State of Florida

Public Service Commission

INTERNAL AFFAIRS AGENDA

Tuesday - July 14, 2009
Immediately Following Agenda Conference
Room 140 - Betty Easley Conference Center

1. Approve June 29, 2009, Internal Affairs Meeting Minutes. (Attachment 1)

2. Draft Report on the Status of Competition in the Telecommunications Industry. Due to the Legislature on August 1, 2009. Approval is sought. (Attachment 2)

3. 2009 Legislative Session Summary and Proposed Implementation of Legislation Affecting the FPSC. Briefing only. (Attachment 3)

4. American Recovery and Reinvestment Act of 2009 (ARRA) - State Regulators Assistance Grant: Staff Seeks Direction on Whether to Pursue a Grant from the U.S. Department of Energy to Fund State Utility Commission Implementation of the ARRA. (Attachment 4)

MAB/ba

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.

Attachment 1

State of Florida
Public Service Commission
INTERNAL AFFAIRS MINUTES
9:45 AM – 10:15 AM
Monday - June 29, 2009
Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT:	Chairman Carter Commissioner Edgar Commissioner McMurrian Commissioner Argenziano (via telephone) Commissioner Skop
STAFF PARTICIPATING:	Bane, Hill, Imhof, Shafter
OTHERS PARTICIPATING:	David Christian – Verizon Greg Follensbee – AT&T

1. Approve June 16, 2009, Internal Affairs Meeting Minutes.

   The minutes were approved.

   Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

2. Draft Report on the Status of Competition in the Telecommunications Industry. Due to the Legislature on August 1, 2009. Approval is sought.

   The Commissioners directed staff to incorporate the revisions discussed and bring back to the next Internal Affairs meeting.

   Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

3. Briefing on Risk Management Report from the Chief Financial Officer.

   Mr. Chuck Hill briefed the Commissioners on the Risk Management Report.

   Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

4. (New Item) Succession Plans for the Executive Director Position

Commissioner Skop commented, that at the appropriate time, it would be beneficial during a future Internal Affairs to have a discussion regarding succession planning for the Executive Director position. He suggested this take place sometime in August to bring some certainty to the Commission in terms as to what may or may not happen. The Chairman noted that with two Commissioners in the process of reappointment, it may be more beneficial for the Commission to have that process resolved prior to beginning succession planning for the Executive Director position. It was agreed that succession planning for the Executive Director position will begin before the year ends.

Commissioners participating: Carter, Edgar, McMurrian, Argenziano, Skop

State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 6, 2009

TO: Mary Andrews Bane, Executive Director

FROM: Office of Strategic Analysis and Governmental Affairs (Shafer, Fogleman, Hunter, Hilgendorf, Lowery)
Division of Regulatory Compliance (Cordiano)

RE: Revised Draft of the Report on the Status of Competition in the Telecommunications Industry
Critical Information: Please place on the July 14, 2009 Internal Affairs. FPSC approval of report is sought. The report is due to the Legislature on August 1, 2009.

Section 364.386, Florida Statutes, requires that the Commission prepare an annual report on the status of competition in the telecommunications industry. The report is to be submitted to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the majority and minority leaders of the Senate and the House of Representatives by August 1 of each year.

The attached revised draft of the report on the "Status of Competition in the Telecommunications Industry," incorporates the corrections and updates presented by Commission staff at the June 29, 2009 Internal Affairs. In addition, the revised draft contains those changes suggested by AT&T, Verizon, and Commissioner Skop. Those changes are appear in type and strike format and are on pages 18, 20, 55, 76, and 83.

Attachment
cc: Charles Hill
Booter Imhof

REVISED DRAFT
7/1/2009

REPORT ON THE STATUS OF COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY

As of December 31, 2008

Florida Public Service Commission
Office of Strategic Analysis and Governmental Affairs

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LIST OF FIGURES AND TABLES

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LIST OF ACRONYMS

3G	Third Generation (wireless)
4G	Fourth Generation (wireless)
ADA	Americans with Disabilities Act
ARRA	American Recovery and Reinvestment Act
ADSL	Asynchronous Digital Subscriber Line
ARMIS	Automated Reporting Management Information System
BPL	Broadband Over Power Line
Bus	Business
CDC	Centers for Disease Control
CLEC	Competitive Local Exchange Company
C.F.R.	Code of Federal Regulations
COLR	Carrier of Last Resort
DCF	Department of Children and Families
DOCSIS	Digital Over Cable Service Interface Specifications
DMS	Department of Management Services
DSL	Digital Subscriber Line
ETC	Eligible Telecommunications Carrier
F.A.C.	Florida Administrative Code
FCC	Federal Communications Commission
FCTA	Florida Cable Telecommunications Association
FiOS	Verizon's trademark name for its fiber-to-the-home package of services
FNPRM	Further Notice of Proposed Rulemaking
FPSC	Florida Public Service Commission, the Commission
F.S.	Florida Statutes
IBEC	International Broadband Electric Communications
ILEC	Incumbent Local Exchange Company
IP	Internet Protocol
ITS	Indiantown Telephone Company
ITIF	Information Technology and Innovation Foundation
IXC	Interexchange Company
JEDC	Jacksonville Economic Development Council
kbps	kilobits per second
LEC	Local Exchange Company
LTE	Long Term Evolution
MDU	Multi-dwelling Unit
Mbps	Megabits per second
NEFCOM	Northeast Florida Communications Company
NOI	Notice of Inquiry
NPRM	Notice of Proposed Rulemaking
NTIA	National Telecommunications and Information Administration
OOS	Out-of-Service
OPC	Office of Public Counsel
PSTN	Public Switched Telephone Network
Res	Residential

LIST OF ACRONYMS

RUS	Rural Utilities Service
SGP	Service Guarantee Program
TDD	Telecommunications Devices for the Deaf
TRO	Triennial Review Order
TRRO	Triennial Review Remand Order
TRS	Telecommunications Relay Service
UNE	Unbundled Network Elements
UNE-P	Unbundled Network Element-Platform
USF	Universal Service Fund
VoIP	Voice over Internet Protocol
VRS	Video Relay Service
WiMAX	Worldwide Interoperability for Microwave Access

EXECUTIVE SUMMARY

This report fulfills the statutory requirements set forth in Section 364.386 and Section 364.161(4), Florida Statutes (F.S.), which require the Florida Public Service Commission (the Commission or FPSC) to report on "the status of competition in the telecommunications industry" to the Legislature by August 1 of each year. On February 20, 2009, data requests were sent to the 10 incumbent local exchange companies (ILECs) and 327 competitive local exchange companies (CLECs) certificated by the Commission to operate in Florida, requesting data as of December 31, 2008.

Wireline Competition

The following market share data relates exclusively to the ILEC and CLEC wireline market and does not reflect the significant number of wireless and voice over Internet protocol (VoIP) subscribers in Florida. The report addresses changes in the telecommunications market for the period December 31, 2007, through December 31, 2008. Significant findings relating to the wireline market as of December 2008 include:

- CLECs provided service with a combined (residential and business) market share of 12 percent, an increase from 11 percent in December 2007.
- Total ILEC access lines decreased by 12 percent. This percentage reflects a 14 percent decrease in residential lines and an 8 percent decrease in business lines.
- Total CLEC access lines decreased by 5 percent. This percentage reflects a 29 percent decrease in residential lines and an increase in business lines of less than 1 percent.

Residential

- CLEC residential market share remained 3 percent, the same as in December 2007.[1]
- Residential access lines decreased 29 percent for the CLECs.[2]
- Residential access lines decreased 15 percent for AT&T, 14 percent for Verizon, and 13 percent for Embarq.
- Residential access lines decreased 7 percent for the rural ILECs. This decline followed a 5 percent decrease in lines from June 2006 to December 2007.

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[1] Market share calculations for 2007 were adjusted to correct a misclassification of lines. The impact on the business market share was immaterial.

[2] ILEC-affiliated CLEC access lines are reflected as ILEC lines if provided to end users within the affiliate ILEC's territory and as CLEC lines if serving end users outside the affiliate company's territory.

Business

- CLEC business market share increased 2 percent to 25 percent. This 2 percent represents a total increase of 5,186 access lines.[3]

- Business access lines decreased for all ILECs.

The slight reduction (less than one percent) of CLEC residential market share and residential access lines and the increase in the number of CLEC providers can be attributed to several factors. The first is the growing impact of intermodal competition, manifested by increases in VoIP service subscribers and by the substitution of wireless service as the only household voice service. In addition, there are lingering effects of Federal Communications Commission (FCC) decisions relating to the availability of certain unbundled network elements (UNEs) that were not fully reflected in the data for 2006. Finally, the acquisitions of large CLECs by both AT&T and Verizon are reflected in this report. Since 2007, access lines of the acquired CLECs (and those of the Embarq-affiliated CLEC) are accounted for by assigning them as ILEC lines if they serve customers within the affiliated ILEC territory or CLEC lines if they serve customers outside the affiliated ILEC territory.[4]

Intermodal Competition

Wireless and VoIP services compete with traditional wireline service and represent a growing portion of today's communications market in Florida. Broadband service also provides the basis for some VoIP services. These three services are not subject to FPSC jurisdiction, and Florida-specific data are not readily available. Forty-six CLECs reported providing VoIP service and provided VoIP line data in response to the 2009 FPSC Local Competition data request. However, two certificated CLECs providing VoIP services elected not to provide access line data, citing the lack of FPSC jurisdiction over VoIP services. One ILEC provided VoIP data. Highlights relating to VoIP, wireless, and broadband services include:

Wireless

- Approximately 15.6 million wireless handsets were in service in Florida as of December 2007.[5]

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[3] Market share calculations for 2007 were adjusted to correct a misclassification of lines. The impact on the business market share was immaterial.

[4] No adjustment was made in 2006 since not all of those transitions had been in place throughout the reporting period.

[5] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Thirteenth Report,", DA 09-54, January 16, 2009, Table A-2, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 21, 2009.

- The Centers for Disease Control (CDC) estimates that nearly 20.2 percent of U.S. households are wireless-only as of December 2008.[6] The CDC estimate for Florida is 16.8 percent as of December 2007, the most current available state-level estimate.[7]

- Consumers' purchases of prepaid phones grew 13 percent in North America in 2008, representing a growth rate that was nearly 3 times greater than postpaid wireless phone plans.[8]

VoIP

- An estimated 1.6 million residential VoIP subscribers were in Florida as of December 2008, an increase of 45 percent over the 1.1 million estimated in 2007.

- Florida CLECs reported 254,006 VoIP lines to the FPSC in response to its 2009 Local Competition data request.

- The Florida Cable Telecommunications Association (FCTA) reported 1,233,829 residential cable digital voice (VoIP) subscribers as of December 2008, an increase of 65 percent from the number reported for December 2007.

Broadband

- Federal Communications Commission (FCC) statistics show that Florida's broadband line count reached approximately 7.4 million as of December 2007, up from 5.3 million the prior year.[9]

- In Florida, high-speed DSL connections were available to 89 percent of the households to which ILECs could provide local telephone service.[10]

- High-Speed cable modem service was available to 92 percent of the households to which cable system operators could provide cable TV service.[11]

- Florida ranks fourth nationally in terms of states with the most high-speed connections.

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[6] S.J. Blumberg, J.V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008," May 6, 2009, p. 1, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf>, accessed on May 13, 2009.

[7] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

[8] Jenna Wortham, "More Customers Give Up the Cellphone Contract," *The New York Times*, February 21, 2009,<http://www.nytimes.com/2009/02/21/technology/21prepaid.html>, accessed June 12, 2009.

[9] FCC, "High-Speed Services for Internet Access: Status as of December 31, 2007," September 2008, Table 9, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf>, accessed on March 12, 2009.

[10] Ibid, Table 14.

[11] Ibid, Table 14.

- Wireless broadband services represent the fastest growing segment of the broadband market.

Florida's communications market continues to evolve as new technologies and services become more widely accepted. Estimates of wireless substitution for wireline service have increased from prior years. In the most recent reporting period, Florida cable companies expanded the number of markets in which they offer voice services. These facts, coupled with continued residential access line losses by ILECs, suggest an active market for voice communications services in many areas of Florida.

CHAPTER I. INTRODUCTION AND BACKGROUND

Chapter 364, Florida Statutes (F.S.), sets forth the principles by which the Florida Public Service Commission (FPSC or Commission) regulates wireline telecommunications companies. Commission oversight is primarily focused on traditional local telephone companies, known as incumbent local exchange companies (ILECs). Competitors to the ILECs, known as competitive local exchange companies (CLECs) and interexchange companies (IXCs), are subject to minimal regulation. The Commission does not regulate wireless telecommunications, broadband services, or VoIP services.

Chapter 364, F.S., requires the Commission to prepare and to deliver a report on "the status of competition in the telecommunications industry" to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of the Senate and the House of Representatives on August 1 each year. Section 364.386, F.S., requires that the report address the following six issues:

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

A 1997 amendment to Section 364.161(4), F.S., also requires a summary of all complaints filed by CLECs against ILECs. The list of complaints is found in Appendix E.

As of December 31, 2008, 10 ILECs and 327 CLECs were certificated by the Commission to operate in Florida.

A. Provisions and Goals of Chapter 364, Florida Statutes, and the Telecommunications Act of 1996

1. Chapter 364, Florida Statutes

In 1995, the Florida Legislature amended Chapter 364, F.S., to allow for competition in the state's local telecommunications markets. The Legislature found that "the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the introduction of new telecommunications services, encourage technological innovation, and encourage investment in telecommunications infrastructure."

CLECs are subject to minimal Commission oversight. Unlike ILECs, CLECs are not rate capped and not required to file tariffs for Commission acknowledgment.[12] Instead, each CLEC is required to file a price list if it offers basic local telecommunications service. In addition, Section 364.337(2), F.S., states in part, "The basic local telecommunications service provided by a competitive local exchange telecommunications company must include access to operator services, '911' services, and relay services for the hearing impaired." If they provide basic local telecommunications services, CLECs must provide a flat-rate pricing option for that service. The statute states that "mandatory measured service for basic local telecommunications services shall not be imposed."

2. Federal Telecommunications Act of 1996

The federal Telecommunications Act of 1996 (the 1996 Act) established a national framework to enable CLECs to enter the local telecommunications marketplace. The Federal Communications Commission's (FCC's) Local Competition Order specified that opening the local exchange and exchange access markets to competition was "intended to pave the way for enhanced competition in all telecommunications markets."[13] The FCC expected opening markets to "blur traditional industry distinctions and bring new packages of services, lower prices, and increased innovation to American consumers." Not only have CLECs entered the local market, but less traditional providers, such as cable, wireless, and broadband communications providers, have also entered this market using their own facilities or new technologies to compete against traditional wireline providers for a share of the voice communications market.

The 1996 Act established three methods by which CLECs could enter the local exchange market: resale, leasing of unbundled network elements (UNEs), and investing in their own facilities. Because ILECs dominate the last mile of the traditional wireline networks, CLECs must either use an ILEC's local loops, build their own facilities, purchase facilities from other CLECs, or enable facilities currently in place (for example, cable networks) to provide local

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[12] Governor Crist signed SB2626 into law on June 24, 2009, relieving ILECs of the obligation to file tariffs with the Commission. The law became effective July 1, 2009. The text accurately reflects current law for the period covered by the report.

[13] FCC 96-325, CC Docket No. 96-95, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, released August 8, 1996, ¶ 914.

telephone service. The 1996 Act did not address market entry strategies for non-wireline competitors.

B. Methodology

As in prior years, the Commission prepared this report using responses to its data requests from CLECs and ILECs. Commission staff also used additional resources, including FCC reports, industry reports, and financial analyses.

The response rate for CLECs for this report was 96 percent. The response rate for ILECs was 100 percent. Companies that did not respond by April 7, 2009, were mailed a second reminder letter. Commission staff also telephoned and e-mailed the CLECs that did not respond by the April 15 deadline. Enforcement actions are underway against CLECs that did not respond to the 2009 data request. It is unlikely that a 100 percent CLEC response rate can be achieved because some CLECs go out of business but do not notify the Commission; however, the Commission's goal is to achieve a response rate as close to 100 percent as possible.

The analyses that follow are based on information provided by the ILECs and the reporting CLECs. As in previous years, precise market share calculations are not possible because some CLECs failed to respond. The FPSC believes the collective market share of the CLECs failing to file is statistically insignificant to have an effect on the analyses.

The Commission recognizes the limitations of data-gathering authority over wireless, VoIP, and broadband providers. While some providers of these services voluntarily contributed data to enhance the accuracy of this report, these providers are beyond the jurisdiction of the Commission and cannot be compelled to contribute.

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CHAPTER II. COMMUNICATIONS MARKET OVERVIEW

Florida ILEC residential access lines have been declining since 2001. From December 2007 to December 2008, that decline reached 14 percent.[14] In previous periods, wireless subscriptions[15] were increasing and at least some of the decline in ILEC residential access lines was attributable to wireless substitution. The Centers for Disease Control's most recent estimate for wireless-only households in the U.S. reached 20.2 percent as of December 2008.[16] The rate at which wireless companies are adding new subscribers has declined. Bernstein Research estimates that the decrease in the rate of growth of wireless subscriptions was 34 percent in the fourth quarter of 2008.[17]

Wireless subscription and revenue growth may not be able to offset declining wireline revenues for AT&T and Verizon. As subscriber growth slows, the ability of wireless carriers to add new customers may depend, in large part, on their ability to lure customers from other carriers. Enticing a customer to switch carriers is more expensive than simply adding a new subscriber that previously did not have a wireless phone. Reduced service prices and increased equipment subsidies may attract customers, but these actions also reduce revenues per subscriber. In a stressed economy some wireless carriers will find it difficult to be successful.

Two factors will slow or dampen the shrinking wireline and near saturated wireless markets. The first is that broadband subscription for wireline providers remains steady, and some subscribers prefer wireline broadband to wireless broadband or cable modem service. Both Verizon and AT&T are now providing video services over wireline broadband infrastructure, generating new demand. These other service offerings help the companies maintain traditional wireline voice customers. The second factor that may aid large wireline and wireless providers is the continuing evolution of technology and innovation.

The communications industry remains a dynamic market with many new products and service options encompassing multiple technologies and platforms. However, at least in part because of competing technologies, certain sectors of the industry are showing signs of strain. Combined with an uncertain economy those strains may lead to interesting results in the coming year. An overview of current market developments follows.

A. ECONOMY

Since the last edition of this report, general economic conditions have worsened, affecting all markets, including telecommunications.[18] During the fourth quarter of 2008, the

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[14] FPSC, "Report on the Status of Competition in the Telecommunications Industry as of December 31, 2007," Tallahassee, FL, August 1, 2008; and responses to the FPSC 2009 Local Competition data request.

[15] For the purposes of this report, wireless subscription is defined as a wireless handset in service.

[16] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

[17] Craig Moffet, "U.S. Wireless '09: A Recipe for Disaster?" [Conference Call Transcript], Bernstein Research, March 25, 2009, p. 3.

[18] "Gross Domestic Product, 1st quarter 2009 (preliminary), Corporate Profits, 1st quarter 2009 (preliminary)," U.S. Department of Commerce, Bureau of Economic Analysis News Release, May 29, 2009, <http://bea.gov/

economic decline was the worst in 25 years, contracting 6.3 percent. During the first quarter of 2009, the economy contracted another 5.7 percent, as business cutbacks and significant drops in U.S. exports overshadowed a rebound in consumer spending.[19] Consumers played a significant role in the contracting economy as they cut back spending in the face of rising unemployment, falling home values, and shrinking investments.

In difficult economic conditions, many consumers will seek to reduce discretionary spending by forgoing purchase of some products or services. Telecommunications providers can be affected not only by lower demand for their services, but also by the availability of capital. Florida ILECs lost approximately 1 million access lines, or roughly 12 percent of their wireline market in 2008. Competitive carriers lost approximately 49,000 access lines. This loss represents a five percent decline in the CLEC wireline market. Some carriers, such as AT&T, have stated that their wireline losses have been offset to some extent by increases in wireless services.[20]

Increased wireless subscription is consistent with data indicating that the percentage of households with wireless-only service has increased. A small, but growing segment of the wireless market is the prepaid market. Consumers' purchases of prepaid phone service grew 13 percent in North America last year.[21] This rate is nearly three times faster than for traditional cell phone plans. Prepaid consumers pay up front for their phones, and they do not have long-term commitments with the service provider. Several companies have begun offering prepaid plans for $50 that includes unlimited voice and data usage.[22]

Florida's economy has also struggled during this time. In March 2009, the unemployment rate in Florida reached 9.7 percent. According to data from the U.S. Department of Labor, Florida's unemployment rate has not been this high since March 1976.[23]

Data shows that through November 2008 there has been a decline in the number of U.S. residents migrating to Florida.[24] While less U.S. residents are moving to Florida, there are more Floridians moving to other states.[25] Some have speculated that this decline may be due in part to the nationwide housing slump, making it difficult for residents in other states to sell their homes

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newsreleases/national/gdp/gdpnewsrelease.htm>, accessed on May 29, 2009.

[19] "Gross Domestic Product Percent Change from Preceding Period," U.S. Department of Commerce News Release, May 29, 2009, <http://www.bea.gov/national/index.htm>, accessed on May 29, 2009.

[20] AT&T Forum 10-K, December 31, 2008, EX-13, p. 15, <http://www.sec.gov/Archives/edgar/data/732717/000073271709000007/ex13.htm>, accessed on June 12, 2009.

[21] Jenna Wortham, "More Customers Give Up the Cellphone Contract," *The New York Times*, February 21, 2009, <www.nytimes.com/2009/02/21/technology/21prepaid.html>, accessed on February 26, 2009.

[22] Craig Moffett, "U.S. Wireless: Pre-Paid Pricing . . . Fifty is the New One Hundred," *Bernstein Research*, April 14, 2009.

[23] "Local Area Unemployment Statistics: Unemployment Rates, Seasonally Adjusted: Historical Data: Florida," U.S. Department of Labor, Bureau of Labor Statistics, updated April 2009, <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>, accessed on May 18, 2009.

[24] Luis F. Perez, John Maines, "Non-Hispanic whites leaving Broward, Palm Beach County in large numbers," *South Florida Sun-Sentinel*, August 7, 2008, http://www.sun-sentinel.com/news/local/southflorida/sfl-flbcensus0807sbaug07,0,6220529,print.story, accessed June 12, 2009.

[25] Haya El Nasser, "Fewer Americas move out of state," *USA Today*, December 30, 2008, <http://www.usatoday.com/news/nation/2008-12-30-moving_N.htm>, accessed June 12, 2009.

to move to Florida. The reduction was offset by a net gain of 77,000 new international residents to the state.[26]

In February 2009, the President signed the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA included funding of more than $7 billion for loans and grants to create broadband deployment incentives and increase adoption by consumers. The $7 billion in funding was divided between the National Telecommunications and Information Administration (NTIA)[27] and the Rural Utilities Service (RUS)[28] for distribution. Several telecommunications experts have expressed skepticism regarding whether this part of the ARRA will effectively stimulate the economy. The concern relates to the length of time it will take to approve projects and create new employment opportunities.[29] The first disbursement of stimulus funding is not expected before the last quarter of 2009.

B. INCUMBENT WIRELINE

AT&T, Verizon, and Embarq are the largest ILECs providing service in Florida. All of these providers experienced access line loss in both residential and business segments of the wireline market. Nationally, AT&T reported losses of approximately four million local phone lines from the end of 2007 to 2008. Residential lines fell 12.6 percent during this period, while business lines dipped 4.3 percent.[30] Residential lines fell by 14.9 percent for AT&T in Florida, and business lines dropped 7.7 percent.[31] Despite these access line losses, nationally AT&T was able to report overall revenue growth for 2008 due to wireless and data services.[32] AT&T's C.E.O, Randall Stephenson, has stated that the decline in landline is inevitable. The *Wall Street Journal* has quoted him as saying: "You could try to hold back the tide, but that's a very frustrating proposition. Or you could say, let's get ahead of the market; let's get ahead of the mobility curve."[33] AT&T's mobile phone revenue increased 14.7 percent, or $5.7 billion, from 2007 to 2008. Revenue from the mobile phone market represents more than a third of the company's overall revenue.[34] Total operating revenues for the first quarter of 2009 declined by less than one percent when compared to the previous year.[35]

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[26] Mike Schneider, "Census: More people leaving Florida than moving in," *Orlando Sentinel*, April 22, 2009, <http://www.orlandosentinel.com/news/local/breakingnews/orl-bk-florida-population-042209,0,6598614.story>, accessed on May 18, 2009.

[27] The NTIA is an agency in the U.S. Department of Commerce that serves as the executive branch agency principally responsible for advising the President on telecommunications and information policies.

[28] The RUS is one of three agencies that are part of the United States Department of Agriculture's Rural Development Bureau.

[29] Ted Gotsch, "Industry experts see problems with broadband stimulus," *TR Daily*, May 4, 2009.

[30] AT&T Forum 10-K, December 31, 2008, EX-13, p. 12, <http://www.sec.gov/Archives/edgar/data/732717/000073271709000007/ex13.htm>, accessed on June 12, 2009.

[31] Responses to Local Competition Data Request for 2008 and 2009.

[32] AT&T Forum 10-K, December 31, 2008, EX-13, p. 4, <http://www.sec.gov/Archives/edgar/data/732717/000073271709000007/ex13.htm>, accessed on June 12, 2009.

[33] Amol Sharma, "AT&T CEO on Apple, Google and Air Travel," *The Wall Street Journal*, April 14, 2009, <http://blogs.wsj.com/digits/2009/04/14/att-ceo-on-apple-google-and-air-travel/>, accessed on May 22, 2009.

[34] AT&T Inc., Form 10-K, December 31, 2009, p. 6, <http://www.sec.gov/Archives/edgar/data/732717/000073271709000007/ye10k08.htm>, accessed on June 12, 2009.

[35] AT&T Inc., Form 10-Q, March 31, 2009, p.2, <http://www.sec.gov/Archives/edgar/data/

Similarly, Verizon had lost approximately five million access lines nationally by the end of 2008.[36] In Florida, Verizon experienced access line losses that are comparable to that of AT&T in the residential and business markets.[37] However, Verizon increased its number of wireline broadband subscribers by six percent and doubled its number of FiOS[38] TV customers to almost two million throughout its national footprint.[39] With the conclusion of its acquisition of Alltel, Verizon Wireless now serves more than 80 million customers, making it the largest wireless service provider in the U.S. in terms of total number of customers.[40] During 2008, revenues from wireless, broadband, and video services offset declining revenue in the traditional wireline voice market. As a result, total revenues for 2008 increased 4.2 percent. Total operating revenue for the first quarter of 2009 increased 11.6 percent when compared to a year earlier.[41]

Embarq lost approximately 600,000 switched access lines in the U.S in 2008. This figure represents a 9.8 percent loss in access lines.[42] Embarq's residential access line loss in Florida was 13.2 percent, while access line losses for business fell only 7.5 percent. Embarq experienced increased revenue from data services; however, the increase was not enough to offset the fall in revenues from its wireline voice services. As a result, Embarq's net operating revenues declined eight percent nationally.[43] Unlike AT&T and Verizon, Embarq must rely on reselling wireless and video services provided by other companies. As of December 31, 2008, approximately 297,000 of their customers also subscribed to Embarq's resold video services.[44] Wireless services are offered through a wholesale arrangement with Sprint Nextel, although Embarq is phasing out its wireless business. Embarq has curtailed most of its wireless sales activities while continuing to serve active customers.

Rural carriers also experienced contraction in their respective markets. In the aggregate, rural carriers in Florida saw their access lines fall by seven percent in 2008. In Florida, Windstream is the largest of the "rural" ILECs. As of December 31, 2008, Windstream served more than 3 million communications customers in 16 states. Additionally, Windstream provides data services to approximately one million high-speed Internet customers.[45] Total access lines

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732717/000073271709000016/att1q0910q.htm>, accessed on June 12, 2009.

[36] Verizon Communications Inc., Form 10-K, December 31, 2008, p. 10, <http://www.sec.gov/Archives/edgar/data/732712/000119312509036349/d10k.htm>
and Verizon Communications Inc., Form 10-K, December 31, 2007, p. 5, <http://www.sec.gov/Archives/edgar/data/732712/000119312508042027/d10k.htm>, accessed on June 12, 2009.

