means of data access, over the past year certain mobile operators have begun to use WLANs to augment their CMRS-based voice services with voice connections at Wi-Fi hot spots. For example, in June 2007, T-Mobile and Cincinnati Bell introduced new services – “HotSpot@Home” and

¹⁵⁰ A. Sharma and L. Yuan, *AT&T Deal Could Speed Move to Wireless Internet Calling*, *The Wall Street Journal*, March 6, 2006.

“Home Run,” respectively – featuring dual-mode handsets that offer seamless voice connections on both Wi-Fi and the operators’ GSM cellular networks.¹⁵¹

As we explained above, these latter options are designed to compete directly with wireline phone service by offering unlimited calling from users’ homes for low incremental charges.

Other hybrid “smart phones” with dual mode capabilities will become more widely available as Wi-Fi becomes more widely deployed.¹⁵² Both Vonage and Net2Phone have developed wireless VoIP phones that allow users to make calls at home or anywhere a wireless Wi-Fi broadband connection is available. Net2Phone’s VoiceLine XJ100 Wi-Fi Handset automatically and intelligently scans and connects to available access points, so users can make a call over any open Wi-Fi hot spot.¹⁵³ Vonage, in conjunction with UTStarcom, launched its F1000 portable Wi-Fi phone in December 2005. The handset is configured with Vonage’s standard call features, including three-way calling, call waiting, repeat dial on busy, voicemail and caller ID. Bill Huang, chief technology officer and senior vice president of engineering at UTStarcom commented:

We believe the affordable price point and extensive features of the UTStarcom F1000 offered through Vonage will be a disruptive force in the telecommunications service marketplace. Consumers with Wi-Fi access in their home can replace their traditional home phone with the F1000 and start reaping the benefits of wireless VoIP phone service right away.¹⁵⁴

According to a recent survey by In-Stat, 23 percent of decision-makers in medium-sized companies and large enterprises said that they had already deployed wireless VoIP in some manner and another 30 percent said they were planning or evaluating the implementation of the technology within the next six to twelve months.¹⁵⁵ In-Stat forecasts that by 2008, there will be close to 40,000,000 cellular voice devices w/WLAN subscribers, with non-business consumers beginning to dominate the subscriber market.¹⁵⁶

As can be seen from the data for Florida, Wi-Fi is growing rapidly. Market research companies have forecast that the growth will continue. For example, In-Stat forecast rapid growth of WiFi chipsets for PCs and mobile phones,¹⁵⁷ and estimated that the number of public hot spot locations would double from 2005 to 2009.¹⁵⁸

¹⁵¹ FCC Twelfth CMRS Report, at paragraphs 254 -257.

¹⁵² See Parks Associates, *Residential Voice-over-IP: Analysis and Forecasts (Second Edition)*, 1Q 2005, at 12.

¹⁵³ See Net2Phone Press Release, *Net2Phone Launches Enhanced Wi-Fi Offer*, March 8, 2005.

¹⁵⁴ See Vonage Press Release, *Vonage® And UTStarcom Liberate Consumers From Their Traditional Phone Lines With Launch Of Portable Wi-Fi Phone*, December 13, 2005.

¹⁵⁵ *In-Stat Wireless VoIP*, p 1.

¹⁵⁶ *In-Stat Wireless VoIP*, p. 25, Table 5 and p. 1.

¹⁵⁷ In-Stat Press Release, *Wi-Fi Chipset Market Continues Impressive Growth*, February 28, 2006, available at <http://www.instat.com/press.asp?ID=1598&sku=IN0501813NT> and Wi-Fi Planet, *Wi-Fi Still Booming*, November 29, 2005, available at <http://www.Wi-Fiplanet.com/news/print.php/3566911>.

2. WiMAX

a. Overview of WiMAX Technology

WiMAX, like Wi-Fi, provides wireless broadband connections, but has a much wider range, up to 30 miles from the central base station, and has much higher speeds, of up to 75 Mbps.¹⁵⁹ Thus, a single WiMAX network or hot-zone, can provide broadband access to an entire city. WiMAX can extend service to rural and remote areas.