[37] Response to Local Competition Data Request for 2008 and 2009.

[38] Verizon's trademark name of its fiber-to-the-home package of services.

[39] Verizon Communications Inc., Form 10-K, December 31, 2008, p. 10, <http://www.sec.gov/Archives/edgar/data/732712/000119312509036349/d10k.htm>, accessed on June 12, 2009.

[40] Ibid, p. 3.

[41] Verizon Communications Inc., Form 10-Q, March 31, 2009, p. 16, <http://www.sec.gov/Archives/edgar/data/732712/000119312509107317/d10q.htm>, accessed on June 12, 2009.

[42] Embarq Corporation, Form 10-K, December 31, 2008, p. 26, <http://www.sec.gov/Archives/edgar/data/1350031/000119312509028860/d10k.htm>, accessed on June 12, 2009.

[43] Ibid, p. 31.

[44] Ibid, p. 4. Embarq sells video services through sales agency relationships with DIRECTV for certain business customers and DISH Network Corporation for residential customers.

[45] Windstream Corp., Form 10-K, December 31, 2008, p. 4, <http://www.sec.gov/Archives/edgar/data/1282266/000119312509032904/d10k.htm>, accessed on June 12, 2009.

nationwide declined by approximately 44,000, or 5.3 percent, in 2008.[46] The company also reported that total revenues for the first quarter of 2009 were down 5.6 percent. Other rural carriers, such as FairPoint Communications (FairPoint), have been able to increase revenues from other services, including broadband, to offset reductions from traditional wireline voice service. In the first quarter of 2009, FairPoint was able to increase its total revenue nationwide by ten percent, even while revenue from local calling services declined by two percent.[47] Smaller wireline carriers have been able to adapt their networks to provide consumers with services they want, even as competitive and economic pressures increase.

1. Mergers / Acquisitions

Nationally, merger and acquisition activity for telecommunication carriers peaked in 2006 with more than 90 companies consolidating their networks and management.[48] Sixty-three mergers and acquisitions occurred in 2008.[49] Future merger activity may face greater scrutiny than during the previous administration. The Obama administration has announced its desire for a more aggressive posture on issues relating to antitrust enforcement.[50] Notable transactions of interest to Florida for 2008/2009 are described below.

a. Embarq / CenturyTel

On October 26, 2008, CenturyTel, Inc. (CenturyTel) agreed to acquire Embarq in a stock-for-stock transaction that CenturyTel expects to complete in the second quarter of 2009. By the end of 2008, CenturyTel operated approximately 2 million telephone access lines, primarily in rural areas and small to mid-size cities in 23 states. More than 68 percent of CenturyTel's lines are located in Missouri, Wisconsin, Alabama, Arkansas, and Washington.[51] Embarq serves approximately 5.7 million access lines nationwide, with a significant presence in Florida, North Carolina, Nevada, and Ohio.[52] By the end of 2008, Embarq had 1.5 million access lines in Florida.[53] All of the affected 33 state regulatory agencies have approved the merger.[54] The FPSC approved the joint application for the transfer of control of Embarq to CenturyTel on

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[46] "Windstream Reports First-Quarter Earnings Results," Windstream News Release, May 8, 2009, <http://www.windstream.com/about/NewsDetail.aspx?NewsID=117>, accessed on May 14, 2009.

[47] FairPoint Communication, Form 10-Q/A, March 31, 2009, p. 7. <http://www.sec.gov/Archives/edgar/data/1062613/000104746909005282/a2192974z10-qa.htm>, accessed on June 12, 2009.

[48] FCC, "2006 Completed Domestic Section 214 Transfer of Control Transactions," updated February 3, 2009, <http://www.fcc.gov/wcb/cpd/214Transfer/214completed2006.html>, accessed on April 20, 2009.

[49] FCC, 2008 Completed Domestic Section 214 Transfer of Control Transactions, <http://www.fcc.gov/wcb/cpd/214Transfer/214completed2008.html>, accessed on April 20, 2009.

[50] Elizabeth Williamson and Matthew Karnitschnig, "U.S. Signals More Scrutiny of Mergers, Antitrust," *The Wall Street Journal*, May 12, 2009, <http://online.wsj.com/article/SB124204508513206525.html>, accessed on May 15, 2009.

[51] CenturyTel, Inc., Form 10-K, December 31, 2008, p. 4, <http://www.sec.gov/Archives/edgar/data/18926/000001892609000008/form10-k.htm>, accessed on June 12, 2009.

[52] Embarq Corporation, Form 10-K, December 31, 2008, pp. 2-3, <http://www.sec.gov/Archives/edgar/data/1350031/000119312509028860/d10k.htm>, accessed on April 20, 2009.

[53] Embarq's Redacted Response to FPSC's 2009 ILEC Local Competition Data Request.

[54] Kevin Olin, "CenturyTel and Embarq Receive All Necessary State Approvals for Merger," Embarq Press Release, May 29, 2009, http://www.centurytelembarqmerger.com/pdf/pressreleases/WA%20and%20PA%20FINAL%205_29_09.pdf, accessed on June 1, 2009.

March 23, 2009.[55] The FCC approved the merger with conditions on June 25, 2009.[56] The merged company agrees not to increase special access for a year and provides CLECs with a period of stability in their interconnection agreements. The broadband commitment promises 100 percent coverage for single-line residential and business lines, with 90 percent to be reached using wireline technologies within three years.[57] The broadband-speed commitments include promises to reach 87 percent of lines with 1.5 Megabits per second (Mbps) within two-years and 78 percent of lines with 3 Mbps.[58] CenturyTel announced that the newly merged company will be called CenturyLink and plans on using the name immediately after the closing of the merger transaction.[59] For the purposes of this report, we will continue to refer to the company as Embarq.

b. Alltel / Verizon Wireless

The FCC approved the transfer of control of Alltel to Verizon Wireless on November 4, 2008.[60] Once completed, Verizon Wireless will be the nation's largest wireless carrier, surpassing AT&T in wireless subscribers.[61] Alltel serves more than 13 million customers in 34 states, including 57 primarily rural markets that Verizon Wireless does not serve. The approval of this merger was conditioned on:

- Divestiture of assets in 100 markets (all outside Florida).[62]
- Extension of existing roaming commitments to competitive wireless providers for 4 years.
- Acceptance of a 5-year phase out of high-cost universal service support received.
- Implementation of improved wireless E911 location accuracy measures within 2 years.

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[55] FPSC Order No. PSC-09-0126-PAA-TP, Docket No. 080692-TP, Joint application for approval of indirect transfer of control of telecommunications facilities by Embarq Corporation, CenturyTel, Inc., Embarq Florida, Inc., and Embarq Payphone Services, Inc., issued March 3, 2009.

[56] FCC 09-54, WC Docket No. 08-238, Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., Memorandum Opinion and Order, June 25, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-54A1.pdf>, accessed June 25, 2009.

[57] Ibid, Appendix C.

[58] Ibid.

[59] "CenturyTel and EMBARQ Receive All Necessary State Approvals for Merger," CenturyTel Press Release, May 29, 2009, <http://ir.centurytel.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1293827&highlight=>, accessed on June 1, 2009.

[60] FCC 08-258, WT Docket No. 08-95, Applications of Cellco Partnership d/b/a/ Verizon Wireless and Atlantis Holding LLC, Memorandum Opinion and Order and Declaratory Ruling, released November 10, 2009.

[61] Ibid. ¶ 6.

[62] AT&T has purchased the spectrum licenses and cell towers in 79 of these markets in a deal that is expected to close in the fourth quarter of 2009.

c. Verizon / Frontier

Verizon has entered into an agreement to sell its wireline network in 14 states to Frontier.[63] The transaction has been approved by the Boards of Directors of Frontier and Verizon, and is expected to be completed within approximately 12 months, contingent upon regulatory approvals. This transaction is similar to Verizon's deal to sell network assets and local exchanges to FairPoint last year. Upon completion, Frontier will become the nation's fifth largest ILEC. Both Frontier and Verizon are incumbent providers in Florida; however, this transaction does not directly affect their Florida operations.[64]

d. Birch / Cleartel

In May 2009, Birch Communications announced a definitive agreement to acquire the customers and network assets of Cleartel Communications.[65] Included in the acquisition are over 50,000 business and residential access lines in Florida.[66] The transaction is expected to close in the third quarter of 2009 and is subject to, among other conditions, receipt of approvals of the FCC and 22 applicable state regulatory authorities.

C. WIRELESS

The wireless market in 2008 was shaped by the mainstream adoption of smartphones, the growing acceptance of prepaid wireless options, and the decline in the price of service plans and equipment. Wireless subscription continued to expand through the first quarter of 2009, but at a decreasing rate. One market analyst pegged the rate of decline at 34 percent for the fourth quarter of 2008.[67] The rate of growth declined sharply throughout 2008, suggesting that market saturation, predicted by many market analysts in early 2008, may finally be reflected in reported results. In addition to market saturation, the slowdown in the U.S. economy also likely contributed to the decline in the rate of wireless subscription growth, especially in the second half of 2008 and the first six months of 2009.

The wireless industry has thus far managed to counter negative market indicators through the introduction of smartphones and through decreased prices. In the first quarter of 2009, AT&T's wireless business experienced a 9.6 percent growth in subscribers from the first quarter of 2008.[68] Approximately three-fourths of those new subscribers chose the iPhone.[69] Verizon

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[63] David Whitehouse, "Frontier Communications to Acquire Verizon Assets Creating Nation's Largest Pure Rural Communications Services Provider," Frontier Press Release, May 13, 2009, <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MzM3NTc3fENoaWxkSUQ9MzIyMTk2fFR5cGU9MQ==&t=1>, accessed on May 15, 2009.

[64] Frontier will acquire Verizon access lines in Arizona, Idaho, Illinois, Indiana, Michigan, Nevada, North Carolina, Ohio, Oregon, South Carolina, Washington, West Virginia, and Wisconsin as well as some assets in California.

[65] Allan Samson, "Birch Communications Announces Acquisition of Cleartel Communications' Customer and Network Assets," May 12, 2009, <http://www.birch.com/about/05122009.aspx>, accessed on June 3, 2009.

[66] Responses to the FPSC 2009 Local Competition data request by subsidiaries of Cleartel Communications.

[67] Craig Moffet, "U.S. Wireless '09: A Recipe for Disaster?" [Conference Call Transcript], Bernstein Research, March 25, 2009, p. 3.

[68] "AT&T's First-Quarter Results Highlighted by Wireless Gains, U-verse TV Growth, Double-Digit Increase," AT&T Press Release, April 22, 2009, <http://www.att.com/Investor/Financial/Earning_Info/docs/Supp_IB_1Q09.xls>, accessed on May 13, 2009.

Wireless also experienced first quarter subscribership growth of 8.9 percent from the fourth quarter of 2008, some of which was attributable to new BlackBerry Storm subscribers.[70]

Price decreases have occurred not only through increased subsidies for equipment, but also through reductions in prices for unlimited calling plans, both pre- and postpaid. Sprint has led the industry in handset subsidies, increasing subsidies from approximately $60 per handset at the beginning of 2008 to more than $112 per handset by year end.[71] Subsequently, AT&T reduced the price of the iPhone to $199, effectively forcing Verizon to price the BlackBerry Storm in the same range. Some smartphones, including the LG View and other keyboard equipped phones can now be purchased for as little as $49.99.[72] Postpaid plans usually require service contracts and may require repayment of equipment subsidies and/or early termination fees to discontinue the contract.

Prepaid wireless offerings by Leap Wireless and MetroPCS offering unlimited calling for $50 per month, are pressuring mid-tier carriers like Sprint and T-Mobile. T-Mobile has matched these plans with a $50 unlimited plan of its own, but only for existing T-Mobile customers. Boost Mobile, Sprint's prepaid affiliate, also offers an unlimited $50 plan. At the high end of the market, Sprint initiated the $99 unlimited everything plan, and Verizon Wireless and AT&T have each responded with similar plans.

While growth in the wireless sector has continued, it seems increasingly likely that the market is nearing the end of its expansionary phase. Sprint experienced significant subscriber losses over the last several years but managed through its aggressive pricing strategies to stabilize customer loss in the most recent quarter. According to one analyst, Sprint leads the industry in handset subsidies and has been forced to slash prices for both high volume consumers and budget conscious prepaid consumers.[73] Prepaid providers Leap Wireless and MetroPCS have expanded their market shares and are also aggressively pursuing a shrinking pool of available new subscribers. It is unlikely that every wireless carrier can sustain subscriber growth through the remainder of 2009.[74]

Despite declining growth rates in wireless subscribership, the Centers for Disease Control (CDC) recently reported that wireless-only households reached 20.2 percent as of December 2008, an increase of 2.7 percentage points since the first half of 2008. This increase is the largest six-month change since the CDC began collecting data on wireless substitution in 2003. In

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[69] Peter Svensson, "AT&T earnings fall, but iPhone helps it beat estimates," *USA Today*, April 22, 2009, <http://www.usatoday.com/money/companies/earnings/2009-04-22-att_N.htm>, accessed on May 12, 2009.

[70] "Verizon Wireless – Pro Forma Selected Financial Results and Operational Metrics," April 27, 2009, <http://investor.verizon.com/financial/quarterly/index.aspx >, accessed on May 13, 2009.

[71] Craig Moffet, "U.S. Wireless '09: A Recipe for Disaster?" [Conference Call Transcript], Bernstein Research, March 25, 2009, p. 16.

[72] Ibid, p. 17.

[73] Ibid, p. 16-17.

[74] Ibid, p. 30.

addition, the CDC reported that 14.5 percent of U.S. households with both a landline and wireless phone received all or almost all calls on a wireless phone.[75]

As wireless providers invest in future network capabilities to meet the growing demand for mobile data services, there is an increasing likelihood of a transition to Internet Protocol or IP-based wireless voice services. Gartner, Inc., a market research company, predicts that "over time traditional network-based mobile carriers face the real prospect of losing a major slice of their voice traffic and revenue to new non-infrastructure players that use VoIP."[76] A number of third party providers, including Skype, Truphone, and fring,[77] have begun offering VoIP service via mobile phones using Wi-Fi and/or the carriers' own wireless voice networks. Gartner suggests that the implementation of 4G networks[78] and open architecture networks will provide the springboard for entirely IP-based mobile services in the future.[79] The rollout of 4G on a widespread basis sufficient to support end-to-end IP-based voice service is likely five to eight years away. Efficiencies and cost savings generated by IP-based services will be a major factor driving the transition.[80]

D. VOICE OVER INTERNET PROTOCOL

Voice over Internet protocol (VoIP) trends identified in the 2008 edition of this report established that cable telephony providers were the leaders in residential VoIP subscribership. Growth for over-the-top providers, such as Vonage, slowed dramatically. Cable providers currently dominate the VoIP market, so much so that Comcast surpassed Embarq to become the third largest residential voice communications provider in the U.S. as of the first quarter of 2009.[81] In addition, several large cable providers, including Comcast and Bright House, are now actively pursuing medium and small business customers in an effort to increase growth opportunities.

The news worsened for Vonage in the first quarter of 2009 as it lost 6,000 net subscriber lines and finished the quarter with 2.6 million lines in service.[82] Contributing to the struggles of

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[75] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

[76] "Gartner Says Mobile VoIP Poses a Huge Challenge for Traditional Mobile Voice Providers," Gartner, Inc. Press Release, May 5, 2009, < http://www.gartner.com/it/page.jsp?id=963712>, accessed on May 15, 2009.

[77] fring (spelled with a small f) is a trademarked name for a mobile Internet company offering IP-based voice, text, chat, and other IP-based communications services, <http://www.fring.com/>, accessed on May 28, 2009.

[78] Worldwide interoperability for microwave access (WiMAX) and Long Term Evolution (LTE).

[79] "Gartner Says Mobile VoIP Poses a Huge Challenge for Traditional Mobile Voice Providers," Gartner, Inc. Press Release, May 5, 2009, < http://www.gartner.com/it/page.jsp?id=963712>, accessed on May 15, 2009.

[80] Doug Mahoney, "Gartner: More than 50% of mobile voice traffic will be VoIP by 2019," May 6, 2009, <http://www.fiercevoip.com/story/gartner-more-50-mobile-voice-traffic-will-be-voip-2019/2009-05-06>, accessed on May 14, 2009.

[81] "Comcast Now the Third Largest Residential Phone Services Provider in the U.S.," Comcast Press Release, March 11, 2009, <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=1265311&highlight=>, accessed on March 13, 2009.

[82] "Vonage Holdings Corp. Reports First Quarter 2009 Results," Vonage News Release, May 7, 2009, <http://files.shareholder.com/downloads/VAGE/640909879x0x293039/3fb93742-acea-41b0-af0f-3deaa57e765c/Press_release_Q109_FINAL_07MAY09.pdf>, accessed on May 14, 2009.

Vonage and other over-the-top providers is the fact that the price of cable VoIP offerings have dropped, especially when bundled with video and broadband services. In addition, cable VoIP service is more widely available as a competitive option than two years ago at the peak of Vonage's popularity. When the price of separate broadband service necessary for Vonage subscribers is factored into the price of Vonage's service, the amount of savings is much less than several years ago.

Traditional telecommunications providers are also redirecting and intensifying efforts relating to VoIP service. AT&T discontinued CallVantage, its Internet-based VoIP service, but has begun offering U-verse Voice service through its U-verse offering, as well as HomeManager, a data/voice interface device for the home similar to a smartphone. Verizon has also discontinued VoiceWing, its over-the-top VoIP offering, and Verizon Wireless has begun offering Verizon Hub ~~to its FiOS customers~~. Verizon Hub is a media phone service, similar to AT&T's HomeManager, that can be used with any broadband connection.

E. BROADBAND

This year, President Obama signed the ARRA. As part of the ARRA, Congress provided more than $7 billion for grants and loans to stimulate broadband deployment and adoption. This funding was divided between the NTIA and the RUS for distribution. In addition, the FCC is required to develop a national broadband plan by February 17, 2010. All of these federal agencies are working together to develop policy that will help all participants direct their efforts in a productive manner. Furthermore, the FCC has taken action to collect more detailed information regarding areas where broadband is currently available and at what speeds.[83]

Just as wireless voice service became a significant segment of the voice market, wireless broadband services represent an important component of the data market. Continued innovations in handsets such as smartphones and applications have helped increase sales, even in a declining economy. Most notable of these handsets is the iPhone, which was further refined this year.[84] In addition, the underlying technology to deliver such services is evolving. Both Verizon and AT&T have announced the adoption of LTE wireless transmission standards that promise to provide significantly faster wireless data speeds than what is currently available.[85]

Traditional telecommunications providers continue to deploy fiber optic cable further into their networks to compete with cable companies for broadband customers. Such investments in infrastructure are designed to increase the ability to provide faster broadband speeds and enable applications such as video services. Carriers have adopted different strategies depending on their

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[83] FCC 08-148, WC Docket No. 07-38, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Order on Reconsideration, released June 12, 2008.

[84] Released July 11, 2008, the iPhone 3G supports faster 3G data speeds and the Assisted Global Positioning System compared to the original iPhone. On March 17, 2009, Apple announced the iPhone firmware version 3.0, due to be released in mid-2009.

[85] Published estimated LTE data speeds indicate that it would be up to 100 Megabits per second (Mbps). Erik Palm, "4G Race Gaining Speed, Data Says," March 5, 2009, <http://news.cnet.com/8301-1035_3-10190218-94.html?tag=newsEditorsPicksArea.0>, accessed on March 10, 2009.

market characteristics. AT&T has adopted a strategy to deploy fiber facilities to a node within a neighborhood, whereas Verizon has been deploying fiber to the consumer's home. In order to compete with faster data speeds offered by traditional telephone companies, cable companies have also had to invest in network improvements. A more detailed discussion of broadband and broadband technologies can be found in Chapter IV.

F. Regulatory Factors

Changes to state and federal regulatory policy, as well as changes in state and federal law, continue to influence telecommunications markets. While there may not be immediate measurable impacts on the Florida telecommunications market because of these changes, the changes are significant because they signal a growing recognition by regulatory and legislative bodies of the changing nature of the telecommunications industry.

1. Federal

The FCC was in a state of transition beginning in 2008. The term of one Commissioner expired at the end of the year. As a result of the Presidential election in November, the Chairman of the Commission and a majority of Commissioners will be Democratic appointees for the next four years. Chairman Martin resigned as of January 20, 2009. In addition, the FCC was focused on the transition to digital television and the reallocation of spectrum related to analog broadcast television. Consequently, FCC actions in the second half of 2008 were limited to noncontroversial items for which an easy majority could be achieved.

Since the last report, the FCC has not finalized comprehensive reform of either the Universal Service program or intercarrier compensation (ICC). Each of these proceedings has lasted multiple years with numerous comment cycles. On November 5, 2008, the FCC released an Order on Remand and sought comment on three options to amend the Universal Service High-Cost Support mechanism.

This order was intended to represent a more comprehensive reform of both the High-Cost programs and existing ICC mechanisms. However, as reflected in the separate Commissioners' comments, the FCC was not able to form a consensus regarding these issues. In addition, significant pressure from Congress and interested parties provided the impetus for the FCC to put its new ICC proposal out for comment. Reluctantly, the Chairman acquiesced, and the resulting order narrowly addressed the D.C. Circuit Court of Appeals' remand of the FCC's rules regarding ICC paid to Internet service providers.

Congress, by comparison, expanded the role of the FCC, NTIA, and RUS to stimulate broadband deployment and adoption. In the "Food, Conservation, and Energy Act of 2008," Congress directed the FCC, in consultation with the Department of Agriculture, to develop a comprehensive rural broadband strategy. This directive was expanded within the ARRA, which mandated that the FCC must deliver a national broadband plan to Congress on February 17, 2010. The FCC issued a Notice of Inquiry (NOI) to seek comment on the development of the

broadband policy.[86] Acting FCC Chairman Copps released a report to Congress outlining a rural broadband strategy on May 22, 2009.[87] This rural broadband strategy will act as a precursor to the development of the national broadband strategy mandated by ARRA. These issues are discussed in more detail in Chapter VII.

2. State

The FPSC addressed a petition by Verizon, AT&T, Embarq, TDS Telecom, and Windstream (Petitioners) regarding the adoption of a new rule on competition, and to clarify, repeal, or amend numerous FPSC rules.[88] The new proposed rule included a market competition test that would trigger streamlined regulation of price-cap ILECs.[89] During the proceeding, the Petitioners withdrew their request for the new rule as well as amendments to or repeal of seven other rules. In response to the petitions, the Commission exempted the price-regulated ILECs from 33 rules, repealed 16 rules, amended 20 rules, and took no action on 1 rule.

Governor Crist signed a bill into law on June 24, 2009, (CS/CS/SB 2626), which makes reforms to the existing regulatory framework for telecommunications. The bill redefines basic service to include only single-line, flat-rate residential service. ~~Any additional~~The addition of nonbasic features or unregulated services, either priced individually or as part of a combination of services (including unregulated services), are reclassified as nonbasic. Affected consumers will not have the same degree of price[90] or service quality protection[91] that was previously available for basic service. All customers who subscribe to single-line business service are also redefined as nonbasic. In addition, the bill expands the income eligibility criterion for Lifeline services for the three largest ILECs from 135 percent to 150 percent of the federal poverty guidelines. The bill also designates the Department of Management Services (DMS) as the primary agency for the purpose of coordinating the development of a broadband strategy for Florida. Additional information on these topics can be found in Chapter VI.

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[86] FCC 09-31, GN Docket No. 09-51, A National Broadband Plan for Our Future, Notice of Inquiry, released April 8, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-31 A1.pdf>, accessed on April 23, 2009.

[87] Michael J. Copps, "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," FCC, May 22, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf>, accessed on May 28, 2009.

[88] Rulemaking Dockets 080159-TP, Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by 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., and 080641-TP, Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

[89] Streamlined regulation would be triggered when two-thirds or more of the households in the market have access to at least three different providers using any local service access alternative.

[90] Consumers are subject to a maximum 10 percent rate hike in a 12-month period. Previously, the level of a rate increase in any 12-month period was limited to the change in inflation less 1 percent. Basic customers as of July1, 2009 will be grandfathered under previous provisions.

[91] The FPSC will no longer have authority to resolve service quality complaints of nonbasic customers.

CHAPTER III. STATUS OF WIRELINE COMPETITION IN FLORIDA

A. WIRELINE ACCESS LINES IN FLORIDA

1. 2008 Summary of Results

Traditional wireline access lines, ILEC and CLEC combined, declined 30 percent, from approximately 12 million in 2001 to 8.4 million as of December 2008. The decline began in 2001, and has occurred each year except for a slight gain in 2004. Through December 2008, residential access lines have declined by approximately 3.6 million lines, to a combined CLEC and ILEC total of 4.8 million. A decline of more than 828,000 residential lines occurred in 2008. Combined wireline residential access lines have declined by 42 percent since 2001.[92]

Combined ILEC and CLEC business access lines have decreased by approximately 132,000 lines, to a total of 3.6 million lines, from May 2001 to December 2008, a decrease of approximately 4 percent. Between June 2001 and June 2006, business access lines increased slightly each year. Beginning in June 2007, business access lines began to decline and decreased by more than 220,000 lines between December 2007 and December 2008. All of the ILECs experienced business access line loss in 2008. During the same time period, CLECs gained more than 5,000 business lines, representing an increase of less than 1 percent. The last time business access line totals increased for CLECs was between June 2004 and June 2005.

The composition of ILEC and CLEC access lines served has also undergone a noticeable shift since 2001. As of December 2008, total ILEC business lines were 37 percent of total ILEC lines served, compared to 28 percent in 2001. CLEC business access lines were 87 percent of total CLEC access lines served, compared to 64 percent in 2008. This shift in composition is likely a result of multiple factors including increased competition for residential subscribers wireless and cable providers and a CLEC business strategy to target larger business customers in order to establish a foothold in the market.

2. Contributing Factors to Access Line Decline

The primary reason for the decline in residential access lines is the substitution of wireless and VoIP services for traditional wirelines. In addition, there may be lingering effects related to the restructuring in the CLEC residential market as a result of FCC decisions embodied in the Triennial Review Order (TRO) and Triennial Review Remand Order (TRRO) in 2005. The current recession has also likely contributed to the decline.

As addressed more thoroughly in Chapter IV, the FPSC estimates 1.6 million residential VoIP subscribers are in Florida as of December 2008. The growth of residential VoIP subscribers, especially for cable-provided voice, reflects mainstream acceptance of wireline VoIP telephone service as a viable substitute for traditional wireline service.

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[92] Market share calculations for 2007 were adjusted to correct a misclassification of lines. The impact on the business market share was immaterial.

3. CLEC Market Composition

Table 3-1 represents a distribution of the number of CLECs by ranges of residential access lines for 2007 and 2008. Two CLECs serve more than 20,000 residential access lines, representing approximately 47 percent of the CLEC residential market for 2008. Only 1 CLEC serves between 10,000 and 20,000 residential access lines. The 3 largest residential providers constitute 55 percent of the CLEC residential market. The remaining CLECs represent 45 percent of the residential CLEC market. There are 53 CLECs that serve less than 1,000 residential access lines each.

Despite the reduction in residential access lines served by CLECs, there is an increase in the number of CLECs reporting access line data from 65 in 2007 to 74 in 2008. CLEC access lines in the residential wireline residential market have continued to diminish as a result of intermodal competition and federal regulatory decisions that have altered CLEC business plans, as well as the declining economy.

Table 3-1. Summary of CLEC Residential Access Line Providers

Number of Lines	2007		2008	
	Number of Providers	% of Total CLEC Res Lines	Number of Providers	% of Total CLEC Res Lines
20,000 +	3	65	2	47
10,000 - 20,000	0	0	1	8
1,000 - 10,000	22	28	18	32
Less than 1,000	40	7	53	13

Source: Responses to 2009 FPSC data requests.

B. Wireline Market Share And Access Lines

Charts and graphs in this section of the report show a gap in 2007 data due to a statutory change in the timeline of the report. Data collected for this year's edition of the report is as of December 31, 2008.[93]

Graphic figures and tables are arranged to provide market share, (expressed as a percentage), and actual line counts, (presented as raw numbers). Market share data are presented first followed by actual line counts.