WiMAX can complement Wi-Fi. The combination of Wi-Fi and WiMAX technologies may allow broadband connections almost anywhere. According to a WiMAX analyst,

Early Wi-Max deployments will start by connecting fixed or stationary subscriber stations, but then will evolve to support nomadic/portable applications and eventually completely mobile services and devices. Wi-Max will also enable the “access anywhere” triple play revolution: high-speed wireless delivery of data, voice and video applications at home, in the office and on the go.¹⁶⁰

As the use of WiMAX spreads, it could grow to challenge established wireline DSL and cable modem services. In-Stat discusses some of the benefits of WiMAX to consumers:

WiMAX will offer consumer and business subscribers a range of technology and service level choices from broadband operators. Fixed and mobile broadband prices will decline, and there will be DSL-like services that offer portability. DSL “blackspots” and “installation” fees will be eliminated. Service providers will have a cost-effective way to offer new, high-value, real-time, multi-media services like wireless picture mail, video mail, and video streaming.

Subscribers will enjoy “anytime, anywhere connectivity.” No more driving around looking for a WiFi hotspot. Dial-up will be a distant memory. As

According to In-Stat and the Wi-Fi Alliance, over 140 million Wi-Fi chipsets shipped in 2005, representing an average annual growth rate of 64 percent since 2000. In-Stat is forecasting that the rapid growth will continue, with sales reaching 430 million units in 2009. It is estimated that over 90 percent of all notebook computers shipped today are Wi-Fi enabled. Wi-Fi is also moving beyond core PC applications and into consumer electronics and mobile phones, further increasing the potential for growth in sales in the future.

¹⁵⁸ In-Stat Press Release, *Wireless Data Hotspot Services to Reach \$3.46 Billion in 2009*, September 20, 2005, available at <http://www.in-stat.com/press.asp?ID=1447&sku=IN0502196MU>. It estimated that the number of public hot spots will grow from 100,000 locations in 2005 to almost 200,000 locations in 2009, largely driven by branded deployments in the café market (including coffee shops, fast food and full service restaurants). Over the same period, associated revenue will increase from \$969 million to \$3.46 billion.

¹⁵⁹ See, e.g., Shim, Richard. *WiMAX in the Wings*, CNET News.com, June 25, 2004, available at http://news.com.com/Wi-Max+in+the+wings/2100-1039_3-5247984.html.

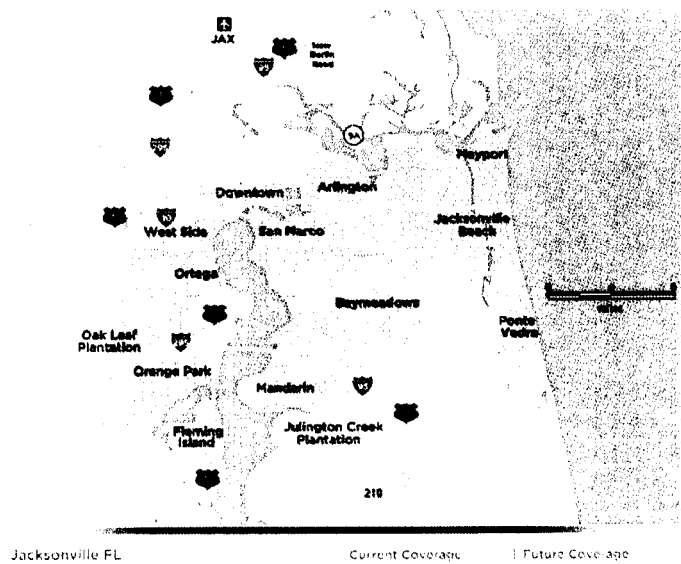
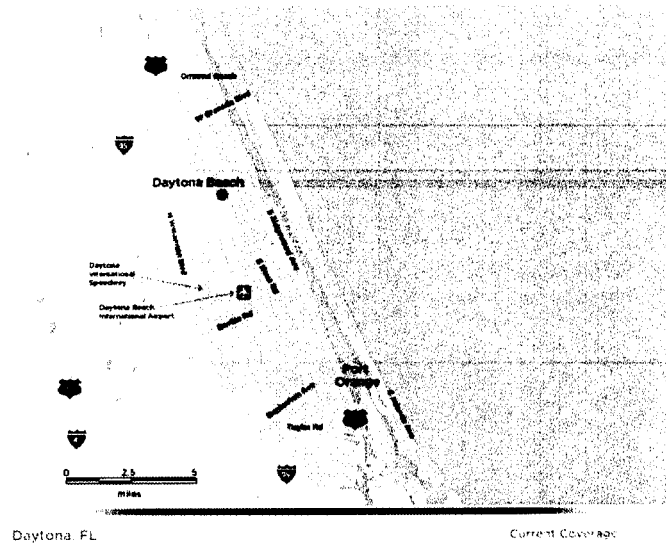
¹⁶⁰ See Antonello, Gordon. *Just the Wi-Max Facts, Ma'am*, Electronic News, March 16, 2005.

broadband connectivity becomes more ubiquitous, subscribers will use their devices more and leave them on, integrating them more into their lifestyles.¹⁶¹

b. WiMAX Deployment in Florida

In our 2006 report, we described WiMAX deployments by Clearwire in Jacksonville and Daytona Beach.¹⁶² The following maps of Clearwire's two Florida service areas illustrate how WiMAX can be used to cover large geographic areas.¹⁶³

Map 2 Clearwire's Florida Service Areas



¹⁶¹ K. Lundgren and N. Bogen, *WiMAX: Challenging the Status Quo*, In-Stat, December 2005, p. 9.

¹⁶² See NERA, *Intermodal Competition in Florida Telecommunications*, July 2006, p. 67; and Clearwire *Wireless Broadband*, available at <http://www.clearwire.com>.

¹⁶³ See http://www.clearwire.com/store/service_areas.php.

We also reported that Clearwire was deploying voice service throughout its service areas.¹⁶⁴ Although, Clearwire has not yet deployed additional systems in Florida, it has continued to expand its operations and to add customers. According to a March 2008 article in *RCRWireless News*: Clearwire doubled its customer base “from 206,000 subscribers at the end of 2006 to 394,000 at the end of last year”; its average revenue per customer (i.e., the average charge per customer) was only about \$36.09 in 2007; its quarterly revenues reached \$45 million in Q4 of 2007, although its losses increased substantially during 2007 the “company attributed the increase to expenses related to launching 14 new markets during the year”; and Clearwire “echoed earlier comments from Sprint Nextel executives that the two companies were in discussions regarding a partnership to deploy a nationwide mobile WiMAX network.”¹⁶⁵

Two other WiMAX providers recently announced that they have deployed or would deploy the technology in Florida. Towerstream provides the service in Miami.¹⁶⁶ And, NextPhase President Robert Ford stated that they have the spectrum to serve Miami: “Combined with the recently announced Local Multipoint Distribution Service spectrum that we’ve acquired in certain key markets (Atlanta; Los Angeles; Miami; Philadelphia; Wilmington, Del.; and Trenton, N.J.) we now have all of the elements in place to deliver a comprehensive portfolio of business-grade broadband speeds.”¹⁶⁷

c. WiMAX Development Will Enhance Competition

As we explained in our 2006 report, the availability of WiMAX is likely to increase because of major funding from companies like Motorola and Intel. According to a September 2007 press account, additional companies such as Samsung are investing in the technology:

Sprint Nextel and Clearwire, along with their infrastructure vendors, are investing untold amounts of money to realize the promise of WiMAX. That makes investments in devices, particularly for first-to-market vendors, a reasonable bet, according to Samsung’s Skarzynski.

WiMAX is coming on as the U.S. market, for instance, is reaching maturation and saturation, Skarzynski said. With penetration reaching 80%, U.S. consumers will continue to upgrade their handsets and that often means spending a little more for

¹⁶⁴ See Clearwire Press Release, *Clearwire Becomes First International Wireless Broadband Company to Offer Simple, Reliable Internet Phone Service*, April 10, 2006 and *Clearwire News Releases*, available at <http://www.clearwire.com/company/news/releases.php>.

¹⁶⁵ Dan Meyer, “Clearwire stock gyrates on results, speculation,” *RCRWirelessNews*, March 4, 2008

¹⁶⁶ According to Peter Svensson, “Speedy WiMax May Be The Future Of Wireless Internet Links,” *The Associated Press*, “Towerstream now sells service Miami, Los Angeles, Chicago, Seattle, San Francisco, Providence, R.I., and Boston,” and in New York. November 18, 2007.