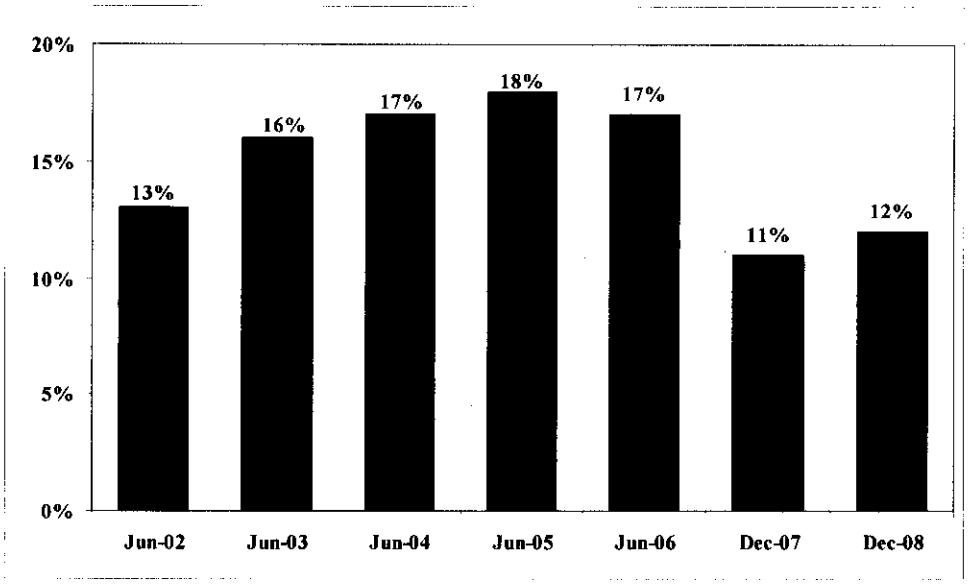
[93] The methodology for counting ILEC-affiliated CLEC access lines in the affiliated ILEC's territory changed starting with the 2008 report. The access lines of a CLEC related to AT&T, Verizon, or Embarq are accounted for as competitive lines only when those access lines are outside of the parent company's footprint.

1. CLEC Market Share

a. Florida

Calculations based on responses to the Commission's data request indicate the overall CLEC market share is 12 percent as of December 2008. Figure 3-1 provides the CLEC market share percentages for total access lines (combined residential and business lines) from 2002 through 2008.

Figure 3-1. Florida CLEC Market Share



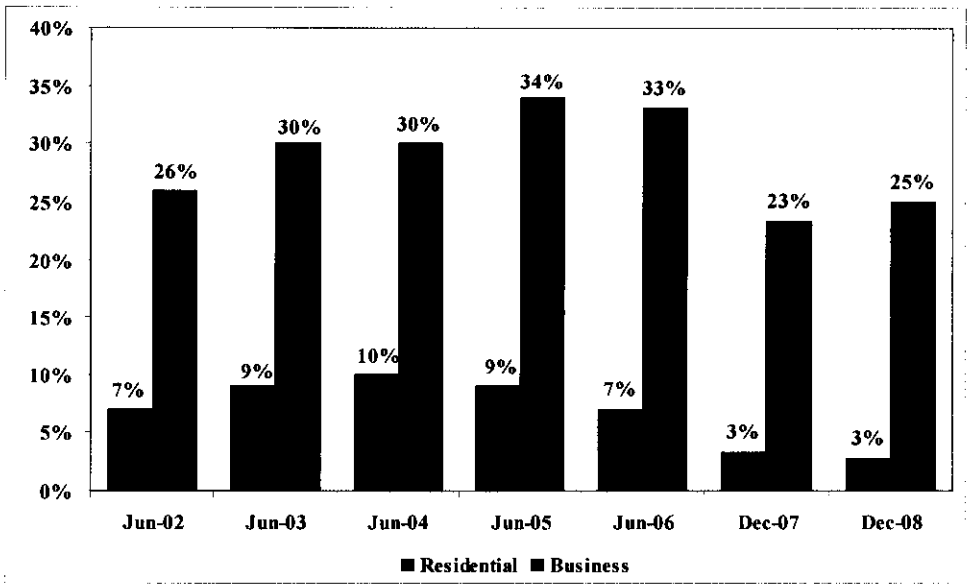
Source: Responses to 2002-2009 FPSC data requests.

Figure 3-2 shows the CLEC residential and business market shares for the same period.

- CLEC residential market share remained steady at 3 percent as of December 2008.
- CLEC business market share increased by 2 percentage points to 25 percent, up from 23 percent in 2007.

The market share percentages mask the fact that both ILEC and CLEC residential access lines declined over the reporting period. CLECs now have a larger share of a smaller residential wireline market.

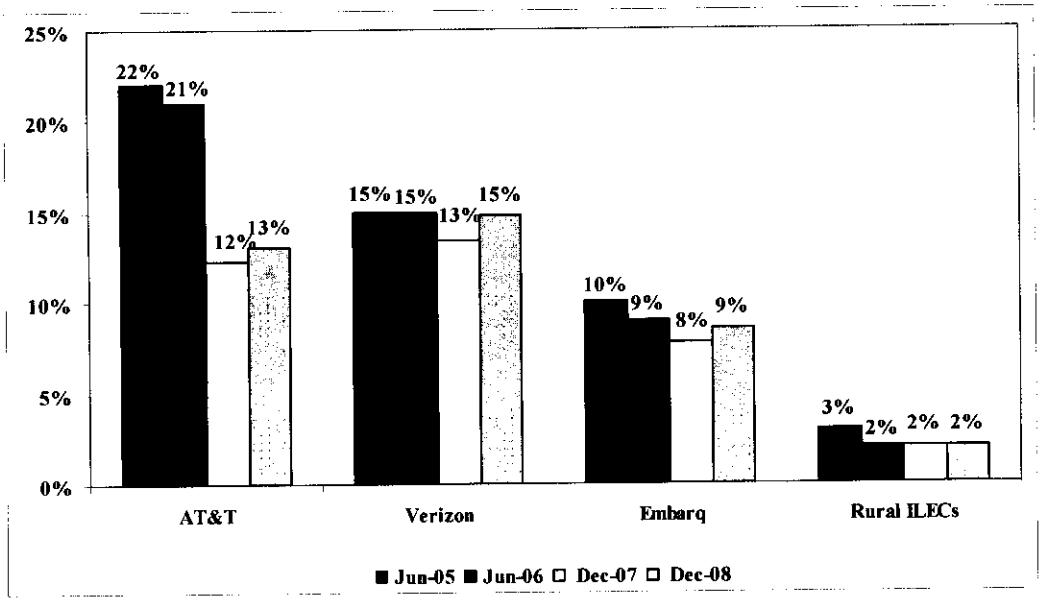
Figure 3-2. Florida Residential & Business CLEC Market Share



Source: Responses to 2002-2009 FPSC data requests.

Figure 3-3 displays the CLEC market share of combined residential and business lines within the service territories of AT&T, Verizon, Embarq, and the combined rural ILECs for 2005 through 2008. CLEC market share increased in AT&T, Embarq, and Verizon territories but remained relatively unchanged from last year in rural ILEC territories.

Figure 3-3. Florida CLEC Market Share by ILEC Service Territory



Source: Responses to 2005-2009 FPSC data requests.

b. National

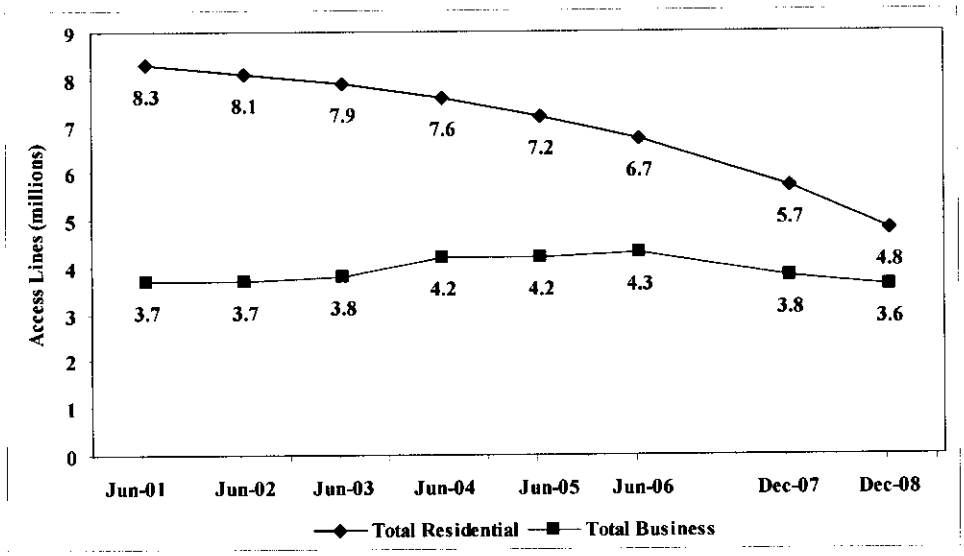
According to the FCC's most recent report on local competition, the nationwide CLEC market share was 18 percent as of December 31, 2007. The FCC reports Florida's CLEC market share at 13 percent as of December 2007, which is 2 percentage points greater than what the FPSC reports as of December 2007.[94]

[94] FCC, "Local Telephone Competition: Status as of December 31, 2007," September 2008, Table 8, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf>, accessed on May 15, 2009.

2. Access Line Overview

Based on responses to the FPSC's 2009 Local Competition data request, local exchange companies were serving approximately 8.4 million lines in Florida as of December 31, 2008, a decline of 3.6 million lines from June 30, 2001. As Figure 3-4 illustrates, the number of residential lines has declined every year since 2001. The number of business lines now appears to be declining, after a slight increasing trend from 2001 through 2006.

Figure 3-4. Florida Access Line Trends



Source: Responses to 2001-2009 FPSC data requests.

Table 3-2 displays the residential and business access line counts for ILECs and CLECs from 2005 to 2008. Between December 2007 and December 2008:

- Total access lines in Florida declined 11 percent.
- Total ILEC access lines decreased by 12 percent, reflecting a 14 percent decrease in residential lines and an 8 percent decrease in business lines.
- ILEC business access lines accounted for 37 percent of total ILEC lines in December 2008, compared to 28 percent in June 2001.
- CLEC business access lines accounted for 87 percent of total CLEC lines in December 2008, compared to 64 percent in June 2001.
- Total CLEC access lines decreased approximately 5 percent.

Table 3-2. Florida Access Line Comparison

	Res		Res	Change from '05-'06
ILECs	6,641,069		6,218,002	-4%
CLECs	629,869		453,039	-10%
Total	7,270,938		6,671,041	-5%

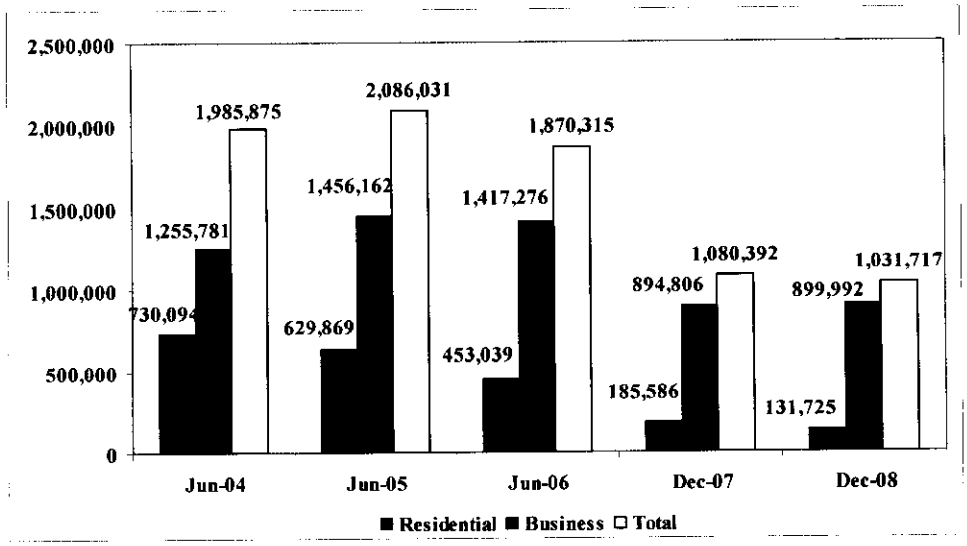
	Res		Res	Change from '07-'08
ILECs	5,428,994		4,654,512	-12%
CLECs	185,586		131,725	-5%
Total	5,614,580		4,786,237	-11%

Source: Responses to 2004-2009 FPSC data requests.

Figure 3-5 graphically displays CLEC access line counts from 2004 to 2008.

- CLEC residential access lines declined by almost 54,000 from December 2007 to December 2008, or 29 percent in 2008.
- CLEC business access lines increased by more than 5,000 from December 2007 to December 2008, or less than 1 percent.
- CLEC business access lines as a percentage of the total, increased to 87 percent, a 4 percent climb from 83 percent in 2007.

Figure 3-5. Florida CLEC Lines

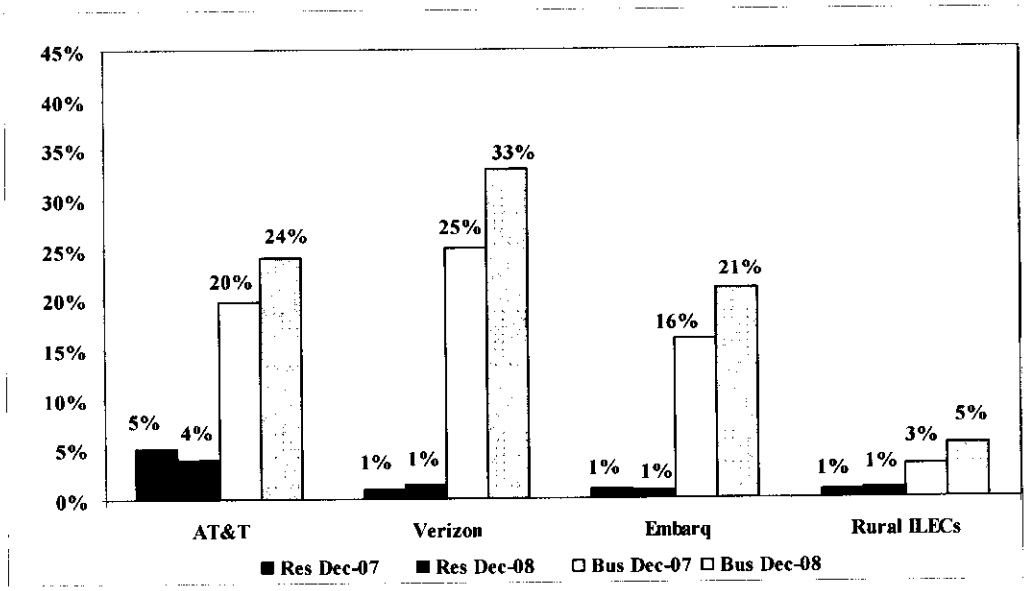


Source: Responses to 2004-2009 FPSC data requests.

3. CLEC Market Penetration by ILEC Territory

Figure 3-6 displays the CLEC residential and business wireline market share by ILEC territory for 2007 and 2008. CLEC residential market shares declined in AT&T's territory and remained relatively static in the territories of Verizon, Embarq, and the rural ILECs. CLEC business market share increased in all ILEC territories. CLECs have their highest penetration rates in the business market, with a 33 percent share in Verizon's territory, a 24 percent share in AT&T's territory, and a 21 percent share in Embarq's territory. A more thorough analysis of factors influencing where CLECs choose to offer services is contained in Chapter V, subsection 2.

Figure 3-6. Florida CLEC Residential & Business Market Share by ILEC Service Territory



Source: Responses to 2008-2009 FPSC data requests.

4. Competitive Presence by Exchange

Table 3-3 lists the five Florida exchanges with the greatest number of CLEC providers, all in AT&T's territory. Verizon's Tampa exchange and Embarq's Tallahassee exchange are listed for comparison. The number of CLEC residential providers increased from 2007 levels in all exchanges, and five out of the seven exchanges reflected an increase in CLEC business providers. The number of overall providers has increased in all exchanges. CLECs gained residential access lines in one of the seven exchanges and gained business access lines in two of the seven.

Table 3-3. Florida Exchanges with the Most CLEC Providers

Exchange	Rank by Total Access Lines	Residential		Business		Total CLECs	
		Dec-07	Dec-08	Dec-07	Dec-08	Dec-07	Dec-08
Miami	1	40	49	52	50	73	78
Orlando	6	41	47	47	51	70	77
Fort Lauderdale	4	42	47	47	47	68	72
West Palm Beach	5	44	47	42	44	67	69
Jacksonville	3	38	42	38	42	61	64
Tampa (Verizon)	2	18	22	33	34	45	48
Tallahassee (Embarq)	10	20	23	20	23	37	41

Source: Responses to 2007-2009 FPSC data requests.

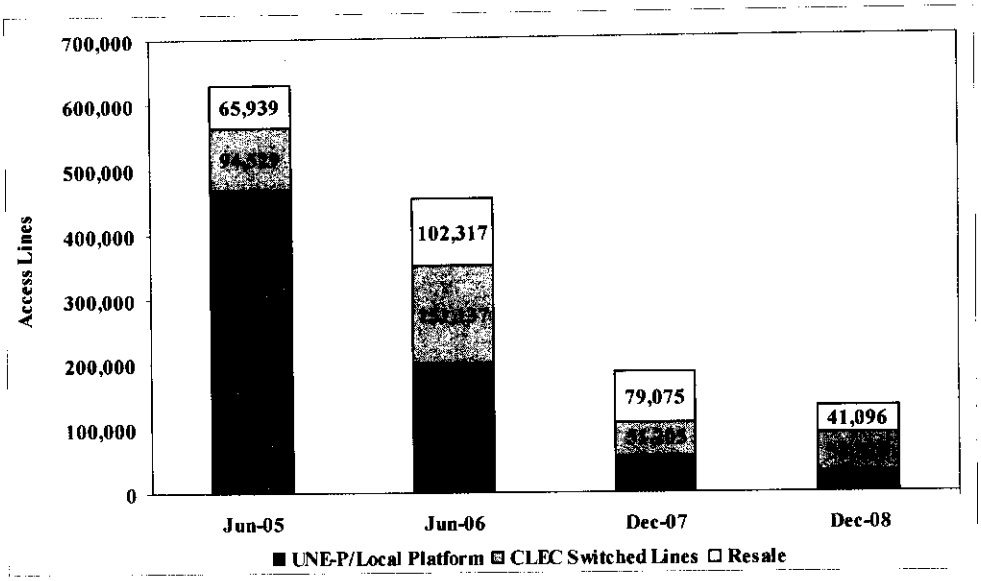
C. Competitive Market Trends

1. CLEC Access Line Provisioning

The 2006 report noted the impact of the FCC's decision to eliminate certain UNEs that many CLECs had previously relied on to provide service to end-users. The FCC's decision has had a continuing negative effect on the Florida CLEC community.

Figure 3-7 displays CLEC residential access lines by provisioning method from 2005 to 2008. The figure highlights the change in provisioning after the Unbundled Network Element-Platform (UNE-P) was eliminated, as well as the overall decline in CLEC residential access lines. From 2007 to 2008, CLEC-switched access lines increased while lines provisioned through resale and local platforms declined. The composition of CLEC business access lines has not changed significantly since 2007.

Figure 3-7. Total Florida CLEC Residential Line Composition

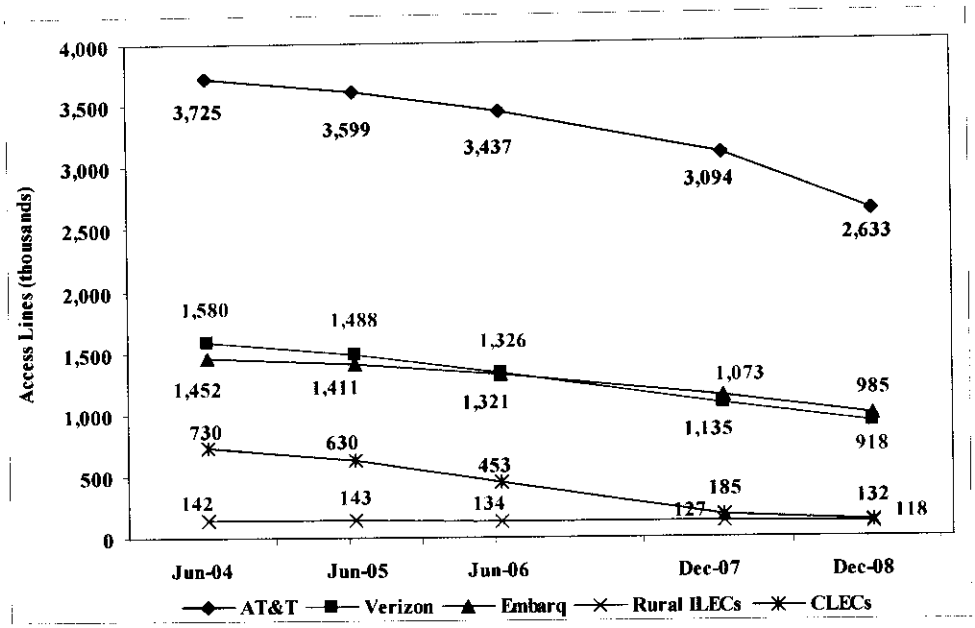


Source: Responses to 2005-2009 FPSC data requests.

2. Residential Access Line Trends

Figure 3-8 displays the residential access line trends separately for AT&T, Verizon, Embarq, the rural ILECs (in the aggregate), and the CLECs. CLECs in the aggregate reported a decline in total residential access lines. All of the ILECs reported a decline in residential access lines. CLEC residential access lines declined by almost 54,000 lines, or 29 percent, between December 2007 and December 2008.

Figure 3-8. Florida Residential Line Trends by ILECs and CLECs



Source: Responses to 2004-2009 FPSC data requests.

Analysis of exchange level residential access line data reveals:

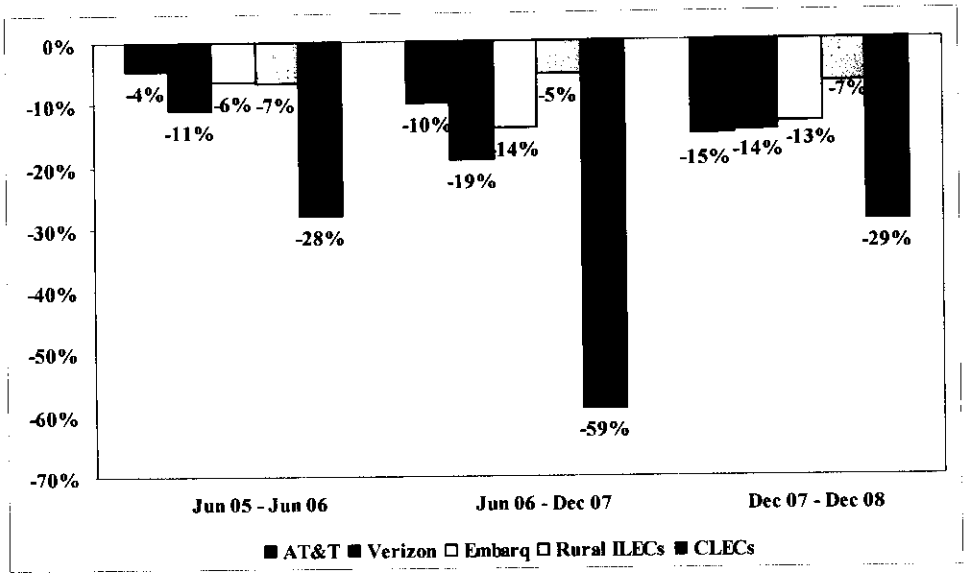
- CLECs gained residential access lines in 64 of 278 exchanges in 2008.
  - Gains exceeded 100 access lines in 9 exchanges.
- CLECs lost residential access lines in 168 out of 278 exchanges.
  - Losses exceeded 100 access lines in 29 exchanges and 1,000 access lines in 9 exchanges.
- In 7 of 9 exchanges where CLECs lost more than 1,000 lines, AT&T residential access line loss was greater than 10,000 lines.
  - ILECs lost residential access lines in every exchange statewide.

- ILEC losses exceeded 10,000 access lines in 11 AT&T exchanges, 3 Embarq exchanges, and 5 Verizon exchanges.

- Losses exceeding 1,000 access lines occurred in 10 Embarq exchanges, 4 Verizon exchanges, and 1 AT&T exchange.

Figure 3-9 presents the percentage changes of residential lines for the ILECs and CLECs. ILEC residential access lines declined for AT&T, Embarq, and the CLECs at a slower rate in 2008 than in 2007. CLECs experienced a 29 percent decline from December 2007 to December 2008, compared with a 59 percent drop from June 2006 to December 2007.

Figure 3-9. Percent Change of Florida Residential Access Lines by ILECs and CLECs

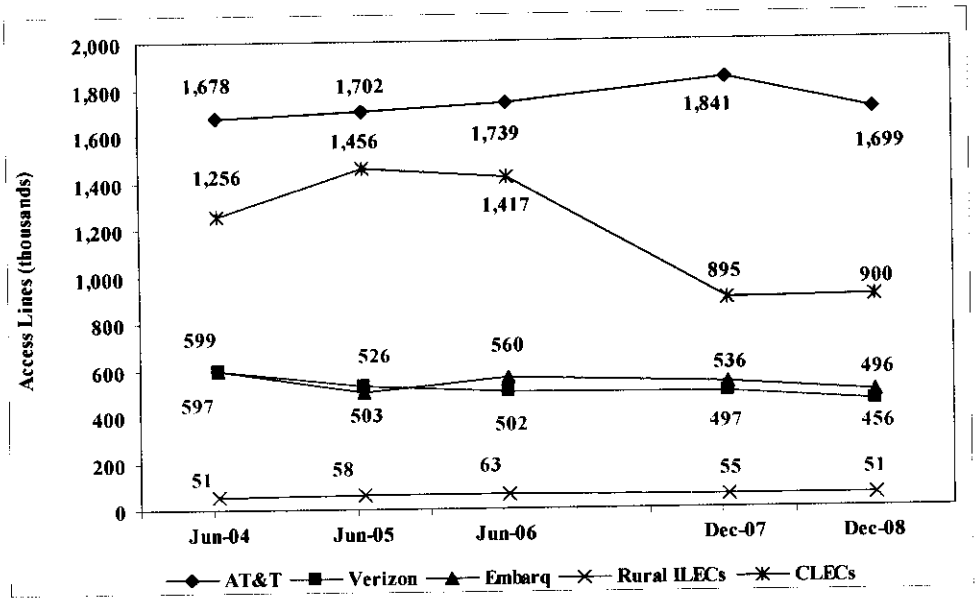


Source: Responses to 2005-2009 FPSC data requests.

3. Business Access Line Trends

Figure 3-10 displays the business line trends for AT&T, Verizon, Embarq, the rural ILECs, and CLECs. All of the ILECs experienced a decrease in business access lines between 2007 and 2008. CLEC business access lines increased for the first time since 2005. The percentage change went from a 37 percent decline in 2007 to a 1 percent increase in 2008.

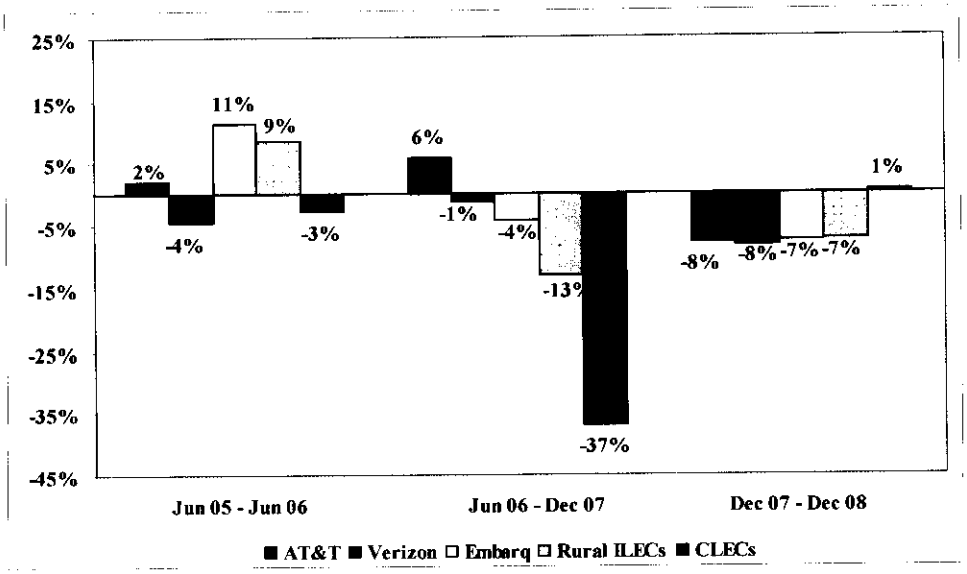
Figure 3-10. Florida Business Line Trends by ILECs and CLECs



Source: Responses to 2004-2009 FPSC data requests.

Figure 3-11 displays the annual percentage changes for business lines for ILECs and CLECs.[95]

Figure 3-11. Percent Change of Florida Business Access Lines by ILECs and CLECs



Source: Responses to 2005-2009 FPSC data requests.

[95] Reclassification of ILEC-affiliated CLEC lines as ILEC lines accounts for 12 percent of the loss of CLEC business lines between June 2006 and December 2007.

D. Rural Access Line Trends

Total ILEC rural access lines declined by approximately 13,000 in the period from December 2007 to December 2008, a 7 percent decline. No rural ILECs experienced access line growth for either residential or business access lines.

1. Residential Access Lines

Rural residential access lines declined by almost 8,000 lines in the period from December 2007 to December 2008, a 7 percent decline. Each rural ILEC experienced some residential access line decline. TDS Telecom lost 23 percent of their residential access lines in Florida, the largest percentage decline of any incumbent carrier.

2. Business Access Lines

Rural business access lines declined by more than 4,000 lines in the period from December 2007 to December 2008, a 7 percent decline. FairPoint and Northeast Florida Communications Company (NEFCOM) reported the greatest percentages of business access line loss.

E. Pay Telephone Services

The pay telephone industry has undergone significant contraction in the availability of pay telephone service in Florida during the past several years. According to the most recent FCC pay telephone data, the number of pay telephones in Florida continues to decline. Current industry estimates provided by the Florida Public Telecommunications Association indicate that the number of Florida pay telephones has dropped to approximately 20,000 as of December 31, 2008, a decline of nearly 4,000 since March 28, 2008. The number of certificated pay telephone service providers in Florida has dropped from 233 as of December 31, 2007, to 183 as of December 31, 2008. These trends are an inevitable impact of the significant growth in wireless services over this period.

Despite the proliferation of wireless phones, pay telephones still fill a need in many communities. A recent attempt by the Jacksonville Economic Development Commission (JEDC) to remove 11 payphones from downtown Jacksonville has focused attention on pay telephones in the area. The JEDC contends that the phones create an environment for nuisance crime such as loitering and panhandling. However, local social service organizations have raised concern about their removal, citing lack of cell phones and the need for access to emergency and social services for low-income residents and the homeless.[96]

F. Prepaid Telecommunications Services

There is also a segment of the market served by CLECs that provide only prepaid services. CLECs that provide only prepaid residential wireline telephone service account for 17

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[96] "City Considers Pay Phone Ban," May 8, 2009, <http://www.news4jax.com/news/19411131/detail.html>, accessed on May 19, 2009.

of the 53 CLECs with fewer than 10,000 access lines, or 32 percent. Prepaid-only carriers serve 24 percent of the access lines of those carriers below 10,000 lines and 11 percent of total residential CLEC access lines.

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CHAPTER IV. WIRELESS, VoIP, CABLE, AND BROADBAND

A. WIRELESS

The wireless industry has experienced shifts in growth, market share, and technology this year. Company strategies have changed and consumer perception of the market now includes both a simple wireless device for voice communication and all-in-one combined data and voice communications tools. As the wireline voice market is shrinking, wireless subscriber numbers are increasing, but at a slower rate than in past years.[97]

U.S. national wireless subscription increased from 249 million to 264 million in 2008.[98] This jump of 15 million handsets represents an increase of almost 6 percent.[99] Not only has subscribership grown, but availability has also increased. The FCC reports that approximately 99.6 percent of the total U.S. population has at least 1 wireless provider offering service within the census block where they live.[100]

According to a report released by financial analysts at Bernstein Research, wireless subscription growth at the beginning of 2008 was decreasing at a rate of 16.1 percent. By the fourth quarter of 2008, the rate of decline reached 33.9 percent.[101] Bernstein analysts suggest that the recession may be contributing to slower growth, but believe the biggest obstacle is that most people already have phones and services. The estimated saturation point for the wireless market is 91 percent of the U.S. population. The market now stands at 86 percent of the population, leaving scant room for growth in the future.[102] Going forward, wireless companies will likely focus on reducing churn rates and increasing acquisition of wireless customers from other carriers.

Analysts have identified a trend in the wireless market called bifurcating. Growth is concentrated at the low and high ends of the market, while the middle is being hollowed out.[103]

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[97] Craig Moffet, "U.S. Wireless '09: A Recipe for Disaster," *Bernstein Research*, March 5, 2009, <http://reports.bernsteinresearch.com/researchlinks/view.aspx?eid=tftQBmPVV6rzJwXtOwPWGyZK072jarNmdb7xg8umW4ZWmhqh2k9g1thEcJtRl5j1>, accessed on March 11, 2009.

[98] FCC Wireless data has not been released for December 2008. To get a reasonable estimate for wireless handsets as of December 2008, the Commission reviewed CTIA wireless data and analyzed the percent change from 2001 to 2008. We compared the percent change of FCC data from 2001 to 2007 and determined that the year-over-year percent change was within a reasonable difference from the CTIA year-over-year percent change. We then applied the CTIA data percent change from 2007 to 2008 (6 percent) to the FCC 2007 data to calculate a 2008 subscribership number.

[99] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services," DA 09-54, January 15, 2009, p. 6, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 4, 2009.

[100] Ibid, p. 5.

[101] Craig Moffett, "U.S. Wireless '09: A Recipe for Disaster," *Bernstein Research*, March 5, 2009, <http://reports.bernsteinresearch.com/researchlinks/view.aspx?eid=tftQBmPVV6rzJwXtOwPWGyZK072jarNmdb7xg8umW4ZWmhqh2k9g1thEcJtRl5j1>, accessed on March 11, 2009.

[102] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services," DA 09-54, January 15, 2009, p. 6, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 4, 2009.

[103] Craig Moffett, "U.S. & European Telecommunications: Stuck in the Middle . . . Will T-Mobile USA Be the Next Sprint?," *Bernstein Research*, February 5, 2009, <http://reports.bernsteinresearch.com/researchlinks/

High-end customers are those purchasing smartphones and additional features such as Internet access while low-end customers are those seeking budget conscious options such as prepaid plans.

Smartphone technology is driving the high end of the wireless market. In 2008, Verizon released the BlackBerry Storm to compete with AT&T's iPhone. While sales of the Storm have not equaled the levels of the iPhone, Storm sales have reached one million consumers. Smartphones are now an important element in acquiring and keeping customers. Wireless data service demands are increasing and becoming a more integral part of everyday life for many Americans. Text messaging increased from 18.7 billion messages in 2006 to 48.1 billion in 2007, an increase of 157 percent. Photo messaging also grew an impressive 126 percent from 2.7 billion picture messages in 2006 to 6.1 billion in 2007. In addition, 13 percent of U.S. subscribers accessed the Internet using a mobile device in January 2008. Fifty-eight percent of smartphone users and 85 percent of iPhone users accessed Internet content in January 2008.[104]

Prepaid carriers, which operate in mostly smaller urban areas, have nearly doubled their subscription rates from first quarter 2007 to first quarter 2008.[105] With the economy in a deepening recession, more people are seeking the most value for their dollar and consider prepaid plans as economical choice. Sprint's prepaid affiliate, Boost Mobile, which added about 764,000 customers from first quarter 2007 to first quarter 2008,[106] now offers a plan of unlimited voice, messaging, data, and walkie-talkie service for only $50 a month.[107] MetroPCS, Leap Wireless, and Virgin Mobile have all followed suit offering unlimited plans in the $50 range depending on the options a customer selects.[108] Overall, prepaid subscribers have increased from 15 percent of the wireless market in 2006 to 17 percent in 2007, representing more than 42 million subscribers.[109] Because of the success of the prepaid plans, carriers offering these plans are branching out into larger metropolitan areas putting pressure on larger carriers to offer competitive pricing.[110] AT&T recently announced a plan to offer prepaid users unlimited voice

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view.aspx?eid=U3FGzp006GEhjUZDnTMWzJy7Qmbwa%2fGMoZNuyeDnKYAqubkSdkHXGz1DBvltStRv>, accessed on March 11, 2009.

[104] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services," DA 09-54, January 15, 2009, pp. 7-8, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 4, 2009.

[105] Marguerite Reardon, "Boom times for prepaid cell phone operators," May 7, 2009, <http://news.cnet.com/8301-1035_3-10236078-94.html?tag=mncol>, accessed on May 20, 2009.

[106] Marguerite Reardon, "Boom times for prepaid cell phone operators," May 7, 2009, <http://news.cnet.com/8301-1035_3-10236078-94.html?tag=mncol>, accessed on May 20, 2009.

[107] Philip Elmer-Dewitt, "Analyst: iPhone benefits from carrier rate war," February 23, 2009, <http://telephonyonline.com/external.html?q=http://apple20.blogs.fortune.cnn.com/2009/02/23/analyst-iphone-benefits-from-carrier-rate-war/>, accessed on March 11, 2009.

[108] Peter Svensson, "Cut-rate prepaid plans shake up wireless industry," *Associated Press*, April 20, 2009, <http://hosted.ap.org/dynamic/stories/T/TEC_PREPAID_PRICE_FIGHT?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2009-04-20-13-35-47>, accessed on April 24, 2009.

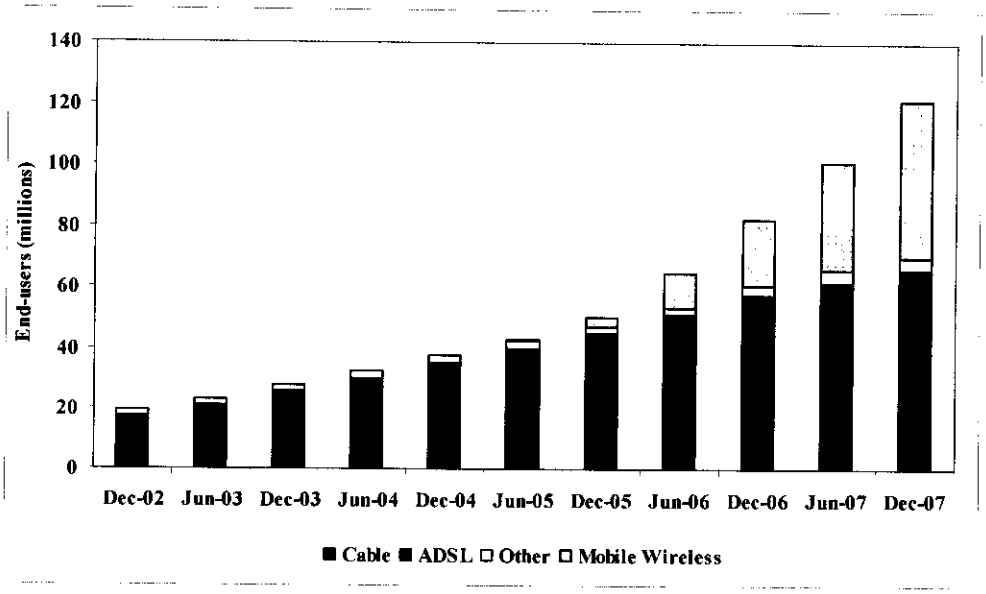
[109] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services," DA 09-54, January 15, 2009, p. 8, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 4, 2009.

[110] Marguerite Reardon, "Boom times for prepaid cell phone operators," May 7, 2009, <http://news.cnet.com/8301-1035_3-10236078-94.html?tag=mncol>, accessed on May 20, 2009.

for 1 day for $3.[111] Net additions for prepaid companies combined have experienced a 70 percent year-over-year growth. However, these companies, with a total of 15 million subscribers, are only one tenth of the size of AT&T and Verizon combined.[112]

Sprint and T-Mobile, middle-market carriers, have lost subscribers or experienced very little growth. Changes in the wireless market and the national economy have forced these companies to develop new marketing plans and incentives to entice consumers to spend their dollars more effectively. Unlimited voice and data plans are emerging to compete with sophisticated technology and economical prepaid options. T-Mobile is testing a new $50 unlimited voice plan with a $25 additional charge for unlimited data/Internet to customers in San Francisco. Customers qualify for the test offering if they have subscribed to T-Mobile for at least 22 months. T-Mobile is also offering a $135 credit to customers who switch from a competitor's service. [113] Figure 4-1 shows broadband subscription rates by technology and demonstrates the large increase over the last three years in consumers using wireless broadband connection.

Figure 4-1. U.S. Broadband Subscription by Technology Type



Source: FCC High-Speed Services for Internet Access Report, various years, Table 1.

[111] Matt Richtel, "AT&T Has a Prepaid Twist: Talk All Day for $3," *New York Times*, May 8, 2009 <http://bits.blogs.nytimes.com/2009/05/08/att-has-a-prepaid-twist-talk-all-day-for-3/?pagemode=print>, accessed on May 20, 2009.

[112] Craig Moffett, "U.S. Telecommunications: It's the Economy Calling . . . TelCo Q4 '08 Preview," *Bernstein Research*, January 21, 2009, <http://reports.bernsteinresearch.com/researchlinks/view.aspx?eid=scwyj%2blza63pB3YfzELRp2XXmdaRGQGu4d%2bdOx1oeyXlPCtsEjPfZ9QfGMLB5P6l>, accessed on March 11, 2009.

[113] Sinead Carew, "T-Mobile USA Tests $50 Unlimited Call Plan," February 19, 2009. <http://www.fiercewireless.com/story/t-mobiles-50-unlimited-voice-plan-goes-nationwide/2009-03-02>, accessed on March 11, 2009.

1. Wireless-Only Households

According to the CDC, during the second half of 2008, 20.2 percent of U.S. adults lived in a household that used at least 1 wireless phone and had no active wireline telephone (dubbed "wireless-only households" by the CDC), an increase from 17.5 percent in the first half of 2008.[114] The CDC also reported that 16.8 of households in Florida are wireless only.[115] People aged 18-29 represent the largest segment of the population that has forgone wireline phones.[116] The CDC also reported that of those surveyed:

- 41.5 percent of adults between the ages of 25 and 29 live in wireless-only households.
- Non-Hispanic white adults (16.6 percent) are less likely to give up a landline than Hispanic adults (25 percent).
- Adults in the South (21.3 percent) and Midwest (20.8 percent) are more apt to live in wireless-only households than adults in other parts of the country.[117]

2. Florida Trends

Florida wireless subscription trends mirror those of the U.S. Florida subscriptions grew in 2007, but at a much slower rate than in 2006. Florida experienced an increase of 843,190 subscribers in 2007, a 5 percent increase compared to a 21.4 percent increase in 2006. Total wireless subscribers in Florida in 2007 reached 15.6 million handsets.

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[114] S.J. Blumberg, J.V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008," May 6, 2009, p. 1, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf>, accessed on May 13, 2009.

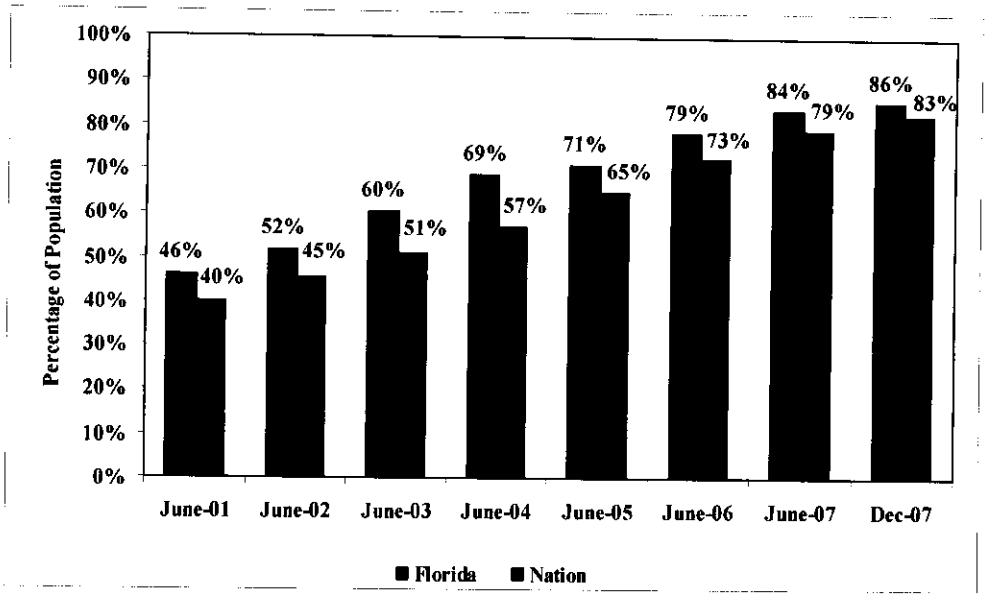
[115] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

[116] FCC, "Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services," DA 09-54, January 15, 2009, p. 10, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf>, accessed on May 4, 2009.

[117] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

Total subscribership results as of December 2007 show that Florida exceeds the national subscription levels by three percent, as seen in Figure 4-2. However, this difference is the smallest since 2001.

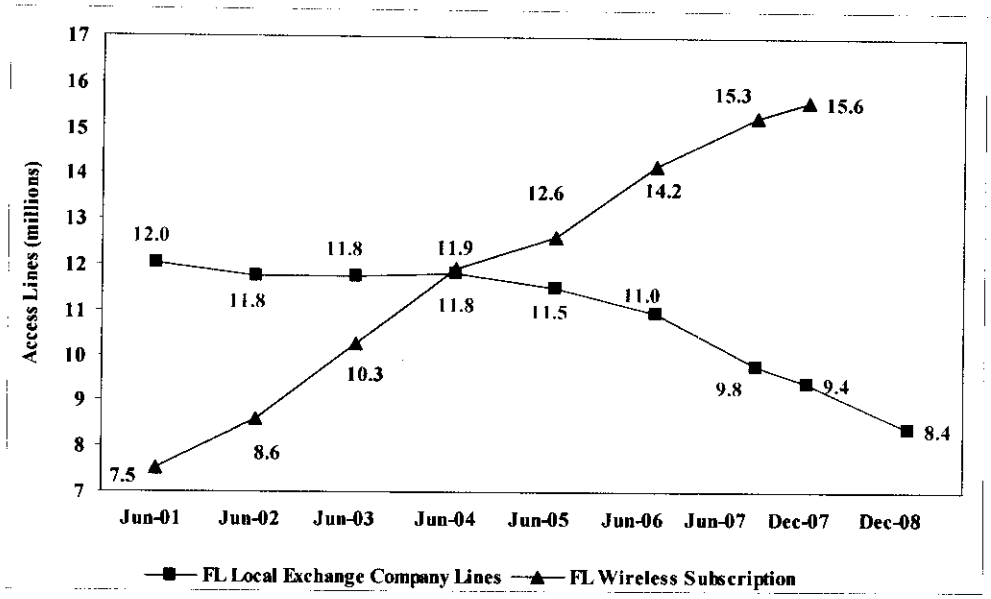
Figure 4-2. Wireless Subscription as Percentage of Population



Source: FCC, Local Telephone Competition: Status as of December 31, 2007; U.S. Census Bureau, State Population Estimates.

Figure 4-3 shows that Florida wireless subscriptions have continued to surpass Florida wireline access lines. The number of wireless handsets in Florida has increased significantly over the number of wireline access lines in the state, and the gap appears to be widening. Local exchange company access lines in Florida have declined 18 percent since the end of 2005, while wireless subscriptions have increased by 24 percent during the same time period.[118, 119] Wireless handsets outnumbered wireline access lines by 5.5 million as of December 2007.[120, 121] Florida wireless subscribership increased by 1.4 million subscribers from June 2006 to December 2007.[122]

Figure 4-3. Florida Local Exchange Access Lines and Florida Wireless Subscriptions



Source: FCC, Local Telephone Competition: Status as of December 31, 2007; Responses to 2009 FPSC data requests.

B. VOICE OVER INTERNET PROTOCOL

VoIP service[123] has rapidly become a major competitive alternative challenging wireless and traditional wireline service for a significant share of the communications market. VoIP data

[118] FCC, "Local Telephone Competition: Status as of December 31, 2007," Table 14, <http://www.fcc.gov/wcb/iatd/comp.html>, accessed on May 29, 2009.
[119] FPSC, responses to 2001-2009 Local Competition data requests.
[120] FCC, "Local Telephone Competition: Status as of December 31, 2007," Table 14, <httpp://www.fcc.gov/wcb/iatd/comp.html>, accessed on May 29, 2009.
[121] FPSC, responses to 2001-2008 Local Competition data requests.
[122] FCC, "Local Telephone Competition: Status as of December 31, 2007," Table 14, <httpp://www.fcc.gov/wcb/iatd/comp.html>, accessed on May 29, 2009.
[123] 47 C.F.R. § 9.3; see also IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, ¶ 24 (2005) ("VoIP 911

from the Yankee Group, a market research firm specializing in communications, shows that VoIP-based services have experienced impressive growth, increasing from 0.1 percent of U.S. telephone lines in 2003 to 24 percent at the end of 2008.[124] The end-of-year line totals equate to an increase from 129,000 VoIP-connected households in 2003, to 19.4 million in 2008.[125]

Based on information provided to the FPSC, an estimated 1.6 million Florida residential consumers subscribe to VoIP service. An accurate estimate for the business market is not possible because of limited data, but promotional campaigns and financial reports of publicly traded companies suggest that the business sector is a target market for some cable VoIP providers.[126]

The following market analysis relies on nationally available data and limited Florida-specific data. The analysis focuses on facilities-based, interconnected VoIP services provided by cable companies, wireline telephone companies, and over-the-top VoIP providers.[127]

1. National Market Analysis

The market research firm Pike & Fischer forecasts that the number of VoIP-connected households will exceed 25 million in the U.S. by the end of 2010, with growth at about 14 percent annually over the next few years.[128] Forecasts of VoIP growth vary, as the Yankee Group anticipates 30.2 million subscribers by the end of 2010.[129]

a. Facilities-Based VoIP Providers

The traditional telephone companies and facilities-based cable VoIP providers continue to place an increased emphasis on offering feature-rich, discounted bundled services, including digital voice (VoIP) services over managed-IP networks. These providers offer high call quality and reliability. The cable companies dominated digital phone service with an estimated 14.9[130]

Order"), *aff'd sub nom. Nuvio v. FCC,* 473 F.3d 302 (D.C.Cir. 2006), <http://www.fcc.gov/cgb/voip911order.pdf>, accessed on February 12, 2009.

[124] Justin Neville-Rolfe, "Top 8 Communications Surprises," Yankee Group Research, Inc., January 19, 2009, <http://blogs.yankeegroup.com/2009/01/19/top-8-communications-surprises/>, accessed on March 4, 2009.

[125] Yankee Group Research, Inc., "U.S. VoIP Consumer Forecast, December 2003-2012," received on March 4, 2009.

[126] Comcast Corporation, "4th Quarter 2008 Earnings Presentation," Slide 14, <http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_4Q08/4Q08Slides.pdf>; Cablevision Systems, Corp., <http://www.cablevision.com/about/index.jsp> and <http://www.optimum.com/voice/index.jsp> all accessed on April 27, 2009.

[127] FCC 06-189, WC Docket No. 06-74, AT&T Inc. and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, released March 26, 2007, ¶92-¶93, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf>, accessed on February 12, 2009.

[128] Pike & Fischer, Inc., "Residential VoIP Market Outlook," October 2008, <http://www.pf.com/marketResearchPDInd.asp?repId=630>, accessed on March 4, 2009.

[129] Yankee Group Research, Inc., "U.S. VoIP Consumer Forecast, December 2003-2012," received on March 4, 2009.

[130] Mike Paxton, "34 Million Subscribers: Worldwide Cable Telephony Services Continue to Expand," In-Stat, August 2008, <http://www.instat.com/abstract.asp?id=288&SKU=IN0804053MBS>, accessed on March 2, 2009.

to 15.7[131] million VoIP subscribers at the end of 2008. The top cable VoIP telephony providers, based on number of subscribers, are:

- Comcast Corp. 6.47 million subscribers[132]
- Time Warner Cable 3.75 million subscribers[133]
- Cablevision Systems Corp. 1.88 million subscribers[134]
- Cox Communications 0.64 million subscribers[135]

Comcast is now the third-largest residential telephone service provider in the U.S. behind AT&T and Verizon.[136] However, the growth rate of cable phone subscribers fell sharply in the fourth quarter of 2008, with the nation's top cable companies collectively adding only 877,000 net subscribers. This fourth quarter decrease marks the first time since 2006 that net additions have dropped below 1.1 million.[137]

As the cable companies penetrate the VoIP market, traditional telephone companies have responded with their own deployments of facilities-based VoIP services with an estimated 251,000 VoIP subscribers at the end of 2008.[138] AT&T first launched U-verse Voice service, its facilities-based VoIP service offering, in Detroit,[139] the service is now available in multiple states, including Florida.[140] Verizon also launched its facilities-based VoIP service with a

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[131] Yankee Group Research, Inc., "U.S. VoIP Consumer Forecast," December 2003-2012, received on March 4, 2009.

[132] Comcast Corporation, "Financial Tables," Comcast Reports Fourth Quarter and Year End Results, February 18, 2009, <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=1257468&ID=1257468&highlight=>, accessed on February 20, 2009.

[133] Time Warner Inc, Form 10-K, 2008, February 20, 2009, <http://files.shareholder.com/downloads/TWX/596089154x0xS950144-09-1481/1105705/filing.pdf>, accessed on March 3, 2009.

[134] Cablevision Systems Corporation, Form 10-K, Fourth Quarter 2008, February 26, 2009, <http://www.cablevision.com/investor/sec.jsp>, accessed on February 26, 2009.

[135] Mike Paxton, "34 Million Subscribers: Worldwide Cable Telephony Services Continue to Expand," (noting an estimated 1.83 million circuit-switched subscribers as of July 2008), In-Stat, August 2008, <http://www.instat.com/abstract.asp?id=288&SKU=IN0804053MBS>, accessed on March 2, 2009.

[136] Comcast Investor Relations Homepage, "Comcast Now the Third Largest Residential Phone Services Provider in the U.S.," March 11, 2009, <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=1265311&highlight=>, accessed on March 13, 2009.

[137] Pike & Fischer, Inc.'s Broadband Advisory Services, "Cable Suffers Dip in Phone Uptake," March 15, 2009, <http://www.broadbandadvisoryservices.com/>, accessed on March 15, 2009.

[138] Yankee Group Research, Inc., "U.S. VoIP Consumer Forecast," December 2003-2012, received on March 4, 2009.

[139] "AT&T U-verse Voice Debuts in Detroit," AT&T Press Release, January 22, 2008, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=25068>, accessed on March 13, 2009.

[140] "AT&T Launches U-verse Voice," AT&T Press Release, February 2008-March 2009,<http://www.att.com/gen/pressroom?pid=4800&cdvn=news&newsfunction=searchresults&beginning_month=12&beginning_year=2008&ending_month=2&ending_year=2009>, accessed on March 29, 2009.

limited deployment in Virginia and Maryland. The service will be marketed to new customers across the 14 states where it offers FiOS TV and Internet services.[141]

b. Over-the-Top VoIP Providers

For consumers looking for ways to save money, competitive over-the-top VoIP providers continue to provide options for low-priced telephone services. Various providers offer over-the-top VoIP services such as Vonage, Packet8, Skype, magicJack,[142] and Google. The Yankee Group estimates 3.4 million consumers had subscribed to over-the-top interconnected VoIP services at the end of 2008.[143]

Vonage, Packet8, magicJack, and Skype are the leading over-the-top VoIP providers based on the number of subscribers. Some wireless carriers are also offering competitive over-the-top VoIP service. T-Mobile, for example, offers an over-the-top VoIP service called "@Home" service.[144] Vonage remains the leader of this sector of the market with a reported 2.48 million U.S. subscribers as of fourth quarter 2008.[145] Packet8 (8x8, Inc.) reported 86,992 subscribers as of fourth quarter 2008, down 25,237 from the previous year.[146] MagicJack began selling its devices in March 2007.[147]

Skype reports more than 405 million registered users worldwide and is focused on product strategies to enhance customer engagement.[148] Skype offers several levels of service including interconnected subscription services, SkypeIn and SkypeOut, as well as its free peer-to-peer service. The number of Skype's U.S. subscribers relative to its free peer-to-peer VoIP service is unknown.