¹⁶⁷ See: Matt Kapko, “WiMAX rolls ahead without Sprint Nextel; TDS, NextPhase boast of deployment plans, *RCR Wireless News*, January 22, 2008; <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20080122/FREE/348119820/0/http:&template=printart>.

the next device. Smartphones today account for perhaps 10% of the U.S.'s annual purchase of about 160 million units, a slice that will grow to 15% to 20% of sales as Americans buy better handsets in an upgrade cycle.¹⁶⁸

WiMAX will complement VoIP by providing wireless broadband internet access anywhere in a metropolitan area. In-Stat discusses some of the potential applications of WiMAX:

802.16-2004, the fixed variant of WiMAX, is designed to accommodate any application currently served by cable or DSL, including the triple play of data, voice and video. A single WiMAX base station...can backhaul traffic from cell sites and WiFi hotspots and provide last mile broadband access to homes and enterprises.

...a key differentiator of 802.16-2004 will be its Nomadic mode, which supports wireless broadband communication within a given area while the end user or device is either stationary or moving slowly at "pedestrian" speeds through the area. This means that a user can connect to a WiMAX network at home, take his WiMAX-enabled device (PDA, laptop, modem, and handset) to work or play, and connect to a WiMAX network at those locations as well. In addition, the user can maintain his broadband connection as he moves around within the WiMAX network coverage area...¹⁶⁹

Recent articles continue to show that WiMAX is likely to have a major effect on the communications market in both urban and rural areas. First, as noted above, at least two WiMAX companies are serving cities in Florida; a third has announced it has spectrum to serve Miami; and Sprint Nextel has resumed talks with Clearwire to jointly deploy a nationwide mobile WiMAX network. Second, forecasts of WiMAX growth are still robust. For example a January 2008 article reported:

The market for WiMAX chipsets will reach almost \$500 million by 2012, driven mainly by embedded mobile WiMAX in mobile personal computers, according to new research from high-tech research firm In-Stat.

The market will also benefit from demand for WiMAX customer premises equipment, external clients and dual-mode cellular/WiMAX handsets, said In-Stat.

"The total WiMAX user terminal chipset market will reach almost \$500 million in 2012, growing from \$27 million in 2007," said Gemma Tedesco, In-Stat analyst.

¹⁶⁸ Phil Carson, "WiMAX devices due to hit U.S. market in '08: Evangelism now, a slew of mobile devices soon," *RCRWireless News*, September 26, 2007.

¹⁶⁹ K. Lundgren and N. Bogen, *WiMAX: Challenging the Status Quo*, In-Stat, December 2005, p. 10.

“Furthermore, WiMAX base station semiconductor revenues are expected to be approximately \$1.4 billion in 2012, compared to \$130 million in 2007.”¹⁷⁰

In September of last year RCRWireless News reported that Samsung which is developing new WiMAX handsets sees WiMAX:

“...as having a large growth potential,” Skarzynski said. “Samsung has a great capability to deliver parts of the home network to deliver content directly from the providers. The technology is there to enable different content providers to reach consumers. Samsung is looking to stake its claim to this market.”¹⁷¹

3. BPL

Broadband Over Powerline, or BPL, has been developed to allow transmission of broadband signals over existing power line facilities. Because it uses the existing utility infrastructure, BPL provides electric utilities a low cost means of entry into the communications markets and allows them to take advantage of economies of scope. Retired FCC Commissioner Abernathy explained the significance of BPL this way:

Access BPL may play an important role as a new competitor in offering broadband access to homes and businesses because power lines are available in almost every community. This means that the traditional providers of broadband communications, DSL and cable modem services, will face a new competitor. In addition, Access BPL may serve as a broadband solution in geographic areas where DSL and cable modem services are not yet offered.¹⁷²

The deployment of BPL facilitates competition for voice services, in addition to broadband. This occurs in two ways. First, the broadband line allows the customer to purchase service from any of the numerous independent VoIP providers or a VoIP offering from the BPL service provider. Second, the BPL service provider may offer VoIP even if the customer does not purchase broadband service.¹⁷³

¹⁷⁰ WiMAX chips to generate \$500M by 2012 RCRWireless News, January 21, 2008, <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20080121/SUB/5378299/1008/FREE&template=printart>

¹⁷¹ Phil Carson, “WiMAX devices due to hit U.S. market in '08: Evangelism now, a slew of mobile devices soon,” *RCRWireless News*, September 26, 2007.