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[141] Doug Mohney, "Verizon FiOS getting VoIP in early 2009," FierceVoIP, December 14, 2008, <http://www.fiercevoip.com/story/verizon-fios-getting-voip-early-2009/2008-12-14?utm_medium=nl&utm_source=internal&cmp-id=EMC>, accessed on March 13, 2009.

[142] The trade name "magicJack" uses a lowercase "m." Note that when the company name appears in this report at the beginning of a sentence, the "m" is capitalized.

[143] Yankee Group Research, Inc., "U.S. VoIP Consumer Forecast," December 2003-2012, received on March 4, 2009.

[144] Olga Kharif, "Home Phone Service for $10 a month?" *BusinessWeek*, June 25, 2008, <http://www.businessweek.com/technology/content/jun2008/tc20080624_332393.htm?campaign_id=alerts>, accessed on February 24, 2009.

[145] Vonage Holdings Corp., Form 10-K, Fourth Quarter 2008 (noting that 95 percent, or 2.48 million, of the 2.61 million represents U.S. subscriber lines with the remaining 5 percent, or 130,500, lines serving customers in Canada and the U.K.), March 3, 2009, <http://files.shareholder.com/downloads/VAGE/39395851x3989576xS1193125-09-43745/1272830/filing.pdf>, accessed on March 5, 2009.

[146] 8x8, Inc., Form 10-Q, for Fourth Quarter 2008, <http://ccbn.10kwizard.com/cgi/image?ipage=6099277&doc=3&cik=1023731&odef=8&rid=12&quest=1&xbrl=0&dn=2>, accessed on March 14, 2009.

[147] See magicJack Web site, http://www.magicjack.com.

[148] EBay, Inc. (purchased Skype for $2.6 billion in September 2005), "eBay, Inc. Reports Fourth Quarter and Full Year 2008 Results," eBay, Inc.'s Fourth Quarter 2008 Report, January 21, 2009, <http://files.shareholder.com/downloads/ebay/578163169x0x266606/581a206a-78df-4c3c-81c4-4a8b57e62440/eBay_FINALQ42008EarningsRelease.pdf>, accessed on February 27, 2009.

AT&T has stopped offering its over-the-top VoIP service, AT&T CallVantage, to new customers[149] and has begun offering AT&T U-verse Voice.[150] U-verse Voice is a VoIP offering, but is provided through AT&T's U-verse broadband offering and is more similar to cable digital voice service than over-the-top VoIP service. Similarly, Verizon issued notice that it would be discontinuing VoiceWing, its over-the-top VoIP service, on March 31, 2009.[151] Verizon's VoiceWing over-the-top VoIP service is replaced by FiOS-based service, similar to U-verse Voice and cable digital voice services.

Vonage seems to be maintaining its lead in the over-the-top VoIP segment of the market. However, its 2008 year-end growth is significantly lower than that experienced by its facilities-based competitors. Vonage added only 329,187 net subscribers,[152] while Comcast and Time Warner Cable added 2.1 million[153, 154] and 850,000[155] net subscribers, respectively.

2. Florida Market

Some limitations exist in arriving at an accurate estimate of VoIP subscribers in Florida because the Commission does not have jurisdiction over VoIP service. However, the FCTA reported residential data for its six largest member providers. Vonage also reported its Florida subscribers, and a number of CLECs and ILECs responded to the Commission's data request. Based on a review of all data, an estimated 1.6 million residential VoIP subscribers are in Florida as of December 2008. This total represents a significant increase from the estimated 662,000 subscribers as of May 31, 2006, and a 45 percent increase over the 1.1 million residential VoIP subscribers as of December 31, 2007. The number of estimated VoIP subscribers in Florida is

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[149] "AT&T Stops Selling CallVantage VoIP To New Customers," Broadband DSLReports.com, August 15, 2008, <http://www.dslreports.com/shownews/ATT-Stops-Selling-CallVantage-VoIP-To-New-Customers-97006?nocomment=1>, and AT&T, < http://www.usa.att.com/callvantage/consumer_redirect.jsp>, all accessed on April 28, 2009.

[150] "AT&T U-verse Launches a New Kind of Home Phone Service in Jacksonville with AT&T U-verse Voice," AT&T Press Release, January 26, 2009, <http://www.att.com/gen/press- room?pid=4800&cdvn=news&news articleid=26495>, accessed on April 28, 2009.

[151] Doug Mohney, "Verizon Officially Pulls Plug on VoiceWing VoIP Service," January 26, 2009, <http://www.fiercevoip.com/story/verizon-officially-pulls-plug-voicewing-voip-service/2009-01-26>, accessed on April 28, 2009.

[152] Vonage Holdings Corp., Form 10-K, Fourth Quarter 2008 (noting that 95 percent, or 2.48 million, of the 2.61 million represents U.S. subscriber lines with the remaining 5 percent, or 130,500, lines serving customers in Canada and the U.K.), <http://files.shareholder.com/downloads/VAGE/39395851x3989576xS1193125-09-43745/1272830/filing.pdf>, accessed on March 5, 2009.

[153] Comcast Corporation, "Financial Tables," Comcast Reports Fourth Quarter and Year End Results, February 18, 2009, <http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=1257468&ID=1257468&highlight=>, accessed on February 20, 2009.

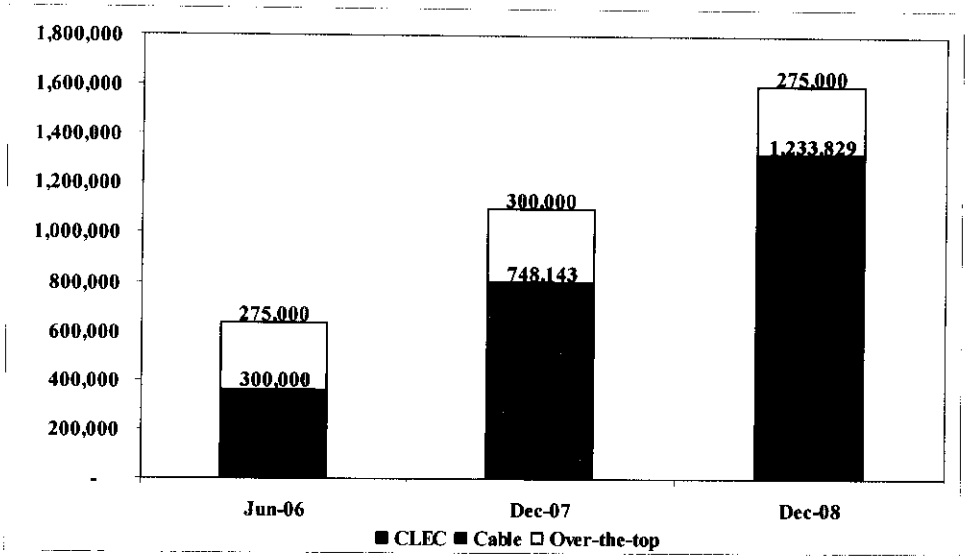
[154] "Time Warner Cable Reports 2008 Full-Year And Fourth-Quarter Results," Time Warner Press Release, February 4, 2009, <http://files.shareholder.com/downloads/TWX/596089154x0xS950144-09-1481/1105705/filing.pdf>, p. 4, accessed on April 28, 2009.

[155] "Time Warner Cable Reports 2008 Full-Year and Fourth-Quarter Results," Time Warner Press Release, February 4, 2009, <http://files.shareholder.com/downloads/TWX/596089154x0xS950144-09-1481/1105705/filing.pdf>, p. 4, and Time Warner Cable Reports 2007 Full-Year And Fourth-Quarter Results, Time Warner Press Release, February 6, 2008, <http://files.shareholder.com/downloads/TWC/626775554x0x166410/9f2f505d-77bb-4a96-8d26-4029c5ecee0c/q407earningsrelease.pdf>, p. 7, accessed on April 28, 2009.

now 12 times the CLEC-reported residential wireline access lines in the state. As noted, an accurate estimate for the business market is not possible because of limited data.

Figure 4-4 shows the composition of the Florida residential VoIP market, based on the Commission's estimates, as of December 2008.

Figure 4-4. Estimated Florida Residential VoIP Access Lines



Source: Responses to 2006-2009 FPSC data request.

a. Facilities-Based VoIP Providers

The FCTA provided a count of its member companies' residential cable telephony subscribers. FCTA's response revealed that 6 of its member companies collectively have 1,233,829 Florida residential cable VoIP subscribers, as of December 2008. This service is usually marketed as digital voice service.[156] Florida cable VoIP subscribership increased by 485,686 subscribers from the number reported to the FPSC in 2007, an increase of nearly 65 percent.[157]

AT&T's VoIP service, U-verse Voice, was launched in the Jacksonville area on January 26, 2009,[158] the first market in the Southeast to get the service.[159] AT&T expanded U-verse

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[156] Florida Cable Telecommunications Association response to FPSC 2008 Competition Report Data Request, received April 2, 2009.

[157] Florida Public Service Commission, "2008 Report on the Status of Competition in the Telecommunications Industry," released August 1, 2008, p.48.

[158] "AT&T U-verse Launches a New Kind of Home Phone Service in Jacksonville with AT&T U-verse Voice," AT&T Press Release, January 26, 2009, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&news articleid=26495>, accessed on February 16, 2009.

Voice availability to areas in Volusia, Orange, Palm Beach, Martin, Seminole, and St. Lucie counties through May 2009.[160] Verizon is not yet offering its VoIP product, FiOS Voice, in Florida.[161]

In response to the Commission's data request, 46 CLECs and 1 ILEC provided VoIP line counts. A total of 91,320 residential VoIP lines and 162,686 business VoIP lines were reported for 2008, an increase of nearly 73 percent and 400 percent, respectively, from 2007. Line growth and an increase in the number of CLECs providing VoIP services contributed to the large increases in reported lines. Two CLECs reported that they provided VoIP services to end users but elected not to provide subscription data, citing Florida law that exempts VoIP from Commission jurisdiction.

b. Over-the-Top VoIP Providers

Vonage continues to be the largest non-facilities-based, over-the-top VoIP service provider in Florida based on its voluntary reporting of its subscriber numbers in Florida. Skype, magicJack, and Packet8 are some of the other competitive providers in this segment of the VoIP market. As noted previously, Verizon and AT&T have discontinued their respective over-the-top offerings. Over-the-top VoIP providers are not certificated in Florida, limiting the Commission's ability to collect Florida-specific data. For the third consecutive year, Vonage has filed Florida-specific subscribership data for the report. Vonage's Florida subscription data for 2007 and 2008 was filed confidentially. Vonage experienced growth of approximately four percent in Florida-based subscriptions for 2008, exceeding its national performance.[162] As of December 2007, the FPSC estimated that there were approximately 300,000 over-the-top VoIP subscribers based on the number of Florida subscribers reported by Vonage and national estimates of the remainder of that market segment. That estimate has been revised downward for 2008 to 275,000 recognizing that while Vonage has managed to maintain its customer base in Florida, other providers have experienced nationwide declines.[163]

Overall, the number of residential VoIP subscribers in Florida is estimated to be 1.6 million, an increase of 45 percent from 2007. The substantial growth in residential VoIP subscribers has been driven by the remarkable growth reported by cable VoIP providers.

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[159] Mark Basch, "AT&T Launches New VoIP Services in Jacksonville through U-verse," January 26, 2009, *The Florida Times Union*, <http://www.jacksonville.com/business/2009-0126/story/att_launches_new_voip_services_in_jacksonville_through_u_verse>, accessed on January 26, 2009.

[160] "AT&T U-verse Launches a New Kind of Home Phone Service in Palm Beach County and the Treasure Coast with AT&T U-verse Voice," AT&T Press Release, April 14, 2009, <http://www.att.com/gen/press-room?pid=4800&cdvn=news&newsarticleid=26721> accessed on May 18, 2009 and "AT&T U-verse Voice Launches in Greater Orlando and Volusia County," *Wall Street Journal*, May 11, 2009, <http://online.wsj.com/article/PR-CO-20090511-905201.html?mod=wsjcrmain>, accessed on May 18, 2009.

[161] E-mail correspondence from Verizon received by FPSC staff April 30, 2009.

[162] Vonage provided Florida-specific subscribership data on a confidential basis on February 26, 2009.

[163] "8x8, Inc. Announces 2009 Fiscal Year-End Operating Results," 8x8, Inc. Press Release, May 21, 2009, <http://investors.com/releasedetail.cfm?ReleaseID=385604>, accessed on May 27, 2009.

C. BROADBAND

Broadband is now generally considered by policy-makers as less of a luxury and more of a necessity.[164] A great deal of focus has been placed on the ability of everyone in the U.S. to have access to high-speed Internet. President Barak Obama's campaign promised to eliminate the "digital divide" and to deliver the economic benefits of high-speed Internet access to poor and rural Americans. As part of the ARRA, Congress provided more than $7 billion over the next 2 years for grants and loans to bring broadband to unserved and underserved areas of the U.S.

1. General Broadband Trends in 2008

National broadband subscribership increased by eight percent from the spring of 2008 to April 2009 (from 55 percent to 63 percent).[165] Much attention has been given to studies portraying the economic and social benefits that can be derived from having quality high-speed Internet access. Experts agree that some of the benefits to Americans that will accompany faster, more ubiquitous broadband are:

- Enhanced medical care through telemedicine.
- Better quality of life for disadvantaged and disabled Americans.
- Improved efficiency of business transactions.
- Accelerated participation in government.
- More accessible education for a wider range of students.
- Improved emergency responses.
- Multiple entertainment and social benefits.[166]

2. Broadband and the Economy

Several studies have attempted to estimate the economic gains of broadband deployment at various levels. The Information Technology and Innovation Foundation (ITIF) claims that a $10 billion investment in broadband networks would sustain 498,000 U.S. jobs for 1 year, at wages 84 percent above average.[167] Connected Nation, a nonprofit entity focusing on expanding broadband access in rural areas, estimates that broadband initiatives could have a national

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[164] Stephen Ezell, Robert D. Atkinson, et al., "The Need for Speed: The Importance of Next Generation Broadband Networks," Washington, D.C., March 2009, p. 24.

[165] John B. Horrigan, "Home Broadband Adoption 2009," Pew Internet & American Life Project, Washington, D.C., June 2009, p. 3.

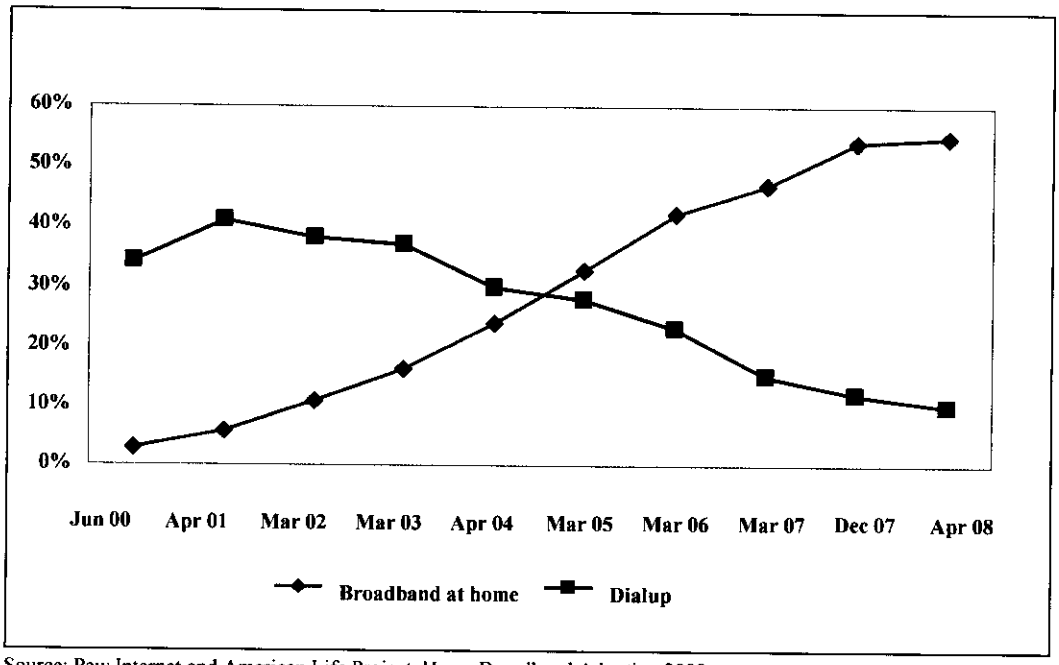
[166] Stephen Ezell, Robert D. Atkinson, et al., pp. 3,18.

[167] Robert D. Atkinson et al., "The Digital Road to Recovery: A Stimulus Plan to Create Jobs, Boost Productivity and Revitalize America," January 2009, <http://www.itif.org/files/roadtorecovery.pdf>, accessed on March 25, 2009.

economic impact of $134 billion and create 2.35 million jobs .[168] The Brookings Institute posits that for every 1 percentage point increase in broadband penetration in a state, employment is expected to grow 0.2-0.3 percent.[169]

Although specific data are not yet available, some dial-up providers claim that the economy has forced some Americans to switch back to dial-up. With broadband growth expected to slow by approximately 12 percent in 2009,[170] several dial-up providers are taking advantage of the downturn to promote their low-cost service, which is about a third of the price of high-speed Internet access.[171] Figure 4-5 shows both the increase in broadband adoption and the drop in dial-up subscription beginning to level out.

Figure 4-5. Trends in Home Internet Access: Broadband vs. Dial-up



Source: Pew Internet and American Life Project, Home Broadband Adoption 2008.

[168] Brian Mefford, "Broadband Stimulus: What States Need to Know," Connected Nation, February 13, 2009.
[169] Robert Crandall et al., "The Effects of Broadband on Output and Employment: A Cross-sectional Analysis of U.S. Data," Number 6, July 2007, <http://www.brookings.edu/~/media/Files/rc/papers/2007/06labor_crandall/06labor_crandall.pdf>, accessed on March 25, 2009.
[170] Roy Mark, "Telcos to Lose in Broadband Slowdown," January 7, 2009, <http://www.eweek.com/index2.php?option=content&task=view&id=51097&pop=1&hide_ads=1&page=0&hide_js=1>, accessed on March 15, 2009.
[171] Andrew Lavallee, "Postponing Dial-Up's Demise," *The Wall Street Journal,* February 26 2009, <http://online.wsj.com/article/SB123561717378378657.html>, accessed on March 13, 2009.

3. National Trends

a. Broadband Speeds

The FCC defines broadband as having speeds of at least 200 kilobits per second (kbps) downstream,[172] a speed that has been criticized as too slow. Studies have shown a sizable rise in the number of consumers paying extra for faster speeds. The Pew American Life Project found that 29 percent of broadband users pay a higher price for a faster Internet connection.[173] Deployment of fiber optic networks closer to consumers and the implementation of technologies such as DOCSIS (Digital Over Cable Service Interface Specifications) 3.0 by cable companies will significantly increase the speeds available to Americans to access the Internet. Table 4-1 shows the speeds achievable by various types of technology.

Table 4-1. Broadband Connection by Speed and Technology 2009

	Exceeding 200 kbps in only 1 direction	Exceeding 200 kbps in both directions, and	
		Greater than 200 kbps and less than 2.5 Mbps in the faster direction	Greater than or equal to 2.5 Mbps in the faster direction
ADSL	10.3%	40.1%	24.8%
Cable	0.8%	11.1%	71.2%
Mobile Wireless	87.0%	43.9%	0.0%
Fiber	0.0%	0.4%	3.8%
Satellite	1.8%	0.2%	0.0%
Other	0.1%	4.2%	0.2%

Source: FCC High-Speed Services for Internet Access Report, Tables 1 and 5.

b. National Broadband Subscribership

As of April 2008, broadband had been adopted by the majority of U.S. households (55 percent).[174] Subscribership then increased a further 8 percent, reaching 63 percent of Americans as of June 2009.[175] Other significant characteristics of U.S. broadband subscribership in 2009 include:

- Americans aged 65 and older had one of the largest increases in subscribership, 11 percent from April 2008 to June 2009.

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[172] "Rural Broadband at a Glance 2009 Edition," U.S. Department of Agriculture, Washington, D.C., February 2009, Number 47.
[173] John B. Horrigan, "Home Broadband Adoption 2008," Pew Internet and American Life Project, Washington, D.C., July 2008, p. 8.
[174] Ibid, p. i.
[175] John B. Horrigan, "Home Broadband Adoption 2009," Pew Internet and American Life Project, Washington, D.C., June 2009, p. 3.

- Rural subscribership increased from 38 percent in 2008 to 46 percent in 2009.[176]
- Men were 4 percent more likely than women to subscribe to broadband.
- Households with incomes between $75,000-$100,000 annually, were more than 3 times as likely to have broadband in their homes as households making less than $20,000.[177]

Despite the fact that the price of broadband has decreased marginally during the last several years, approximately 29 million households in the U.S. are currently not subscribers.[178] Between nine to ten million households did not have a single broadband provider in their areas in spring of 2008. Price is the most significant reason dial-up users say they do not switch to broadband.[179]

c. Best and Worst States

A 2008 study conducted by ITIF ranked states on broadband deployment and median speeds. The study found that the states with the highest percentage of broadband users and enjoying the fastest speeds were New Jersey, Rhode Island, and Delaware. States in the South and Midwest regions typically scored the poorest on broadband availability and speeds, including Mississippi, Arkansas, and Louisiana. The states that made the biggest improvements in broadband technology and deployment between 2007 and 2008 were South Dakota, Utah, and Delaware.[180] The states with the most wireless broadband coverage were the District of Columbia, New Jersey, and Rhode Island. States with the least wireless broadband coverage were Alaska, Montana, and Wyoming.[181]

4. Florida Trends

The ITIF study ranked Florida tenth in the nation in broadband availability and speed. Florida ranked twenty-second in wireless broadband coverage. The total number of high-speed lines in December 2007 was 7.4 million, placing Florida fourth after Texas, New York, and California. Approximately 2.3 million of Florida's high-speed lines are subscribed to by businesses.[182]

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[176] John B. Horrigan, "Home Broadband Adoption 2009," Pew Internet and American Life Project, Washington, D.C., June 2009, p. 14.
[177] Ibid.
[178] Ibid, p. 3.
[179] John B. Horrigan, "Home Broadband Adoption 2008," Pew Internet and American Life Project, Washington, D.C., July 2008, pp. 10-13.
[180] ITIF, "The 2008 State New Economy Index," November 2008, p. 42, <http://www.itif.org/files/2008_State_New_Economy_Index.pdf>, accessed on March 13, 2009.
[181] "Study Ranks Mobile Broadband Coverage by State," CostQuest Associates, Washington, D.C., July 21, 2008, p. 1.
[182] Ibid, pp. 5-6.

In January 2009, the FCC released its annual report on the deployment of advanced services, which contains state-specific data through the end of 2007.[183] This report found that there were 78 different providers of broadband service within the state of Florida, the overwhelming majority of which were traditional wireline telephone (Digital Subscriber Line service or DSL) or cable carriers (cable modem service). The study also found that 89 percent of Florida residents had access to broadband via a telephone carrier where telephone service was available, and 92 percent had access to broadband provided by a cable company, where cable service was available. The FCC determined that every ZIP Code within the state had at least one broadband subscriber.[184] The majority of consumers living in Florida had at least seven different broadband providers in their ZIP Code at the end of 2007, including multiple satellite providers.[185]

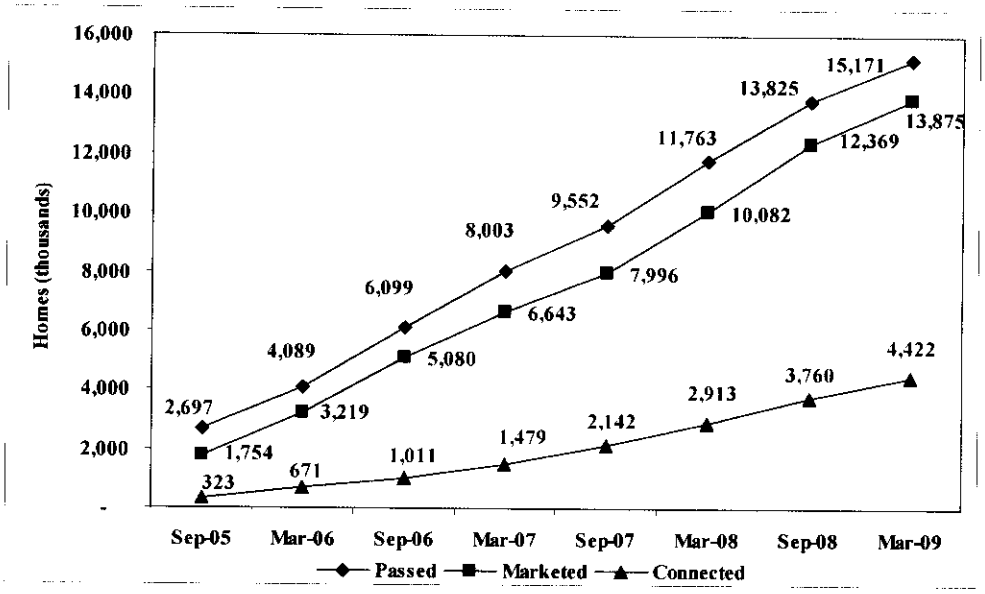
[183] FCC, "High-Speed Services for Internet Access: Status as of December 31, 2007," Released January 16, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf>, accessed on March 12, 2009.
[184] The FCC uses ZIP Codes rather than census tract information to obtain data on broadband penetration. If one customer in a particular ZIP Code has access to broadband, that entire area is considered to be "served." Also, provider numbers are discovered using this same methodology.
[185] FCC, "High-Speed Services for Internet Access: Status as of December 31, 2007," Released January 16, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf>, accessed on March 12, 2009.

5. Deployment of Broadband Technology

a. Fiber Optics

The two largest telecommunications carriers in the U.S., Verizon and AT&T, have made significant investments in fiber optic infrastructure during 2008 and through early 2009. Verizon is deploying fiber to individual homes with its FiOS offering. AT&T deploys fiber to the "node," a centralized point in a neighborhood or subdivision and then relies on copper wire to the premises. AT&T implements this deployment strategy in order to provide its U-verse services. Figure 4-6 shows the current status of fiber-to-the-home deployment.

Figure 4-6. Fiber-to-the-Home Deployment



Source: RVA Market Research and Consulting.

FiOS is currently available in 19 states, including Florida, where it has been deployed in the Tampa Bay area. Broadband through FiOS can achieve up to 50 Mbps, and Verizon provides several speed tiers.[186] Despite the economic downturn, Verizon has been aggressively investing in its fiber build-out. In the fourth quarter of 2008, Verizon added 282,000 FiOS Internet subscribers, for a total of 2.5 million Internet subscribers and 1.9 million television customers. FiOS now passes more than 12.7 million homes and businesses and covers 40 percent of Verizon's landline footprint.[187]

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[186] Verizon FiOS, <http://www22.verizon.com/Residential/FiOSInternet/Plans/Plans.htm>, accessed on March 12, 2009.

[187] "Expansion Drives Growth for Verizon's Telecom Unit in 2008," Verizon Press Release, January 28, 2009, <http://newscenter.verizon.com/press-releases/verizon/2009/expansion-drives-growth-for.html>, accessed on March 17, 2009.