¹⁷² FCC Commissioner Kathleen Q. Abernathy, *Broadband Over Power Line*, Focus on Consumer Concerns, Vol. 4, Number 1, May-June 2004.

¹⁷³ For example, Current Communications is offering a residential broadband and VoIP package to its BPL service area for \$49.90 per month. Residential customers may also purchase phone service only for \$34.95. Current is currently deploying BPL to over 2 million homes and business in the Dallas-Ft. Worth area, in conjunction with TXU Electric Delivery. See <http://www.current.net/ServiceAndPricing/Residential/Voice/PricingAndBenefits/>, <http://www.current.net/ServiceAndPricing/Promotions/> and Current Communications Press Release, *TXU and*

Although certain obstacles have caused a slow commercial deployment of BPL, a 2006 Report of the Broadband Over Power Lines Task Force, the National Association of Regulatory Utility Commissioners noted:

The year 2005 marked an interesting, albeit mixed, year for BPL. The year's highlights saw encouraging signs that BPL may enhance broadband competition and electric utility functionality on a more widespread basis. BPL supporters could point to such developments as commitments to BPL by major media and technology companies, new trial start-ups, new full-scale commercial deployments, and realization of benefits from application of Smart Grid principles.¹⁷⁴

It is also worth noting that in May 2006, Current Communications attracted \$130 million in equity investments from new and existing investors to accelerate the deployment of BPL. New equity investors are General Electric; EarthLink, which will serve as a retail provider of Current's broadband services; TXU Corp.; and Sensus Metering Systems, which provides meter-reading products. Existing equity investors include Duke Energy; EnerTech Capital Partners; Goldman, Sachs & Co.; Google; Hearst; and Liberty Associated Partners LP, an investment partnership between Liberty Media and the Berkman family.¹⁷⁵ Clearly, the market has recognized the potential of BPL.

As noted in the *Florida PSC 2006 Competition Report*, several utilities with a presence in Florida have been exploring BPL. These include Progress Energy (test in North Carolina), Florida Power & Light (announced that it was testing the technology), and Southern Company (BPL demonstration in Georgia). The Commission also noted Jacksonville Electric Authority's (JEA) partnership with Nemours Children's Clinic to deliver pediatric remote home monitoring services via BPL for asthmatic children in the Springfield community of Jacksonville, Florida. In July 2005, The National Rural Telecommunications Cooperative reported that:

ElectroLinks, one of two broadband over power line (BPL) equipment companies participating in a performance pilot of BPL technology in low-population rural settings, has completed the first stage of its equipment installation at NRTC member West Florida Electric Cooperative (WFEC) in Graceville, FL.

CURRENT Communications to Create Nation's First Multipurpose Smart Grid, December 19, 2005, available at <http://www.current.net/OurCompany/PressReleases/PressReleasesDetails/?pressid=15>.

¹⁷⁴ The National Association of Regulatory Utility Commissioners, *Report of the Broadband Over Power Lines Task Force*, February 2006, p. 2. The Report also mentioned that 2005 saw:

news that several BPL trials ended unsuccessfully. BPL detractors continued to question the long-term sustainability of the technology, especially when confronted with the faster deployment and superior funding of its two largest broadband competitors, cable television's cable modem service and telecommunications providers' DSL service. Those who contend that BPL interferes with ham radio and other radio applications also maintained their opposition to deployments of certain BPL technologies.

¹⁷⁵ See B. Santo, *BPL Specialist Current Raises \$130 M*, CED Magazine, May 4, 2006, available at <http://www.cedmagazine.com/article/ca6331733.html?text=bpl+specialist+current+raises>.

“The demonstration was especially significant since [Electrolinks and WFEC] used WildBlue [Satellite broadband], BPL, Wi-Fi and [voice over Internet protocol], and it was all plug and play,” said Steve Collier, NRTC’s vice president, Emerging Technologies.¹⁷⁶

Going forward, BPL deployment may increase as industry-wide standards are developed by the IEEE,¹⁷⁷ and as the imperatives of energy efficiency and environmental concerns stimulate utilities to continue to develop and deploy the smart technology to improve their operational efficiency. In March 2008, Xcel Energy announced its plan to spend up to \$100 million on its “Smart Grid” for Boulder Colorado. In doing so, it stated: “The advanced, smart grid system – when fully implemented over the next few years – will provide customers with a portfolio of smart grid technologies designed to provide environmental, financial and operational benefits.”¹⁷⁸ The company earlier revealed that:

A number of technologies will be offered within Smart Grid City, including:

Transformation of existing metering infrastructure to a robust, dynamic communications network, providing real time, *high-speed, two-way communication throughout the distribution grid.*

Conversion of substations to “smart” substations capable of remote monitoring, near real-time data and optimized performance.

Installation of thousands of in-home control devices and the necessary systems to fully automate home energy use.¹⁷⁹

BPL equipment provider Current Group, which provides sensing, monitoring and other communications technologies over power lines, is a participant in the plan. As noted above, Liberty Media is one of the investors in that BPL vendor.

Thus, although BPL is in its infancy in Florida, utility providers represent potential competitors to telephone and cable companies in the provision of broadband, and therefore the provision of voice services, even in rural areas.

¹⁷⁶ See *NRTC Update*, Volume 3, Number 14, July 6, 2005, available at http://www.nrtc.coop/us/main/nrtc_update/Update2005/NRTCUCU_070605.pdf.

¹⁷⁷ See: Sean Michael, Kerner, “Broadband Over Power Adversaries Unite on Standard,” *internetnews.com*, October 1, 2007, <http://www.internetnews.com/bus-news/article.php/3702646>

¹⁷⁸ See: “Xcel Energy announces first Smart Grid City in the nation: Boulder, Colo., to be fully integrated smart electricity city,” March 12, 2008.

¹⁷⁹ See Xcel News Release “Xcel Energy announces Smart Grid Consortium partners, intent to bring Smart Grid City to life,” 01/16/2008; emphasis added, http://www.xcelenergy.com/XLWEB/CDA/0,3080,1-1-1_15531_46991-44146-0_0_0-0,00.html.

V. CONCLUSION

Intermodal competition is a major force in Florida today. It has already had a tremendous effect on the state's telecommunications market, and it will only intensify in the years to come. Legislators and regulators should reevaluate old assumptions that may have applied decades ago during the monopoly era, but that no longer holds true. To ensure that Florida takes a leadership role in technology and communications, continuing to attract investment to the state, telecommunications regulation must take into account the dynamic competition that has emerged and that is here to stay.

More specifically, the intermodal competition that has developed in the last six years clearly implies that policymakers must allow market forces to play an even larger role than they already do in order to yield economically efficient outcomes. As described above, technological change, notably convergence, and intermodal competition, has essentially eliminated the natural monopoly justification for regulating ILECs. LEC (ILEC and CLEC) networks face formidable and increasing competition from advanced technologies such as digital cable and wireless for the "last mile" connection. The emergence of intermodal competition has so broadened telecommunications markets beyond the traditional wireline sector that all communications firms have to adapt much more rapidly than at any time in the past. In this new environment, existing modes of economic regulation are only likely to retard the evolution of the telecommunications market and pose barriers, rather than solutions.

Perhaps the most urgent task facing Florida policy makers is a reassessment of the current asymmetrical regulatory scheme. Most telecommunications regulations now on the books were put in place long before the advent of intermodal competition and thus were not designed with today's competitive environment in mind. Because of the costs and unintended consequences that such outdated regulations impose, updating and streamlining those regulations should be a top priority. Failure to address this problem now would harm the communications market, the state's economy and ultimately all Floridians.

About the Authors

The authors are: Drs. William E. Taylor, Senior Vice President, and Harold Ware, Vice President, at NERA Economic Consulting (NERA).