AT&T projects that its U-verse offering will be available to as many as 30 million homes by 2010.[188] U-verse is currently available in Florida in the greater Orlando area, as well as Palm Beach, Broward, Miami Dade, and Volusia counties.[189] AT&T has stated that the company intends to invest $1 billion in 2009 to continue deploying the U-verse network, matching the $1 billion spent in 2008.[190] Broadband through U-verse is available at speeds from 1.5 to 18 Mbps.[191]

AT&T, Embarq, and Verizon have each released a new broadband device that may rival the wireless phone for convenient broadband. The "media phone" is a VoIP phone with a touch screen panel that will provide access to local vendors, e-mail, and basic Internet functions like weather, news, and short video streams. AT&T's HomeManager, Embarq's eGo, and Hub, offered by Verizon Wireless, ~~Hub~~ first became available in limited urban markets in early 2009. The eGo operates on Embarq's existing broadband network. The HomeManager and Hub devices ~~and are intended~~can ~~to~~ be used in conjunction with the fiber offerings of the two companies (AT&T's U-verse and Verizon's FiOS), but are also compatible~~although the systems can be used~~ with other broadband connections. The media phone is meant to bridge the gap between the personal landline phone and the wireless phone, and it is also being marketed as a business service that can replace many high-end office phones.[192]

b. DSL

As of the second quarter of 2008, there were 29.7 million DSL subscribers in the U.S.[193] DSL remains the primary broadband platform for telephone companies. DSL and cable are the two most popular choices among consumers for broadband access. Current research using bonded copper pairs has generated DSL speeds of up to 500 Mbps. Although there are still limitations involving distance, this technology will probably be most beneficial when combined with fiber optic technology to span the last mile to the customer's premises.[194]

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[188] Tim Connelly, "AT&T: 1 Million U-verse Subscribers by End of '08," December 11, 2007, <http://www.betanews.com/article/ATT-1-million-Uverse-subscribers-by-end-of-08/1197413756>, accessed on March 19, 2009.

[189] Etan Horowitz, "AT&T Launches U-verse Phone Service in Greater Orlando and Volusia County," May 11, 2009, <http://blogs.orlandosentinel.com/etan_on_tech/2009/05/att-launches-uverse-phone-service-in-orlando-and-volusia-county.html>, accessed on May 14, 2009.

[190] Lisa LaMotta, "AT&T Maintains High-Fiber Diet," *Forbes*, February 24, 2009, <http://www.forbes.com/2009/02/23/att-verizon-telecom-markets-equity_wireless_18.html>, accessed on March 13, 2009.

[191] AT&T U-verse, <https://uversecentral1.att.com/uvp/home/explore?umaurl=/uma/RetrieveGeneralContent%3FCONTENTID%3D1496%26APPID%3DAMSS%26FORMAT%3DIFRAME%26DMA%3DX%26CU.S.TSUBTYPE%3DX>, accessed on March 19, 2009

[192] "The Media Phone has Arrived," February 2009, In-Stat, <http://www.instat.com/promos/09/dl/media_phone_3ufewaCr.pdf>, accessed on May 12, 2009.

[193] Mike Farrell, "Will DSL Survive?" November 15, 2008, <http://www.multichannel.com/article/85756-Cover_Story_Will_DSL_Survive_.php>, accessed on March 19, 2009.

[194] Telecompetitor, "500 Mbps Over DSL?" March 17, 2009, <http://www.telecompetitor.com/node?page=2>, accessed on March 17, 2009.

c. Cable Broadband

The cable broadband offering analogous to fiber optics is DOCSIS 3.0, which is capable of speeds in excess of 50 Mbps. Nearly 15 million consumers in the U.S. already have access to this technology, and analysts predict that by 2011, a minimum of 65 million homes will have access to this service.[195] The cable companies are able to deploy this technology quickly due to its relatively low cost. The upgrade to DOCSIS 3.0 costs $100 per home, compared to the $4,000 per household cost to deploy FiOS.[196] Comcast, the nation's largest cable company, projects that it will have deployed DOCSIS 3.0 to 100 percent of its footprint by 2010, reaching an estimated 50 million homes.[197] Cablevision, another large U.S. cable carrier, projects that it will begin to offer the fastest Internet service in the country in 2009. Cablevision is deploying DOCSIS 3.0, reaching speeds of 101 Mbps and the company plans to offer the service to consumers for less than $100 a month.[198] Mediacom, a smaller cable provider, has also announced its intentions to roll out DOCSIS 3.0 technology. Mediacom, which offers service in Florida, focuses on smaller cities and towns, including a considerable amount of rural territory.[199]

d. Wireless

A major development in wireless broadband is the deployment of WiMAX[200] technology. WiMAX is a broadband technology that provides wireless data over a significantly larger area and at faster rates than Wi-Fi. Sprint Nextel, and Clearwire merged at the end of 2008 to create the nation's largest WiMAX network provider.[201] Cable companies including Comcast and Time Warner Cable have invested in WiMAX technology in order to compete with the wireless broadband offerings of the major telephone companies. Other partners in the Clearwire WiMAX project include Google and Intel. Clearwire anticipates being able to provide its wireless broadband service to as many as 120 million people by 2010.[202] Service from Clearwire is

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[195] Dave Burstein, "U.S. DOCSIS 3.0: 10% Today, 50+% 2010, 80% Soon After," February 6, 2009, <http://www.dslprime.com/docsisreport/163-c/731-us-docsis-30-10-today-50-2010-80-soon-after>, accessed on March 12, 2009.

[196] Craig Moffett, et al., "Verizon (VZ): Project FiOS . . . Great for Consumers, but What About Investors?," *Bernstein Research*, New York, NY, January 14, 2008, p. 1.

[197] Dave Burstein, "U.S. DOCSIS 3.0: 10% Today, 50+% 2010, 80% Soon After," February 6, 2009, <http://www.dslprime.com/docsisreport/163-c/731-us-docsis-30-10-today-50-2010-80-soon-after>, accessed on March 12, 2009.

[198] Saul Hansell, "Cablevision Goes for U.S. Broadband Speed Record," *The New York Times*, April 28, 2009, <http://bits.blogs.nytimes.com/2009/04/28/cablevision-goes-for-us-broadband-speed-record/?pagemode=print>, accessed on March 15, 2009.

[199] "Mediacom: DOCSIS 3.0 on the Way," May 11, 2008, Telecompetitor, <http://telecompetitor.com/node/1241>, accessed on May 12, 2009.

[200] WiMAX stands for worldwide interoperability for microwave access.

[201] FCC 08-259, WT Docket No. 08-94, Sprint Nextel Corporation and Clearwire Corporation, Memorandum, Opinion, and Order, released November 7, 2008.

[202] Marguerite Reardon, "Clearwire Stays the Course Despite Losses," March 5, 2009, <http://news.cnet.com/8301-1035_3-10190068-94.html?tag=newsEditorsPicksArea.0>, accessed on March 14, 2009.

already available in Portland and Baltimore. Comcast will be using the Clearwire network in Portland as its first cable WiMAX market.[203]

In 2007, 68 percent of all broadband subscribers added in the US were mobile connections.[204] Wireless broadband technology is improving and with demand increasing for Internet access on mobile devices, several telephone companies have pushed forward with plans to deploy a fourth generation (4G) wireless standard known as Long Term Evolution (LTE). As many as 6 operators in the U.S. have agreed to adopt the LTE platform, which promises speeds of up to 100 Mbps.[205] LG and Ericsson are developing devices for release in 2009 and 2010 that will be LTE-enabled.

e. Broadband Over Power Lines

Broadband-over-power-line (BPL) technology has thus far failed to generate significant momentum as a viable broadband option. However, IBM has recently entered this market on a limited basis. IBM has partnered with International Broadband Electric Communications (IBEC) to provide broadband to rural customers in Alabama, Indiana, Michigan, and Virginia.[206] IBEC currently offers broadband service over power lines with plans ranging from 256 kbps for $29.95 to 3 Mbps for $69.95 per month for residential users, and the same speeds at a higher rate for business customers. BPL can also support VoIP and real time interactive gaming.[207]

f. Satellite

Another option for those who live outside of the scope of DSL or cable broadband is satellite broadband. There are several large providers of high-speed Internet access via satellite in the U.S., including Skyway U.S.A, WildBlue, and HughesNet. The maximum speed of satellite broadband varies between one and five Mbps.[208, 209] However, satellite broadband has a characteristic known as "latency" which makes using bandwidth-intensive applications such as VoIP, interactive gaming, and video streaming difficult, if not impossible.[210, 211]

In an effort to solve the latency problem associated with satellite broadband, AlphaStar International, Inc. and Computers and Tele-Comm, Inc. have partnered to create a satellite-WiMAX hybrid that uses the satellite for storage and backhaul and delivers signals via WiMAX

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[203] "Comcast Selects Portland as First WiMAX Market," Telecompetitor, March 15, 2009, <http://telecompetitor.com/node?page=2>, accessed on March 19, 2009.
[204] Phoenix Center for Advanced Legal & Economic Public Policy Studies, "Written Statement of George S. Ford, Ph.D. Before the House of Representatives Committee on Energy and Commerce," May 7, 2009. p. 5.
[205] Erik Palm, "4G Race Gaining Speed, Data Says," March 5, 2009, <http://news.cnet.com/8301-1035_3-10190218-94.html?tag=newsEditorsPicksArea.0>, accessed on March 10, 2009.
[206] "IBM Eyes Stimulus Funds for Broadband Over Power Lines," Reuters, February 17, 2009, <http://www.reuters.com/articlePrint?articleId=U.S.N1738980420090217>, accessed on March 14, 2009.
[207] IBEC Services, <http://www.ibec.net/services.php>, accessed on March 19, 2009.
[208] The 5 Mbps offering was added in April of 2009, so it is currently unknown if latency will still be a problem at this speed tier.
[209] HughesNet, <http://go.gethughesnet.com/plans.cfm>, accessed on March 19, 2009.
[210] Skyway U.S.A, <http://www.skywayusa.com/faq.php>, accessed on March 19, 2009.
[211] HughesNet, <http://go.gethughesnet.com/plans.cfm>, accessed on March 19, 2009.

transmitters. Although this technology is still in the early stages, the companies are claiming that the product can achieve 4G speeds (50-100 Mbps). Their initial market will be remote areas of Hawaii.[212]

[212] Erika Engle, "WiMAX May Provide Services to Remote Areas," *Star Banner,* March 13, 2009, <http://www.printthis.clickability.com/pt/cpt?action=cpt&title=WiMAX+may+provide+services+to+remote+areas+-+Business+-+Starbulletin.com&expire=&urlID=34712963&fb=Y&url=http%3A%2F%2Fwww.starbulletin.com%2Fbusiness%2F20090313_WiMAX_may_provide_services_to_remote_areas.html&partnerID=356559>, accessed on March 14, 2009.

CHAPTER V. DISCUSSION OF CHAPTER 364, F.S., REQUIREMENTS

A. INTRODUCTION

Section 364.386(1), F.S., requires the Commission to address the following six points in its evaluation of the status of local wireline telecommunications competition in Florida:

1. The overall impact of local exchange telecommunications competition on the continued availability of universal service.

2. The ability of competitive providers to make functionally equivalent local exchange services available to both residential and business customers at competitive rates, terms, and conditions.

3. The ability of customers to obtain functionally equivalent services at comparable rates, terms, and conditions.

4. The overall impact of price regulation on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

5. What additional services, if any, should be included in the definition of basic local telecommunications services, taking into account advances in technology and market demand?

6. Any other information and recommendations that may be in the public interest.

The FPSC sent data requests to all CLECs and ILECs certificated as of February 20, 2009, designed to address these and other issues. The request included a qualitative questionnaire, which sought information on various service offerings of ILECs and CLECs. The CLEC questionnaire sought information on the effects of approved federal forbearance petitions, Florida-specific capital investments, barriers to entry, information on intermodal competition, and other comments. The ILEC questionnaire sought general comments on the status of competition in Florida. This chapter addresses the statutory questions and summarizes the responses provided by CLECs and ILECs to the qualitative questions.

The Commission recognizes that for many consumers, wireless and VoIP services are substitutes for traditional wireline services. Only wireline telecommunications providers are under the regulatory authority of the Commission. The Commission is, therefore, unable to gather certain types of information from providers of nonjurisdictional services. Wireless carriers and providers of VoIP service are not obligated to provide data to the FPSC. However, a number of VoIP providers have voluntarily provided line counts. With this partial information the Commission's ability to present a complete analysis of the required statutory issues is limited. Through sources available in the public domain, the FPSC is able to reach what it believes are reasonable conclusions regarding wireless and VoIP service providers and their impact on the analysis of these statutory issues.

B. Discussion of Six Statutory Issues

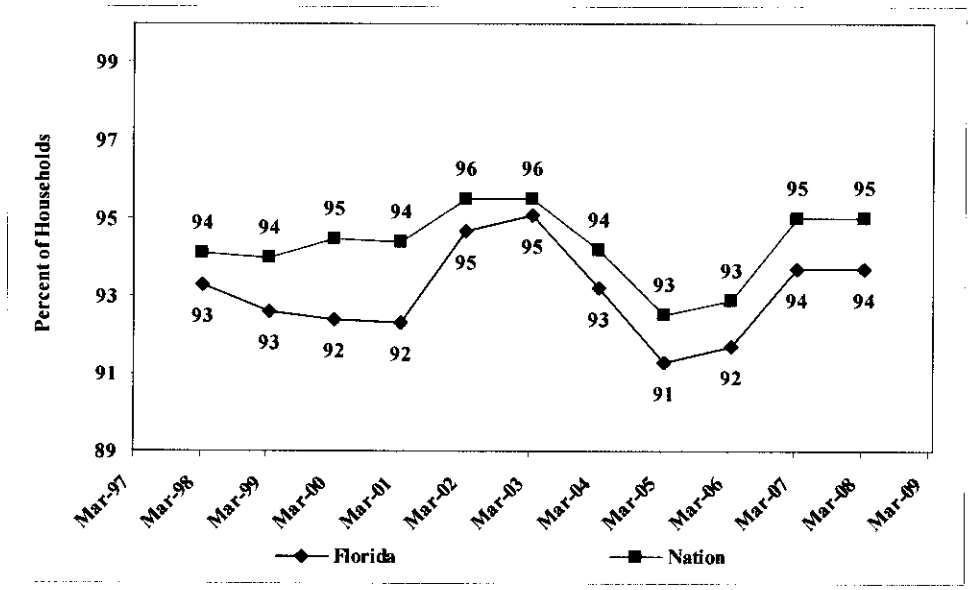
1. The impact of competition on the availability of universal service

Universal service refers to the longstanding policy that a specified set of telecommunications services should be available to all customers at affordable rates. Section 364.025, F.S., provides a number of guidelines designed to maintain universal service objectives with the introduction of competition in the local exchange market. Section 364.025(1), F.S., previously required ILECs to furnish basic local exchange telecommunications service within a reasonable time to any person requesting such service within a company's service territory until January 1, 2009. Section 364.025(4), F.S., states that, prior to January 1, 2009, "the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on competitive local exchange telecommunications companies shall terminate." This Section of the Florida Statutes sunset on January 1, 2009.

According to the FCC, as of year-end 2008, 94 percent of Florida's almost 9 million households had access to voice communication service in the home.[213] Figure 5-1. shows the annual percent telephone penetration as of March of each year since 1997. Income is a significant factor in predicting telephone subscribership, as shown in Figure 5-2. Eighty-nine percent of households with total incomes of less than $10,000 have voice communication service, compared to 96 percent of households with incomes of more than $40,000. Figure 5-2 also reveals an anomaly regarding telephone penetration and income. Florida penetration peaks in the $20,000-$40,000 per year income range and decreases for incomes in excess of $40,000 per year.

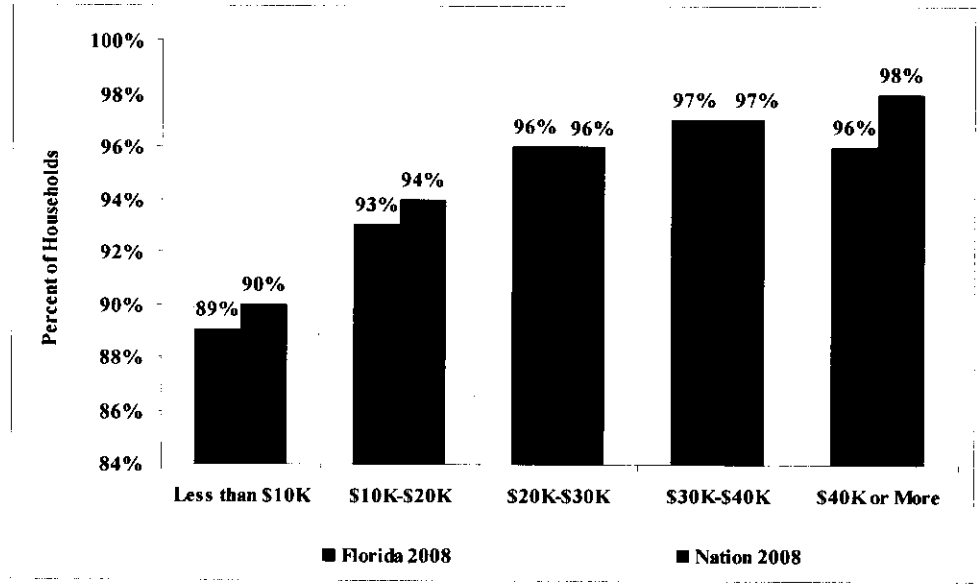
[213] Preliminary information for March 2009 was provided by Alex Belinfante of the Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, via telephone on May 19, 2009.

Figure 5-1. Telephone Service Penetration: Florida vs. Nation



Source: FCC, Telephone Penetration by Income by State.

Figure 5-2. 2008 Telephone Penetration by Income: Florida vs. Nation



Source: FCC, Telephone Penetration by Income by State.

Conclusion: FCC subscribership data for Florida reflected a decline from 95 percent in 2002 to 91 percent in 2005. This decline was followed by an increase in Florida telephone subscribership to 94 percent in 2007 and 2008. It is unclear if this information represents normal variations due to the economic cycle, or whether the data is a reflection that the survey

instrument has become more accurate at accounting for the substitution of new technologies for wireline telephone service. It is premature to assume that recently observed fluctuations in measured telephone penetration rates are cause for alarm. Based on data presented elsewhere in this report, wireless, prepaid telephone services, and VoIP services are providing viable consumer alternatives. The FPSC concludes that local exchange competition has had little if any impact on the availability of universal service.

2. The ability of competitive providers to make equivalent service available

The size of a particular market, as well as subscriber density, are key factors affecting a carrier's market entry decision. As a result, more competitive carriers are offering service in urban areas than in rural areas. Provisions in the 1996 Act influence these differences. For example, the availability of UNEs in a given area may also affect market entry. Section 251(c)(3) of the 1996 Act, as implemented by the FCC, requires that ILECs provide UNEs to requesting carriers at prices based on forward-looking costs. Similarly, Section 251(c)(4) requires that ILECs "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." However, Section 251(f)(1), known as the rural exemption, provides that the requirements of Sections 251(c)(1) through 251(c)(6) do not apply to a rural telephone company until the rural company receives a bona fide request for interconnection, services, or network elements. Once a request has been made, a state commission determines whether the request "is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (other than subsections (b)(7) and (c)(1)(D) thereof)."

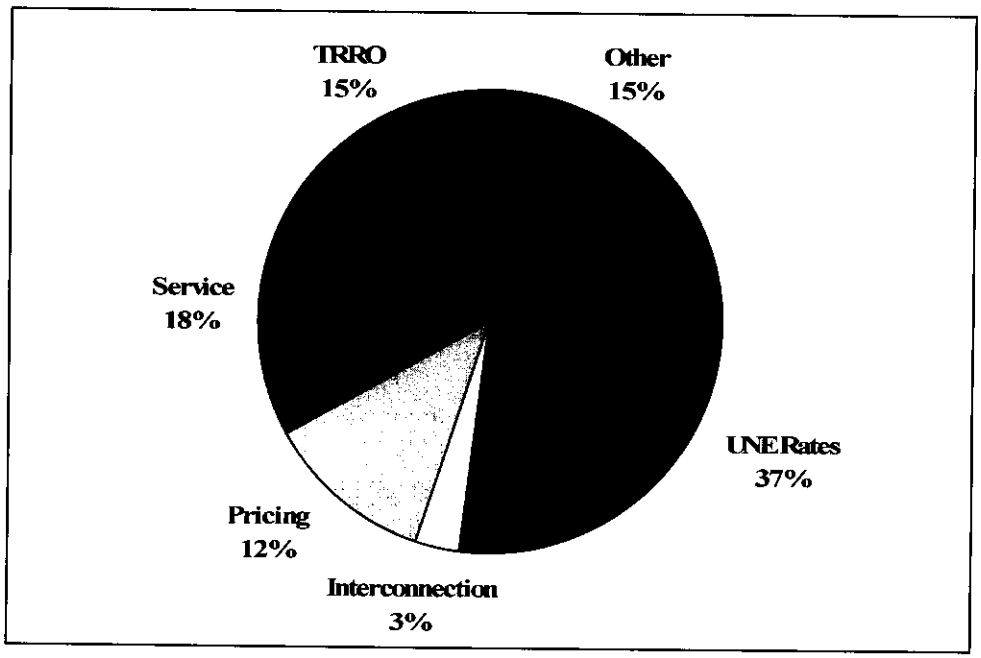
While AT&T, Verizon, and Embarq are currently required to adhere to the various provisions of Section 251(c), the remaining ILECs in Florida are still exempt because the FPSC has yet to lift a rural ILEC's exemption. Since UNEs and resale of the ILEC's services at a wholesale discount are presently not required in Florida's rural ILEC service areas, wireline CLECs considering entry in a rural area will face higher costs as compared to entry in a nonrural area.

Further distinctions exist between nonrural carriers. Specifically, the unbundled loop rates in Florida for AT&T, Verizon, and Embarq were geographically deaveraged, as required by FCC rules. The deaveraging reflects differences in the cost associated with providing loops. Thus, the price for a UNE loop in AT&T's UNE Zone 1 (e.g., most Miami exchanges) is less than a UNE loop in AT&T's UNE Zone 3 (e.g., Homestead exchange). Consequently, carriers entering into urban areas will face lower costs when compared to entering more rural areas.

a. Perceived Barriers to Competition

To evaluate the ability of competitive carriers to provide service, the Commission surveyed all certificated CLECs. CLECs were asked to discuss any perceived barriers to competition in Florida and describe any significant obstacles that might impede the growth of local competition in the state. Thirty-three CLECs reported barriers to competition; the primary issues identified by the respondents are shown in Figure 5-3.

Figure 5-3. Barriers to Competition Reported by CLECs



Source: Responses to 2009 FPSC data requests.

UNE Rates. High pricing of UNEs was the most frequently reported barrier to entry. CLECs alleged unjust fees and UNE rates made competing with ILECs economically unfeasible.

Service. The second most commonly reported type of barrier to entry relates to service problems. This category includes allegations of poor service from ILECs to CLECs and to CLECs' customers. Issues reported include ILEC delays in processing orders and resolving service issues.

Triennial Review Remand Order (TRRO). In 2005, the FCC released its TRRO which, among other things, established a transition period after which the ILECs would no longer be required to unbundle local switching at wholesale prices based on the total element long-run incremental cost methodology. This decision had the effect of increasing the price of UNEs to CLECs. Some CLECs continue to identify the high cost of interconnection directly associated with the TRRO as a barrier. CLEC allegations include lack of access to certain kinds of UNE lines, lack of ILEC cooperation in negotiating commercial agreements, and increased costs resulting from the TRRO.

Pricing. Several CLECs reported that ILECs were offering promotional rates to the CLECs' retail customers that were below wholesale rates available to CLECs.

Interconnection Agreements. A few CLECs listed interconnection agreements as a barrier to entry. CLEC allegations include ILEC refusal to negotiate and refusal by ILECs to interconnect with CLEC networks on fair, reasonable, and nondiscriminatory terms.

Other. CLECs identified other issues as barriers that do not necessarily fit into one of the major categories. These issues included the variety of fees charged to the CLEC at the initiation of CLEC service at a customer's premises, competition from cable companies, deregulation, ILEC market power, excessive paperwork, and the existence of exclusive contracts between developers and other communications companies.

b. Competitive Services

The Commission asked the CLECs to report services they offer. The 140 CLECs providing local service reported offering:

- Bundles including services other than local voice (66 CLECs).
- VoIP (57 CLECs).
- Prepaid only (19 CLECs) / Prepaid and Non-prepaid (12 CLECs).
- Broadband Internet access - Residential (25 CLECs).
- Fiber to end users (11 CLECs).
- Video Service (9 CLECs).

c. CLEC Investment

The Commission also asked the CLECs to report how much money they had invested in their networks that directly serve Florida's local service customers. In order to gather as much information as possible, ranges of dollars were provided so that the CLECs did not need to report a specific dollar amount. As of May 26, 2009, 145 CLECs responded to this question, compared to 111 in the previous year. Of the responses provided:

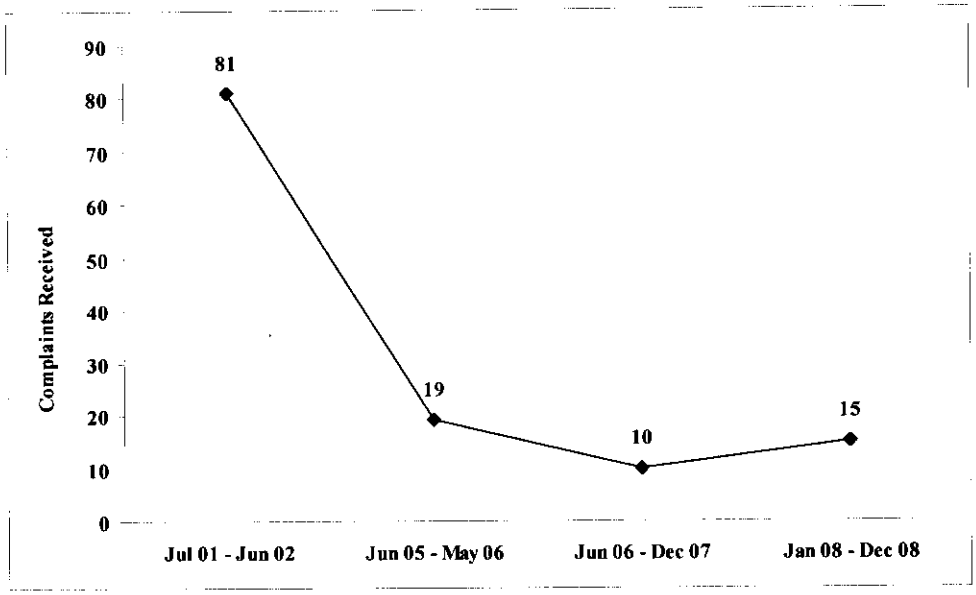
- 35 CLECs reported investing nothing.
- 80 CLECs reported investing $1-$249,999.
- 9 CLECs reported investing $250,000-$999,999.
- 16 CLECs reported investing $1 million-$10 million.
- 5 CLECs reported investing more than $10 million.

d. CLEC Complaints Against ILECs

Pursuant to Section 364.161(4), F.S., the Commission handles CLEC complaints filed against ILECs. As illustrated in Figure 5-4, the number of complaints has generally declined during the past few years. However, 16 complaints were filed from January 1, 2008, to December 31, 2008. Of those 15, 13 were resolved in 2008. The complaints generally focused

on service-related issues. Eleven of the 16 complaints were filed by the same CLEC against 1 particular ILEC. The list of complaints is found in Appendix E.

Figure 5-4. CLEC Complaints Filed Against ILECs



Source: FPSC Consumer Activity Tracking System for January 2008 – December 2008.

The Commission received 120 negotiated agreements and 2 requests for arbitration between January 1, 2008, and December 31, 2008. Since June 1996, the Commission has reviewed and approved 4,391 negotiated interconnection agreements. The general ability of competitive providers to enter into negotiated agreements with incumbent carriers is reflected by these statistics.

e. Comments by Incumbents

ILECs were also asked to provide any comments, suggestions, information, reports, or studies that the ILECs believe to be relevant to topics covered in this report, including intermodal competition. Of the ten ILECs, only AT&T and Verizon filed comments. AT&T filed its comments as confidential, and Verizon stated the following:

> Verizon asserts competition is alive and well in Florida. Consumers have many choices throughout the state, not only for basic telephone service, but also for all their communications needs. Verizon has experienced a 40 percent drop in residential access lines since 2001, while wireless subscription has increased by 83 percent and broadband line growth has exploded statewide. Analysts anticipate another 25-30 percent reduction in the number of access lines by the end of this year for ILECs such as Verizon.

As of 2007, the U.S. Department of Labor, Bureau of Labor Statistics found that cellular phone expenditures actually surpassed spending on residential landline phone services.

Conclusion: Wireless and VoIP services have become a significant portion of the voice communications market. Historically, the Commission has not addressed barriers to entry that may be impacting wireless and VoIP providers. However, these intermodal competitors are providing competitive alternatives to both residential and business subscribers, as evidenced by the fact that intermodal subscribership has increased while wireline subscribership has decreased. In addition, CLECs investing in facilities in Florida are providing a range of service options, and they do not appear to have faced insurmountable obstacles relating to interconnection issues. While there was some positive growth in the number of CLECs offering service in Florida since 2007, the number of residential access lines served by CLECs has declined considerably, from 730,000 access lines in 2004 to fewer than 132,000 in 2008. While some CLECs have been able to provide functionally equivalent service, intermodal competition and federal regulatory decisions have made competing in this market more difficult.

3. The ability of customers to obtain equivalent services

Customers may obtain functionally equivalent services via wireline telephony, wireless telephony, or VoIP. The primary focus of this report is the provision of wireline telecommunications by ILECs and CLECs, the companies subject to Commission jurisdiction.

As of December 31, 2008, 139 CLECs were providing local telecommunications service in Florida in some capacity, compared to 136 as of December 31, 2007. Appendix B lists the responding CLECs and the methods by which each CLEC provides service. CLECs can offer service through resale of an ILEC's or a CLEC's wholesale services, by using its own facilities, by leasing UNEs from an ILEC, or through a combination of methods.

Based on the responses to the 2009 data requests, as of December 31, 2008, of the 278 exchanges in Florida, 12 exchanges have no CLECs offering service, compared to 1 exchange without a CLEC offering service as of December 31, 2007.[214] Table 5-1 lists selected exchanges, the ILEC serving that exchange, the total number of CLEC lines in that exchange, and the total number of CLECs offering service in that exchange for December 2007 and 2008. These exchanges were arbitrarily selected to reflect a range based on the number of lines. The number of CLECs offering services increased in 18 of the 23 exchanges represented, but CLEC access lines decreased in 9 of the 18. The numbers show that CLECs are more likely to target areas with large concentrations of customers.

[214] The twelve exchanges without CLEC service are Alligator Point, Bristol, Carrabelle, East Point, Hosford, Keaton Beach, Kingsley Lake, Molino, Raiford, The Beaches, Tyndall AFB, and Wewahitchka.

Table 5-1. CLEC Providers by Florida Exchange

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Jasper	Windstream	40	33	5	3
Callahan	Windstream	6	63	2	6
Quincy	TDS Telecom	271	271	2	2
Baker	Embarq	46	47	7	7
Crawfordville	Embarq	166	170	11	15
Crestview	Embarq	861	891	20	19
Leesburg	Embarq	1,156	1,124	23	29
Ocala	Embarq	9,398	8,823	31	32
Tallahassee	Embarq	12,641	12,097	35	41
Myakka	Verizon	57	35	7	8
Mulberry	Verizon	373	395	16	19
Bartow	Verizon	883	935	18	20
Zephyrhills	Verizon	1,246	1,241	18	23
Lakeland	Verizon	10,692	10,230	29	33
St. Petersburg	Verizon	28,723	26,845	34	40
Tampa	Verizon	106,072	102,547	44	48
Jay	AT&T	50	58	17	19
Chipley	AT&T	223	246	23	28
Gulf Breeze	AT&T	836	830	25	25
Titusville	AT&T	1,740	1,784	40	42
Gainesville	AT&T	8,820	8,281	47	53
Orlando	AT&T	80,626	70,316	69	77
Miami	AT&T	136,601	121,783	72	78

Source: Responses to 2009 FPSC data requests.

Customers must also be able to obtain functionally equivalent services at rates comparable to that of the ILEC in order for meaningful CLEC competition to occur. Table 5-2 shows that customers appear to have access to services at a variety of rates as competitors have developed pricing strategies to gain customers. Strategies may include overall discounts and matching an ILEC's price. Other CLECs have adopted a strategy of bundling basic local service with discounted toll service or vertical features (call waiting, caller ID, etc.) to compete with ILECs.

Table 5-2. Local Rates for Selected Florida CLECs and ILECs

Access Point	$6.30-$9.19	$17.09-$25.12	AT&T	$12.45-$13.58	$29.94-$36.07
American Fiber	$10.75	$29.25	AT&T	$12.45-$13.58	$29.94-$36.07
	$12	$30	Verizon	$16.33	$33.44
	$11.50	$25.25	Embarq	$15.40-$17.00	$23.45-$30.75
Knology	$11.75	$24.50-$29.50	AT&T	$12.45-$13.58	$29.94-$36.07
	$12.50	$28.75	Verizon	$16.33	$33.44
Orlando Telephone	$11.50	$25	Windstream	$9.49-$11.49	$23.75-$28.72
Cleartel	$11.30-$11.65	N/A	AT&T	$12.45-$13.58	$29.94-$36.07
	$22.28	N/A	Verizon	$16.33	$33.44

*Rates shown are for the lowest and highest rate groups for the most basic local service available. The purpose is to compare CLEC rates in various ILEC footprints.

Source: Tariffs and price lists filed with the FPSC, as of May 2009.

The Commission asked the ILECs and CLECs for information on their bundled service offerings, including whether they offered bundles, what percentage of customers were able to purchase bundles, what percentage of customers actually purchased bundled services (take rate), and if they offered prepaid service. Of the 139 CLECs and 10 ILECs that were offering local telephone service, 66 CLECs and 7 ILECs reported offering bundled services.

Prepaid telephone service continues to be a pricing strategy offered by CLECs to consumers with poor credit histories or to those previously disconnected due to repeated late payment or nonpayment. This service typically gives customers local calling and 911 access in exchange for a prepaid monthly fee, but typically the CLEC blocks long distance, 900 numbers,

and directory assistance calls. CLEC price lists indicate that prices for prepaid service range from approximately $9.19 to $59.95 per month for residential customers, and from $21.93 to $89.95 per month for business customers. Telephone companies providing only prepaid telephone services account for 19 of the 139 CLECs providing local service in Florida and serve approximately 11 percent of CLEC residential access lines.

Wireless and VoIP communications services are alternatives to wireline telecommunications services that are growing in popularity. The appeal of these alternatives is based on price as well as convenience and the availability of unique features.[215] Although obtaining detailed information regarding the penetration levels of these services in Florida is difficult, as reported in Chapter IV, a growing number of Florida households have substituted wireless service and VoIP service for wireline service. Florida's population of college students and seasonal residents may contribute to Florida's continued decline in wireline subscribership because they often fall into demographics with higher rates of wireless substitution.[216, 217] Increasing popularity of wireless and VoIP service also contributes to the fact that total residential access lines for Florida ILECs have steadily declined since 2001 despite an ongoing increase in the number of Florida households.[218] Many VoIP communications services require the purchase of broadband access in order to provide service.

The FCC reports that the annual average percentage of Florida households with a telephone increased in 2006 and 2007 after decreasing in 2004 and 2005. The annual average household telephone penetration for Florida for 2008 was 93.0 percent, a decline of 0.6 percent from 2007.[219] Wireless-only households have grown to about 20 percent of total households nationwide.[220] The percentage of Florida households with wireless-only service was about 17 percent as of December 2007.[221]

Conclusion: Residential consumers in Florida are finding communication alternatives to wireline services offered by ILECs. CLECs, VoIP providers, and wireless providers are providing alternatives. By the end of 2008, CLECs provided 131,725 residential access lines. Ninety-five percent of exchanges in Florida have at least 1 CLEC offering residential service but

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[215] FCC, Voice over Internet Protocol, March 28, 2008, <http://www.fcc.gov/voip/>, accessed on April 28, 2008.
[216] Florida Department of Education, "The Fact Book, Report for the Florida Community College System," 2008, p. 2, <http://www.fldoe.org/arm/cctcmis/pubs/factbook/fb2008/fb2008.pdf>, accessed on April 21, 2009.
"Florida (FL): University and College Education System, Top Five Florida College and Universities by Student Enrollment Size," Educational Portal, <http://education-portal.com/articles/Florida_%28FL%29%3A_University_and_College_Education_System.html>, accessed on April 15, 2009.
[217] "Vulnerable and Hard-to-Reach Population Fact Sheet: Seasonal Residents," Nova Southeastern University, et. al, updated October 2006, <http://www.nova.edu/allhazards/forms/seasonal_res.pdf>, accessed on April 28, 2008.
[218] FCC, "Local Telephone Competition: Status as of June 31, 2008," September 2008, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf>, accessed on April 16, 2008.
[219] FCC, "Telephone Subscribership in the U.S. (Data through November 2008)," June 2009, Table 2, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291222A1.pdf>, accessed on June 19, 2009.
[220] S.J. Blumberg, J.V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2008," May 6, 2009, p. 1, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf>, accessed on May 13, 2009.
[221] S.J. Blumberg, et al., "Wireless Substitution: State-level Estimates From the National Health Interview Survey, January-December 2007" March 11, 2009, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200805.pdf>, accessed on May 14, 2008.

12 exchanges have none. Customers using VoIP-based services in Florida account for an additional 1.6 million residential access lines. Finally, wireless-only households in Florida reached approximately 17 percent as of December 2007.[222] Consequently, the Commission concludes that Florida customers are able to obtain functionally equivalent services at comparable rates, terms, and conditions.

4. The impact of price regulation on the maintenance of affordable and reliable services

For calendar year 2008 section 364.051, F.S., provided that a price cap regulated ILEC may adjust its basic local service revenues once in a 12-month period by an amount not to exceed the change in inflation less 1 percent. In contrast, the price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period, until there is another provider offering local telecommunications service in an exchange area. At that time, the prices for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period.[223] The following ILECs filed notices of rate changes for basic and nonbasic exchange services (local message or measured rate service) between January 1, 2008, and December 31, 2008, pursuant to Section 364.051, F.S.:

- AT&T increased basic local rates by 1.6 percent effective July 11, 2008. Nonbasic rates increased in the range of 0.001 percent to 7.6 percent among the revenue categories.

- Embarq increased basic local rates by 1.2 percent and nonbasic exchange rates by 14.43 percent effective March 11, 2008. Nonbasic rates increased in the range of 0.95 percent to 19.19 percent among revenue categories.

- FairPoint increased basic local rates by 1.5 percent effective November 1, 2008.

- ITS increased basic local rates by 1.8 percent effective May 1, 2008.

- TDS Telecom increased nonbasic rates by 20 percent among the revenue categories.

- Verizon increased basic local rates by 1.58 percent effective November 1, 2008. Nonbasic rates increased in the range of 0.59 percent to 8.6 percent among revenue categories.

- Windstream increased basic local rates by 1.24 percent. Nonbasic rates increased in the range of 1.9 percent to 5.8 percent among the revenue categories.

Conclusion: The FPSC believes these rate increases and price regulation, in general, have had a negligible impact on the overall affordability of telephone service.

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[222] Ibid.

[223] The 2009 Florida Legislature amended Section 364.051, F.S., which changed the terms of price regulation for nonbasic services. However, the report text accurately reflects pricing conditions in effect for calendar year 2008.

5. Definition of basic local telecommunications services

The 2009 Florida Legislature modified the definition of basic local telecommunications service and the new law became effective July 1, 2009. The new definition is as follows:

> "Basic local telecommunication service" means voice-grade, single-line, flat-rate residential local exchange service that provides dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange company, the term includes any extended area service routes, and extended calling service in existence or ordered by the Commission on or before July 1, 1995.

The new definition eliminates multi-line residential and single-line business subscribers from the definition.

According to Section 364.337(2), F.S., if a CLEC offers basic local telecommunications service it must include access to operator services, "911" services at a level equivalent to that of the ILEC serving that area, and relay services for the hearing impaired. CLECs must also provide a flat-rate pricing option for basic local telecommunications. The statute states that "mandatory measured service for basic local telecommunications services shall not be imposed."

With regard to wireless and VoIP services, the FCC has required providers of these services that interconnect to the public switched telecommunications network to provide E911 service. The FCC has an ongoing proceeding to consider additional regulatory requirements for VoIP providers.[224] While these services do provide the same or similar functionality to traditional wireline service, they do not currently fall within the statutory definition of basic local telecommunications service. Wireless or commercial mobile radio service providers are expressly exempt from the statutory definition of a telecommunications company, and VoIP is expressly excluded from the statutory definition of service.

Conclusion: No evidence suggests a need to recommend additions or deletions to the definition of basic local service.

6. Other information and recommendations that may be in the public interest

Conclusion: There are no recommendations at this time.

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[224] FCC, WC Docket No. 04-36, IP-Enabled Services, released April 4, 2008.

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CHAPTER VI. STATE ACTIVITIES

A. ILEC REQUESTED RULEMAKING

In March 2008, five local exchange companies, Verizon, AT&T, Embarq, TDS Telecom, and Windstream Florida (petitioners), filed a Joint Petition requesting that the Commission adopt a new rule on competition and clarify, repeal, or amend 66 rules.[225] The petitioners asserted that with the increasing use of wireless, cable telephony, and VoIP, many of the rules were no longer warranted. In response, the Commission reviewed all the rules in Chapters 25-4, 25-9, and 25-14, Florida Administrative Code (F.A.C.). During the proceeding, the petitioners withdrew their request for the new rule and the amendment or repeal of seven other rules. Due to the large number of rules under consideration, staff filed three separate recommendations that were addressed by the Commission on August 19, 2008, November 13, 2008, and January 6, 2009. In addition, two staff workshops and one Commissioner workshop were held to review and discuss the proposed rule changes.

With its decisions in these dockets, the Commission has exempted the price regulated local exchange companies from 33 rules, repealed 16 rules, amended 20 rules, and taken no action on 1 rule. Of the 20 rules that were amended, the companies either proposed amendments or agreed to staff proposed amendments. The rule changes have decreased the reporting requirements of the companies, eliminated rules which were duplicative of Florida Statutes, limited the applicability of certain rules to residential customers, and allowed the companies to consolidate reporting for installation service, repair service, and answer time. Also, several rule changes were made to adopt the FCC's standards where its standard was similar to Florida's rule. Overall, the changes have resulted in simplified and streamlined rules for regulating local exchange companies. Five of the proposed rule amendments remain pending.

B. ILEC SERVICE QUALITY

ILECs are required by Commission rules to adhere to certain service quality standards while providing basic local telecommunications service.[226] The Commission evaluates the service quality of the ILECs' exchanges throughout the state on a yearly basis, but no more than once in four years for exchanges served by the small ILECs.[227] The service quality standards are usually expressed as a percentage of compliance. For example, Rule 25-4.070, Customer Trouble Reports, states that 95 percent of all out-of-service (OOS) conditions reported by the individual subscriber shall be restored to service within 24 hours. In exchanges containing more than 50,000 access lines, the OOS percentages are reported monthly; otherwise, the ILEC aggregates the results and reports quarterly.

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[225] Docket 080159-TP, Joint petition to initiate rulemaking to adopt new rule in Chapter 25-24, F.A.C., amend and repeal rules in Chapter 25-4, F.A.C., and amend rules in Chapter 25-9, F.A.C., by 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.; and Docket No. 080641-TP, Initiation of rulemaking to amend and repeal rules in Chapters 25-4 and 25-9, F.A.C., pertaining to telecommunications.

[226] Chapter 25-4, F.A.C.

[227] Small ILECs are Indiantown, Frontier, FairPoint, Smart City, TDS Telecom, Northeast Florida Telephone Company, and Windstream.

Another standard found within the same rule involves troubles that are service-affecting. Service-affecting troubles are of a lesser severity than an OOS condition and they are typically related to telephone service features such as voicemail, call forwarding, or noise on the line. In service-affecting conditions, the ILECs are required to clear 95 percent of the troubles within 72 hours. The standard allows the ILECs to aggregate the results on a quarterly basis when the exchange has fewer than 50,000 lines; otherwise, service-affecting troubles are reported monthly.

The ILEC service quality reports for Frontier and Embarq were published in 2008.[228] Frontier is classified as a small ILEC and its last evaluation occurred in 2001. Verizon and AT&T Florida were also evaluated in 2008; however, the reports were not published in 2008 and are not addressed in this report.

The Frontier 2008 service quality evaluation indicated that Frontier was not always providing automatic rebates as required by Rule 25-4.070(3)(a), F.A.C. This issue was a repeat finding from Frontier's 2001 service quality evaluation. The problem was isolated to Frontier's billing system, and Frontier indicated that 752 customers were issued rebates for the period of January 2001 through June 30, 2008, for a total of $5,415.66. The problem was resolved when its customers were migrated to a new billing system.

Embarq's service quality evaluation contained only minor discrepancies, and they have been remedied. The 2 categories contributing to the majority of the discrepancies were service-affecting troubles that were not restored within 72 hours and service guarantee program (SGP) installation rebates.

1. Service Guarantee Programs

ILECs are allowed to petition the Commission for approval of an SGP that relieves the ILEC of the rule requirement addressed by each service standard in the SGP.[229] However, in exchange for relief from the rules, an SGP contains financial incentives for compliance with certain service quality standards established by the SGP. The financial incentives may take the form of a credit to an individual customer for service outages exceeding a certain level, or may provide for the ILEC to make payments to a fund in the event it fails to achieve a certain compliance percentage on a particular service standard established by the SGP. Currently three ILECs, (AT&T, Embarq, and Windstream) are operating under Commission-approved SGPs.

AT&T's SGP provides automatic credits to residential customers for service outages exceeding 24 hours and automatic credits for missing service installation commitment dates by more than 3 days.[230] For calendar year 2008:

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[228] The reports are posted on the Commission's Web site and can be found at the following link: http://www.psc.state.fl.us/utilities/telecomm/servicequality/index2.aspx.

[229] Rule 25-4.085, F.A.C., Service Guarantee Program.

[230] FPSC Order No. PSC-05-0440-PAA-TL, Docket No. 050095-TL, Petition for extension of modification of existing Service Guarantee Program and for limited Waiver of Rules 25-4.070(3)(a) and 25-4.073(1)(d), F.A.C., by BellSouth Telecommunications, Inc., issued April 25, 2005.

- AT&T paid its customers $183,350 for missed installation commitments and $1,540,840 for not repairing OOS trouble reports within 24 hours.

- AT&T's average answer time compliance was below requirements, resulting in $4,000 being credited to its Lifeline Program.

Embarq's SGP provides automatic credits to residential customers for service outages exceeding 24 hours and automatic credits for missed installation commitment dates of greater than 3 days.[231] In 2008:

- Embarq credited its customers $231,751 for missing the service installation commitments and $355,545 for not restoring residential service outages within 24 hours.

- Embarq paid $95,000 to its community fund for missing its monthly average answer time standard.

Windstream's SGP has similar service standards concerning service installations, repair intervals, and answer times to those of AT&T and Embarq.[232] In 2008, Windstream:

- Provided $790 in credits to customers for failing to install service on the agreed upon date.

- Credited $5,500 to those customers experiencing OOS conditions.

- Provided $35,000 to its Community Service Fund promoting Lifeline service.

2. Petition by Attorney General, Office of Public Counsel, and AARP

The Attorney General, the Office of Public Counsel (OPC), and AARP (the Petitioners) filed a petition on May 15, 2008, requesting the FPSC to issue a show cause order against Verizon for violation of Commission service quality rules.[233] The Petitioners allege that Verizon willfully violated the Commission's service quality rule 262 times in 2007. The rule relates to restoration of OOS and service-affecting trouble reports.[234] The company is required by rule to repair 95 percent of their service interruption complaints in each exchange within 24 hours and

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[231] FPSC Order No. PSC-05-0918-PAA-TL, Docket No. 050490-TL, Petition for approval of Service Guarantee Program, with relief from requirements of Rules 25-4.066(2), 25-4.070(3)(a), 25-4.073(1)(a), and 25-4.110(6), F.A.C., by Sprint-Florida, Incorporated, issued September 19, 2005.

[232] Docket No. 050938-TP Joint application for approval of transfer of control of Alltel Florida, Inc., holder of ILEC Certificate No. 10 and PATS Certificate No. 5942, from Alltel Corporation to Valor Communications Group, and for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., due to transfer of long distance customers of Alltel Communications, Inc. to Alltel Corporate Holding Services, Inc.

[233] Docket No. 080278-TL, Joint Petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., service availability, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP.

[234] Rule 25-4.070, F.A.C., Customer Trouble Reports.

95 percent of its service-affecting trouble reports in each exchange within 72 hours. The Commission issued a show cause order and order establishing procedure on February 23, 2009.[235] A hearing is scheduled for ~~July 6-7~~October 29-30, 2009.

C. COMPETITIVE MARKET ACTIVITIES

1. Contested Adoption of Sprint AT&T Interconnection Agreement by Nextel

On June 8, 2007, Nextel filed its Notice of Adoption of existing interconnection agreement between AT&T and Sprint, pursuant to AT&T/BellSouth Merger Commitments and Section 252(i) of the Federal Telecommunications Act of 1996 (the 1996 Act). The Commission found that the requested adoption was valid pursuant to Section 252(i) of the 1996 Act and 47 C.F.R. §51.809, effective June 8, 2007, the date on which Nextel filed its notice of adoption with the Commission. Subsequently, the Commission clarified that the adoption included the three-year extension amendment jointly filed on December 4, 2007, by AT&T and Sprint, which by its express terms was effective March 20, 2007.

On March 18, 2009, AT&T filed a Complaint for Declaratory and Injunctive Relief in the U.S. District Court for the Northern District of Florida regarding the Commission-ordered effective date of June 8, 2007.

2. Frontier's Notice of Election of Price Regulation

On November 17, 2008, Frontier,[236] a small ILEC, filed its notice of election to be subject to price regulation under Section 364.051, F.S., effective January 1, 2009. Frontier was the last ILEC to elect price regulation. The election of price regulation exempts the company from rate base, rate of return regulation, and various statutes, but does not exempt a company from quality of service requirements. The Commission issued an order acknowledging Frontier's election of price regulation to be effective January 1, 2009, and issued a consummating order on March 31, 2009.[237]

3. Alternative E911 Services

Intrado Communications, Inc. (Intrado), a certificated CLEC that offers Public Safety Answering Points as a competitive alternative to an ILEC's E911 network, filed three petitions for arbitration seeking to establish interconnection agreements with Embarq, AT&T, and Verizon.[238] After administrative hearings for Intrado/Embarq and Intrado/AT&T, the

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[235] FPSC Order No. PSC-09-0107-PCO-TL, Docket No. 080278-TL Joint petition for show cause proceedings against Verizon Florida LLC for apparent violation of Rule 25-4.070, F.A.C., Customer Trouble Reports, and impose fines, by the Office of the Attorney General, Citizens of the State of Florida, and AARP, issued February 23, 2009.

[236] Frontier Communications of the South, LLC.

[237] FPSC Order No. PSC-09-0136-PAA-TL and Order No. PSC-09-0195-CO-TL, Docket No. 080680-TL, Notice of election of price regulation by Frontier Communications of the South, LLC, issued March 5, 2009 and March 31, 2009.

[238] Docket No. 070699-TP, Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the

Commission determined that Intrado's E911 service does not meet the definition of "telephone exchange service" because the service will not provide the ability to both originate and terminate calls.[239] Embarq and AT&T were not required to provide interconnection pursuant to the provisions set forth in Section 251(c) of the 1996 FTA; instead, the parties may negotiate commercial agreements pursuant to Section 251(a). The Intrado/Verizon docket is scheduled for an administrative hearing on September 16, 2009.

4. AT&T Request for Waiver of Rule 25-4.040(2), F.A.C.

On February 13, 2009, AT&T filed a petition for waiver of Rule 25-4.040(2), F.A.C.[240] This rule requires that each subscriber served by a directory be furnished one copy of that directory (both residential and business pages) for each access line. The Commission addressed the petition on June 16, 2009 and granted AT&T a temporary two-year rule waiver. Under the conditions of the order, AT&T will provide business directories (i.e., yellow pages), and residential white pages would be delivered only upon request of a customer. AT&T would notify customers of this change by including a message in the "News You Can Use" section of its customer bills for two months. In addition, AT&T will prominently place in three locations in the yellow page directories the options by which customers could acquire and access directory content, including the toll-free number to request a free printed copy of the residential white pages listings (or a CD-ROM in those markets where a CD-ROM is available). To further consumer awareness, the Commission will conduct public outreach to inform consumers of the trial program and collect customer feedback. Upon completion of the two-year trial period, the Commission will assess consumer feedback and determine if the rule waiver should be continued or revoked.

5. Comcast / TDS Telecom Arbitration

Comcast[241] filed a Petition for Arbitration with TDS Telecom pursuant to state and federal law.[242] While the Commission has dealt with many arbitration petitions in the past, this

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Communications Act of 1934, as amended, and Section 364.162, F.S., and Docket No. 070736-TP, Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., and Docket No. 080134-TP, Petition by Intrado Communications, Inc. for arbitration to establish an interconnection agreement with Verizon Florida LLC, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.

[239] FPSC Order No. PSC-08-0799-FOF-TP, Docket No. 070699-TP, Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S., issued March 16, 2009; and FPSC Order No. PSC-08-0798-FOF-TP, Docket No. 070736-TP, Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C., December 3, 2008.

[240] Docket No. 090082-TL, Petition by BellSouth Telecommunications, Inc. d/b/a/ AT&T Florida d/b/a/ AT&T Southeast for waiver of Rule 25-4.050(2), Florida Administrative Code.

[241] Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

case is unique in that it presents only one issue: Is TDS Telecom required to offer interconnection to Comcast under Section 251 of the 1996 Act and/or Sections 364.16, 364.161, and 364.162, F.S.? The Commission conducted an administrative hearing on July 13, 2009. A final decision is pending.

6. Bright House Safety Complaint

On December 9, 2008, Bright House filed a complaint with the FPSC alleging that Verizon has violated Commission rules related to service installations and created unsafe conditions for consumers. In its complaint, Bright House argued that Verizon has been damaging Bright House installed equipment and wiring in the process of installing Verizon's facilities to customers. Specifically, Bright House asserts that coaxial drops are being left ungrounded creating a safety concern should the drops become electrified.

Verizon contends that the coaxial cable facilities that are the subject of the complaint are unregulated. Verizon argues that both its cable facilities and the Bright House cable that has been disconnected are used to provide unregulated VoIP, broadband, and cable television services. Verizon states that the Commission lacks jurisdiction over the complaint and seeks to have the complaint dismissed.

Commission authority pursuant to Section 364.15, F.S., is limited to mandating "repairs or improvements to, or changes in, any telecommunications facility" and "additions or extensions to any telecommunications facility." The Bright House complaint did not encompass such services or facilities and the Commission dismissed the complaint.[243]

7. Bright House and Comcast Retention Marketing Complaint

Bright House Networks Information Services (Florida) LLC, and Bright House Networks, LLC (together, "Bright House") filed a complaint and request for emergency relief with the Commission on November 16, 2007. Bright House alleged that Verizon was engaging in anticompetitive behavior and was failing to facilitate the transfer of customers' numbers to

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[242] Docket No. 080731-TP, Petition by Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone for arbitration of an interconnection agreement with Quincy Telephone Company d/b/a TDS Telecom, pursuant to Section 252 of the Federal Communications Act of 1934, as amended, and Sections 120.57(1), 120.80(13), 364.012, 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106.201, F.A.C.

[243] FPSC Order No. PSC-09-0342-FOF-TP, Docket No. 080701-TP, Emergency complaint and petition requesting initiation of show cause proceedings against Verizon Florida, LLC for alleged violation of Rules 25-4.036 and 25-4.038, Florida Administrative Code, by Bright House Networks Information Services (Florida) LLC and Bright House Networks, LLC., issued May 21, 2009.

Bright House upon request, contrary to Rule 25-4.082, F.A.C.[244] Comcast filed a similar complaint and request for emergency relief with the Commission on January 10, 2008.[245]

In these two cases, the issues are identical and the alleged circumstances are substantially similar. The Commission consolidated the two cases for administrative ease. These companies also filed complaints regarding this issue with the FCC. While the cases were set for hearing before the FPSC in August 2008, the FCC issued its order on June 23, 2008.[246] In the FCC's order, Verizon was ordered to cease its customer retention marketing activities nationwide.[247]

Verizon sought to overturn the FCC's order and the case was argued before the D.C. Circuit Court of Appeals on December 5, 2008. After reviewing the case, the D.C. Circuit Court of Appeals denied Verizon's petition for review of the FCC's Order.[248] The FPSC's docket regarding these complaints will remain open until time expires on Verizon's opportunity for further review of the FCC's order.