Dr. Taylor heads the Communications Practice and the Boston office. He has worked primarily in the field of telecommunications economics on problems of state and federal regulatory reform, competition policy, quantitative analysis of state and federal price regulation proposals, competitive effects of mergers among major telecommunications firms, analyses of vertical integration and interconnection among telecommunications networks, and antitrust litigation in telecommunications markets. He has testified on telecommunications economics before numerous state regulatory authorities, the Federal Communications Commission, the Canadian Radio-Television and Telecommunications Commission, the New Zealand Commerce Commission, the Comisión Federal de Telecomunicaciones de México, federal and state congressional committees and courts. He has appeared as a telecommunications commentator on PBS Radio and on The News Hour with Jim Lehrer.

He has published extensively in the areas of telecommunications policy and in theoretical and applied econometrics. His articles have appeared in telecommunications industry publications as well as the *American Economic Review*, *Econometrica*, the *Antitrust Law Journal*, the *Yale Journal on Regulation*, the *Review of Industrial Organization*, the *International Economic Review*, the *Journal of Econometrics*, *Econometric Reviews*, and *The Encyclopedia of Statistical Sciences*. He has been an Associate Editor of the *Journal of Econometrics*.

Dr. Taylor received a B.A. *magna cum laude* in Economics from Harvard College, an M.A. in Statistics and a Ph.D. in Economics from the University of California at Berkeley. He has taught economics, statistics, and econometrics at Cornell and the Massachusetts Institute of Technology and was a post doctoral Research Fellow at the Center for Operations Research and Econometrics at the University of Louvain, Belgium. He has performed and published research on economics, econometrics and telecommunications policy at Bell Communications Research, Inc. and the Economics Research Center at Bell Laboratories.

Dr. Ware has studied telecommunications regulation and competition issues for over 30 years. At NERA, he has directed and written international comparisons of telecommunications regulation and competition policies for submission to the US Federal Communications Commission (FCC) and to New Zealand's Ministerial Inquiry into Telecommunications.

Dr. Ware's recent work has focused on convergence and intermodal competition among wireless, cable, Internet, and wireline companies, including analyses of:

- Intermodal competition for directory assistance, local, long distance, Centrex/PBX, and other services;
- Convergence of wireline, wireless, cable, and Internet communications technologies;
- Network interconnection costs;

- Costs, pricing and entry policy, and universal service issues associated with the transition to competition;
- Analyses of the competitive effects of mergers involving wireline and/or wireless communications companies; and
- Carrier access pricing, cross-subsidization, and other pricing and costing issues.

Dr. Ware also has substantial experience with analyses of demand and the economics of network deployment. In particular, he has:

- Directed studies of demand for residential and small business regional telephone services, as well as for high capacity business private line services, telephone switching services, and local telephone services; and
- Testified on the planning and deployment of new technology in telecommunications networks.

He has testified or filed affidavit testimony before the US Postal Rate Commission, state regulatory commissions, the FCC, and the US Department of Justice. Dr. Ware is co-author of three chapters of *Communications for a Mobile Society: An Assessment of New Technology* and has published articles in *Public Utilities Fortnightly*, *The Journal of Regulatory Economics*, *IEEE Communications*, and proceedings of the *Fifth and Seventeenth Annual Telecommunication Policy Research Conferences*. His paper, "Competition and Rate Restructuring for Postal Services" appears in *Managing Change in the Postal and Delivery Industries* (Kluwer Academic Publishers, 1997).

Dr. Ware received his doctorate degree in economics from Cornell University, where he taught courses in economics and industrial organization and did research on cellular mobile communications in the Technology Assessment Project of the Program on Science, Technology and Society.

NERA Economic Consulting is an international firm of economists who understand how markets work. Our clients include corporations, governments, law firms, regulatory agencies, trade associations and international agencies. Our global team of 500 professionals operates in 16 offices across North and South America, Europe, Asia and Australia. Founded in 1961 as National Economic Research Associates, our more than 40 years of practical experience creating strategies, studies, reports, expert testimony and policy recommendations reflects our specialization in industrial and financial economics.

NERA is a key participant in the important regulatory, legislative and competition issues facing firms and policy makers around the world. We advise companies on regulatory and competitive issues, and assist firms seeking more freedom to enter and compete in markets. NERA often develops models of demand and costs and prepares demand forecasts for its consulting assignments. We describe our results in testimony, reports and oral presentations, to regulators, courts, competition authorities and legislative bodies.

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