8. Wholesale Performance Measurement Plans

Wholesale performance measurement plans provide a standard against which the Commission can measure performance over time to detect and correct any degradation in the quality of service ILECs provide to CLECs. The Commission adopted performance measurements for AT&T (formerly BellSouth) in August 2001, for Embarq in January 2003, and for Verizon in June 2003. Trending analysis is applied to monthly performance measurement data provided by each ILEC.

For AT&T, the Commission adopted a Performance Assessment Plan to measure AT&T's wholesale performance. AT&T's current Performance Assessment Plan consists of 49 performance measurements. Remedy payments may be applied to 35 of the measurements, if AT&T fails to meet the performance standards approved by the Commission. For the calendar year 2008, AT&T paid approximately $3.7 million in remedies to CLECs and $2.2 million in remedies to the State of Florida General Revenue fund.

Embarq's current Performance Measurement Plan contains 36 performance measures to ascertain if the ILEC is providing nondiscriminatory service to CLECs. Embarq furnishes monthly performance reports to the Commission for review and assessment and prepares a monthly root cause analysis report of measurements that have not met established standards for

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[244] Docket No. 070691-TP, Complaint and request for emergency relief against Verizon Florida, LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida), LLC, and its affiliate, Bright House Networks, LLC.

[245] Docket No. 080036-TP, Complaint and request for emergency relief against Verizon Florida, L.L.C. for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Comcast Phone of Florida, L.L.C. d/b/a Comcast Digital Phone.

[246] FCC 08-159, File No. EB-08-MD-002, Bright House Networks, LLC, et al., v. Verizon California, Inc., et al., Memorandum Opinion and Order, released June 23, 2008.

[247] Ibid, ¶ 48.

[248] Verizon California, Inc., et al. v. Federal Communications Commissioner, et al., Case No. 08-1234, United States Court of Appeals for the District of Columbia Circuit, February 10, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-288345A1.pdf>, accessed on June 8, 2009.

three consecutive months. For the calendar year 2008, Embarq's monthly compliance with established standards has ranged from 89.6 percent to 96 percent.

Verizon's current Performance Measurement Plan contains more than 40 measures. Under this plan, Verizon furnishes monthly performance reports to the Commission for review and assessment. For the calendar year 2008, Verizon's monthly compliance with approved standards ranged from 84.2 percent to 94.3 percent.

D. Lifeline And Link-Up Service For Low-Income Consumers

In its 2008 annual report on the Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation the FPSC reported:

- Eligible customers enrolled in the Lifeline program in Florida grew 11.8 percent during the October 2007 through June 2008 9-month review period.[249]
- 183,972 eligible customers were enrolled in the Lifeline program.
- AT&T increased its Lifeline participation by 11,169 customers.
- Embarq increased its Lifeline participation by 4,787 customers.
- Verizon experienced a net loss of 1,198 Lifeline customers.

The primary reason for the increase in Lifeline participation is the automatic enrollment process initiated by the FPSC and the Department of Children and Families (DCF). Between April 1, 2007, and October 31, 2008, 268,797 Lifeline applications were filed through the FPSC/DCF automatic enrollment process. In addition, enrollment of Lifeline customers by non-ILEC eligible telecommunications carriers (ETCs) continues to have a positive impact. Non-ILEC ETCs enrolled 13,843 Lifeline customers, representing 7.5 percent of the total Lifeline customer enrollment as of June 30, 2008.[250]

Other major developments in 2008 relating to Lifeline included the emergence of TracFone d/b/a/ Safelink Wireless (TracFone) as a major Lifeline provider and an initial decision by the FPSC to require application of Lifeline benefits to bundled packages.

1. TracFone Wireless

TracFone began serving Lifeline customers in Florida on September 8, 2008. It enrolled approximately 226,000 new Lifeline customers in Florida from September 8, 2008, to December 31, 2008. Since Lifeline enrollment figures in the 2008 Lifeline Report ended June 30, 2008, TracFone's Lifeline customers are not included in the total number of Lifeline customers mentioned above.

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[249] The 2008 Lifeline Report used a nine-month review period of September 8, 2008 to December 31, 2008, in order to establish an earlier date for data collection. Future reports will use a twelve-month review period of July 1 to June 30.

[250] Non-ILEC Lifeline enrollment includes competitive ETC and non-ETC reseller enrollment.

2. Bundled Packages

A second new development impacting Florida's Lifeline program is the application of the Lifeline discount to bundled packages. A bundled service package combines basic local exchange service with nonbasic or unregulated services. Such services may include call waiting, call forwarding, voicemail, Internet access, and all other services that may be offered in a bundled package in combination with basic service.

Currently, individual ETC policies within Florida vary among companies as to whether the Lifeline discount applies to bundled service packages. Some ETCs provide Lifeline consumers with the option to subscribe to any bundled package while others reject the applications of Lifeline consumers subscribing to bundled services. Some ETCs offer Lifeline benefits on limited plans for basic service only.

On June 23, 2008, the Commission clarified that pursuant to federal rules, 47 C.F.R. §54.403(b), and consistent with Chapter 364, F.S., ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service.[251] Verizon, Sprint Nextel, and Alltel each filed a protest of the Commission's order. A formal hearing was held on March 2, 2009. It is anticipated that this matter will be brought before the FPSC for final resolution in the second half of 2009.

E. Telecommunications Relay Services

Chapter 427, F.S., requires that a telecommunication relay system be compliant with regulations adopted by the FCC to implement Title IV of the Americans with Disabilities Act (ADA). The FCC mandates the minimum requirements for services a state must provide, certifies each state program, and periodically proposes changes in the stipulated services. One such proposal is for states to fund the intrastate portion of the cost to provide video relay service[252] (VRS) and IP Relay.[253]

The relay costs for VRS and IP Relay are presently being paid through the federal interstate Telecommunications Relay Service (TRS) fund. The FCC believes Title IV of the

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[251] FPSC Order No. PSC-08-0417-PAA-TP, Docket No. 080234-TP, Implementation of Florida Lifeline program involving bundled service packages and placement of additional enrollment requirements on customers, issued June 23, 2008.

[252] Video Relay Service is a form of Telecommunications Relay Service (TRS) that enables individuals with hearing disabilities who use American Sign Language to communicate with voice telephone users through video equipment, rather than through typed text. Video equipment links the VRS user with a TRS operator so that the VRS user and the operator can see and communicate with each other in signed conversation. Because the conversation between the VRS user and the operator flows much more quickly than with a text-based TRS call, VRS has become a popular form of TRS.

[253] IP Relay allows people who have difficulty hearing or speaking to communicate through an Internet connection using a computer and the Internet, rather than a TTY and a telephone.

ADA[254] and its legislative history make it clear that Congress intended that the states be responsible for the cost recovery for intrastate relay services provided under their jurisdiction.[255]

In November 2007, the FCC stated that Section 225 of the 1996 Act provides that the costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, and the costs caused by the provision of intrastate TRS shall be recovered from the intrastate jurisdiction.[256] In that Order, the FCC noted, "The issue of separation of costs relating to the provision of IP Relay and VRS is pending pursuant to the Further Notice of Proposed Rulemaking (FNPRM) in the 2004 TRS Report & Order."

Historically, there were no means available to automatically determine the geographic location of IP Relay and VRS calls; therefore, there was no way to determine if a particular IP Relay or VRS call was interstate or intrastate. In June 2008, the FCC adopted a system for assigning 10-digit telephone numbers linked to the North American Numbering Plan (NANPA) for users of IP Relay and VRS, an initial step toward determining the jurisdictional nature of such calls.[257] The order requires that the telephone number assignments be "geographically appropriate NANPA numbers." The 10-digit numbering system for IP Relay and VRS had to be implemented no later than December 31, 2008. Since the beginning and ending points of calls will now be known, the cost burden of intrastate IP Relay and VRS calls could soon be assigned to the states. The FPSC estimates the impact of assigning intrastate IP Relay and VRS cost to the states at between $25 and $30 million for Florida.

The additional IP Relay and VRS costs could increase the annual budget for Florida TRS to more than $39 million and likely exceed the current $0.25 surcharge cap per access line allowed by statute. If the FCC determines that IP Relay and VRS intrastate costs must be recovered by states, a legislative change may be necessary to either increase the present TRS cap for local exchange company lines or have all carriers, including wireless and VoIP providers, charge the surcharge as the federal TRS program does.

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[254] Title IV of the ADA requires that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

[255] FCC 04-137, CG Docket No. 03-123, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rule Making in, Released June 30, 2004.

[256] FCC 07-186, CG Docket No. 03-123, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, released November 19, 2007.

[257] FCC 08-151, CG Docket No.03-123, In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking, released June 24, 2008.

F. STATE LEGISLATION

1. CS/CS/SB 2626 Telecommunications Companies

Governor Crist signed CS/CS/SB 2626 [258] into law on June 24, 2009, amending Chapter 364, F.S. The bill makes reforms to the existing regulatory framework for telecommunications, and designates DMS as the primary agency for the development of a statewide map of broadband availability and a strategic plan for broadband deployment and use in the state.

a. Telecommunications Regulation

The new law primarily impacts the oversight of ILECs by the FPSC. The bill would redefine basic service for the purposes of regulatory oversight to include only single-line, flat-rate residential service without ~~any~~ the addition of~~additional~~ nonbasic features or unregulated services, either priced individually or as part of a combination of services (including unregulated services such as wireless or video services) offered for one price. The revised definition reclassifies flat-rate, single-line business services and residential services of more than one line, or combined with at least one additional feature, as nonbasic service. Nonbasic services do not have the same degree of price protection and service quality protection previously available for basic services. In addition, the bill eliminates certain regulatory requirements of nonbasic services (any service other than basic, interconnection services, or network access services). Significant changes to FPSC jurisdiction include:

- Single-line business customers and residential customers who subscribe to any nonbasic or unregulated services are now considered nonbasic subscribers. Previously, the local service component was classified as basic service and rate increases in any 12-month period were limited to the change in inflation less 1 percent. ~~The new law grandfathers all existing basic service customers as of July 1, 2009.~~ (Section 364.02(1)&(10) and 364.051(3), F.S.)

- Nonbasic subscribers are now subject to 10 percent rate increases in a 12-month period, a reduction from the 20 percent increases previously allowed if competitors were present. (Sections 364.02(1)&(10) and 364.051(5)(a), F.S.)

- The FPSC no longer has authority to resolve service quality complaints of nonbasic business or residential customers. (Sections 364.02(1)&(10) and 364.051(5)(b), F.S.)

- The FPSC's authority to compel repairs or improvements is now restricted to facilities serving single-line residential customers subscribing to basic only services. (Section 364.15, F.S.)

- The income eligibility criteria for Lifeline service is now increased to 150 percent of the federal poverty guidelines from the existing 135 percent for AT&T, Embarq, and Verizon. (Section 364.10(3)(a), F.S.)

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[258] Committee Substitute for Committee Substitute for Senate Bill 2626.

- The FPSC authority over the terms of contracts between telecommunications companies and their subscribers was repealed. (Sections 364.051(1)(c) and 364.19, F.S.)

- The requirement that companies file tariffs containing rates, terms, and conditions of service was eliminated. Companies are allowed to publish this information electronically or may continue to file schedules (tariffs) with the Commission. (Sections 364.04(1), 364.10(3)(a), and 364.051(5)(a), F.S.)

- The requirement for a bill insert to annually inform customers of the prices of services to which they subscribe was eliminated. Companies are still required to inform customers of this information annually, but the method is not specified. (Section 364.3382, F.S.)

- The price cap for operator services was removed. (Section 364.3376(3), F.S.)

- Certificated carriers are allowed to merge or transfer ownership to other certificated carriers without any state regulatory oversight. (Section 364.33, F.S.)

b. Broadband Deployment Administration

The bill creates a new section of the statute to acknowledge the importance of broadband Internet service and authorizes the DMS to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to:

- Conduct a needs assessment of broadband Internet service including wireless and wireline Internet service providers, to create maps at the census tract level that will show geographic gaps in coverage, identify download and upload transmission speeds, and provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability.

- Create a strategic plan defining goals and strategies for increasing the use of broadband Internet service in the state.

- Build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community.

- Establish a grant program that will use funds to encourage the use of broadband Internet service in rural unserved and underserved areas.

DMS is also authorized to:

- Apply for and accept federal funds for these purposes, as well as accept donations and gifts from individuals, foundations, and private organizations.

- Enter into contracts that are necessary to carry out the goals of the section.

- Establish any committee to administer or carry out the purposes of the section.

- Adopt necessary rules, including the authority to establish definitions of terms pertinent to the section.

2. Carrier-of-Last-Resort Obligation

Section 364.025, F.S., Universal Service, provides that: "Until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory." This requirement is commonly referred to as the carrier-of-last-resort (COLR) obligation. The 2008 Florida Legislature adjourned without extending the expiration date, and the COLR obligation sunset on January 1, 2009. ILECs in the state are no longer obligated by state law to serve any person requesting service. Federal law requires carriers designated as ETCs to offer services that are supported by federal universal service support mechanisms.[259] However, designated ETCs are not required to be able to serve *all* customers in their designated territory in order to secure ETC designation. Current FCC rules require ETCs to file a report every 12 months indicating the number of requests for service that the carrier was unable to fulfill. There are no established penalties for unfulfilled service requests. To date, the FCC has yet to revoke an ETC designation for an unfulfilled service request, and it is not known whether any state has done so.

In addition to the expiration of the COLR obligation, the requirement to establish a permanent intrastate universal service mechanism expired as of January 1, 2009.

[259] 47 U.S.C. Section 214(e)(1)(A).

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CHAPTER VII. FEDERAL ACTIVITIES

A. BROADBAND

1. FCC Broadband Reporting

Section 706 of the 1996 Act directs the FCC to encourage the deployment of advanced telecommunications capabilities to all Americans by using measures that "promote competition in the local telecommunications market." Furthermore, the section requires the FCC to conduct a regular inquiry to determine "whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." The FCC released its Fifth Report on the deployment of advanced telecommunications capabilities on June 12, 2008.[260] The FCC concluded in this report that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

The FCC found it necessary to evaluate broadband deployment based on the migration of customers and services to higher speed tiers. In light of the continuing evolution in technology and consumer demand for advanced telecommunications capability, the FCC concluded that it must modify its data collection efforts. In order to gather more detailed information at state and national levels, the FCC is adding and collecting data on additional broadband speed tiers.

The FCC updated its High-Speed Services for Internet Access report to reflect data as of December 31, 2007. The FCC's analysis indicated that more than 99 percent of the country's population lives in ZIP Codes where a provider reports having at least 1 high-speed service subscriber.[261] Under the current analysis, one customer receiving broadband identifies the entire ZIP Code as having broadband available. Critics of the FCC's analysis have noted that almost all ZIP Codes in the U.S. have access to at least one broadband satellite service provider.

The FCC concluded in March 2008 that it could better measure broadband deployment by requiring submission of data on a smaller geographic level. The FCC adopted a Report and Order to track broadband deployment at the census tract level to address the availability of broadband on a more detailed geographic level. The FCC amended this requirement to include reporting of the percentage of residential broadband customers in each census tract.[262] The new reporting requirements took effect on March 16, 2009.[263]

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[260] FCC 08-88, GN Docket No. 07-45, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Fifth Report, released June 12, 2008.

[261] FCC, "High-Speed Services for Internet Access: Status as of December 31, 2007," January 16, 2009, p. 4, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf>, accessed on March 12, 2009.

[262] FCC 08-148, WC Docket No. 07-38, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, Order on Reconsideration, released June 12, 2008.

[263] FCC, DA 09-430, WC Docket No. 07-38, Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP)

The Consumers Union, Consumers Federation of America, and Free Press[264] have asked the FCC to reconsider its conclusion that advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.[265] The FCC sought comment on the joint petition on September 8, 2008.[266] While the comment cycle has concluded, the FCC has taken no action to resolve the petition.

2. FCC Proceeding Regarding Internet Network Management

In November 2007, a complaint was filed with the FCC against Comcast for violating the FCC's policy of "reasonable network management."[267] Comcast was accused of degrading certain applications when its network became congested. Shortly thereafter, the Associated Press conducted a study that determined that Comcast did, in fact, degrade or block entirely certain types of peer-to-peer traffic. The study found that the disruption also occurred during nonpeak hours, regardless of network congestion. This degradation was especially evident for those services that were in direct competition with some of Comcast's cable offerings, like video streams and VoIP. Such video distribution poses a potential competitive threat to Comcast's video-on-demand service. The FCC found Comcast's practices to be intrusive and discriminatory, and it released an order requiring Comcast to:

- Disclose its methodology for blocking and delaying applications.
- Design a plan to change its network management practices so that it no longer discriminates between certain types of traffic.
- Fully inform customers of its network management policies.

In January 2009, the FCC again contacted Comcast concerning the degradation of VoIP phone calls on its network and an apparent contradiction between the information on the Comcast web site and actual practices.[268] Comcast responded that the information on the web site warned that during periods of network congestion, VoIP calls that used the public Internet

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Subscribership, Order, released February 23, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-430A1.pdf>, accessed on April 28, 2009.

[264] Free Press is a national, nonpartisan, nonprofit organization working to reform the media.

[265] FCC,GN Docket No 07-45, Petition for Reconsideration by Consumers Union, Consumer Federation of America and Free Press filed July 11,2008, <http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520033992>, accessed on April 28, 2009.

[266] FCC Public Notice, DA 08-2035, GN Docket No. 07-45, Pleading Cycle Established for Comments on Petition for Reconsideration of the Commission's Fifth 706 Report, released September 3, 2008.

[267] FCC 08-183, WC Docket No. 07-52, Broadband Industry Practices Petition of Free Press et al,. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management," Memorandum Opinion and Order, released August 20, 2008.

[268] FCC Letter to Kathryn A. Zachem, Vice President, Regulatory Affairs, Comcast Cooperation, WC Docket No. 07-52, Broadband Industry Practices Petition of Free Press et al,. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management", January 18, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-288047A1.pdf>, accessed on April 22, 2009.

may sound "choppy" or have a delay. However, Comcast's own VoIP offering, which does not ride the public Internet, would not suffer from these problems.

3. American Recovery and Reinvestment Act (ARRA)

On February 17, 2009, President Obama signed the ARRA into law. As part of the ARRA, Congress provided more than $7 billion for grants and loans to stimulate broadband deployment and adoption. The $7 billion was divided between the NTIA[269] and the RUS for distribution. The $4.7 billion released to the NTIA was allocated in the following manner:

- $4.35 billion to provide broadband access in unserved and underserved areas.
- No less than $250 million to increase sustained broadband adoption.
- No less than $200 million to upgrade technology and capacity and public computing centers.
- Up to $350 million to fund the Broadband Data Improvement Act for development and maintenance of a broadband inventory map.
- There is also an additional $10 million provided to conduct audits and oversight of grants and other funding.

Funding is subject to a 20 percent match, although a waiver can be granted if the NTIA deems there is sufficient need. State and local governments, nonprofits, and any other entity, including a broadband service or infrastructure provider, are eligible to apply for funding. States may be consulted to help the NTIA identify unserved and underserved areas within the state and to advise the NTIA regarding the allocation of grant funds within that state.

The RUS was given $2.5 million to provide direct loans and grants for distance learning and telemedicine services in rural areas. Projects funded through the RUS must be used in areas that are at least 75 percent rural and have the highest proportion of rural residents without sufficient access to high speed broadband service in order to facilitate rural economic development. Funding will be given to project applicants for broadband systems that will deliver end users a choice of more than one provider, and be fully funded, completed, and commence promptly.

The FCC has also been tasked with developing a national broadband plan within one year of the enactment of the ARRA. The RUS, NTIA, and FCC are working collaboratively to establish policy for future broadband deployment that will help all participants direct their efforts in a productive manner. The FCC issued a Notice of Inquiry on April 8, 2009, seeking input

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[269] The NTIA is an agency in the U.S. Department of Commerce that serves as the executive branch agency principally responsible for advising the President on telecommunications and information policies.

from consumers, industry, large and small businesses, nonprofits, the disability community, governments at the federal, state, local and tribal levels, and all other interested parties. [270]

B. Universal Service

Florida consumers pay significantly more into the federal Universal Service Fund (USF) than the amount of support that is returned to eligible service providers in Florida.[271] The assessment factor used to collect revenue from telecommunications carriers has grown to accommodate growth in the universal service fund. These carriers can pass on these assessments to their customers up to the amount that the carrier is charged. The FCC has proposed an assessment factor of 12.9 percent for the third quarter of 2009. This would represent the highest assessment factor implemented to date.[272] For this reason, the FPSC continues to actively monitor and participate in ongoing proceedings at the FCC and with the Federal-State Joint Board on Universal Service (Joint Board). Table 7.1 shows Florida's estimated contribution and receipts for 2007.

Table 7-1. 2007 Federal Universal Service Programs in Florida
(Annual Payments and Contributions in Thousands of Dollars)

	Payments from USF to Service Providers	Estimated Contributions[273]	Estimated Net
High-Cost	$82,308	$292,258	($209,950)
Low Income	20,912	56,094	(35,182)
Schools & Libraries	79,955	123,262	(43,307)
Rural Health Care	207	2,549	(2,342)
Total[274]	**$183,382**	**$481,258**	**($297,876)**

Source: FCC 2008 Universal Service Monitoring Report, Table 1.12.

[270] FCC 09-31, GN Docket No. 09-51, A National Broadband Plan for Our Future, Notice of Inquiry, released April 8, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-31A1.pdf>, accessed on April 23, 2009.
[271] FCC, "Universal Service Monitoring Report," CC Docket No. 98-202, released December 31, 2008, Table 1.12, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A3.pdf>, accessed on April 1, 2009.
[272] FCC Public Notice, DA 09-1322, CC Docket No. 96-45, Proposed Third Quarter 2009 Universal Service Contribution Factor released June 12, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-1322A1.pdf>, accessed on June 17, 2009.
[273] Ibid. Program specific estimations are based on the percent of total contribution times the program disbursements from Table 1.12.
[274] The total contribution in this table includes approximately $7 million in administrative expenses for the Universal Service Administrative Company.

1. High-Cost Support Reform

The FCC asked the Joint Board to review and recommend changes to the FCC's rules relating to the high-cost universal service support mechanisms for rural carriers.[275] The Joint Board issued its recommendation[276] to the FCC on November 20, 2007, after seeking comment through several public notices.[277] In general, the Joint Board concluded that the FCC should:

- Cap the total amount of high-cost support at the current level.
- Eliminate the identical support rule, which provides support to competitors based on the incumbent carrier's costs.
- Expand the list of supported services to include broadband and mobility services through new high-cost programs.
- Transition to fund only one provider for each service type (i.e., broadband, wireless, and wireline) for a geographic area.
- Consider requiring state matching support as a condition of receiving support beyond some threshold amount for the broadband and mobility funds.

Under the current rules, rural carriers receive high-cost support based on their historic costs. Non-rural carriers receive support based on forward looking costs. A competitive carrier that has been designated as an ETC within a specific area can also receive high-cost support.[278] The amount of support a competitive ETC receives is based on the per line equivalent support amount the incumbent receives, and not on the competitive ETC's own costs. High-cost support for rural carriers represents approximately 68 percent of the high-cost fund, or about $3 billion for 2008.[279] The total federal USF for 2008 was about $7 billion.[280]

Prior to issuing a final order on the Joint Board Recommended Decision, the FCC implemented an interim cap on support available to competitive ETCs.[281] In 2001, competitive ETCs received approximately $17 million in high-cost support. By 2008, competitive ETCs

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[275] FCC 04-125, CC Docket No. 96-45, Federal-State Joint Board on Universal Service, Order, released June 28, 2004.
[276] FCC 07J-4, CC Docket No. 96-45, WC Docket No. 05-337, Recommended Decision, released November 20, 2007.
[277] FCC 04J-2, CC Docket No. 96-45, Federal-State Joint Board on Universal Service, released August 16, 2004; FCC 05J-1, CC Docket No. 96-45, Federal-State Joint Board on Universal Service, released August 17, 2005; FCC 06J-1, CC Docket No. 96-45, Federal-State Joint Board on Universal Service, released August 11, 2006; and FCC 07J-1, CC Docket No. 96-45, Federal-State Joint Board on Universal Service, released May 1, 2007.
[278] Competitive carriers can include wireline CLECs, wireless carriers, and cable providers.
[279] Universal Service Administrative Company, "2008 Annual Report, Amended April 2009," page 48, <http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2008.pdf>, accessed on April 22, 2009.
[280] Ibid, p. 24.
[281] FCC 08-122, CC Docket No. 96-45, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, High-Cost Universal Service Support, Order, released May 1, 2008.

received $1.3 billion in high-cost support.[282] The FCC has indicated that it sees the interim cap as the first step in a comprehensive reform process that will also include intercarrier compensation (ICC).[283]

On November 5, 2008, the FCC sought comment through an Order and Further Notice of Proposed Rulemaking (FNPRM).[284] FCC Chairman Martin had intended this order to represent a more comprehensive reform of both the high-cost programs and existing ICC mechanisms but he was not able to form a consensus regarding these issues. The section of the Order addressing USF reform only briefly addresses the Universal Service Joint Board's Recommended Decision. While there appeared to be some consensus based on the joint comments of the FCC Commissioners, the FCC declined to implement any of the Joint Board's recommendations. The FCC sought comment on many of the Joint Board's recommendations for a second time. The FPSC's latest comments in this proceeding take the following positions:

- A carrier's support should be based on its own costs, not on the cost or the support received by the incumbent provider.
- Place a permanent cap on the amount of high-cost support distributed to ETCs.
- A reverse auction structure should result in a single winner.
- The FCC should limit the initial rounds of auctions to those wire centers that currently receive the most high-cost support and in which there are already more than three ETCs designated.
- If the FCC were to determine that the definition of supported services should include broadband and mobility services, that funding should only be used to deploy network facilities in unserved areas.
- Universal service funding should not be the source of recurring support for broadband or mobility services.[285]

2. Universal Service Fund Oversight

On September 12, 2008, the FCC requested comments on ways to strengthen the management, administration, and oversight of the USF.[286] The primary goal in initiating the notice was to ensure sufficient safeguards are in place for the USF to operate as Congress

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[282] FCC, "Universal Service Monitoring Report," CC Docket No. 98-202, released December 31, 2008, Table 3.2, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A5.pdf>, accessed on April 2, 2009.
[283] FCC, "Interim Cap Clears Path for Comprehensive Reform," FCC News Release, released May 2, 2008, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281921A1.pdf>, accessed on May 26, 2009.
[284] FCC 08-262, WC Docket No. 05-337, High-Cost Universal Service Support, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, released November 5, 2008.
[285] FPSC Reply Comments to FCC Order and NPRM in CC Docket Nos. 96-45, 96-98, 99-200, 01-92 and WC Docket Nos. 03-109, 04-36-05-337, and 06-122, filed December 2, 2008.
[286] FCC 08-189, WC Docket No. 05-195, Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Notice of Inquiry, released September 12, 2008.

intended. In recent years, the FCC has undertaken a series of steps to improve and strengthen oversight, including recovery of any improperly disbursed funds.

While the FCC's notice sought comment on all of the federal programs relating to USF, the comments of the FPSC focused on the Lifeline program.[287] The FPSC recommended the FCC consider the following changes:

- Include low-income beneficiary audits in each round of future USF audits.
- Inform state commissions of ETC oversight audits so state and federal efforts are not duplicated.
- Acknowledge that states can enforce state and federal Lifeline requirements for wireless ETCs, once a state has asserted jurisdiction for designating such carriers.
- Acknowledge that wireless ETCs must file for annual certification with the state once a state assumes jurisdiction regarding ETC designation of wireless carriers.
- Confirm that state commissions may request that the Universal Service Administrative Company suspend support disbursements for failure of an ETC to comply with state and/or federal requirements.
- Determine that a Lifeline customer's personal identifying information is confidential before considering a national database to enforce federal rules that limit the Lifeline credit to one per household.

3. Effects of Merger Conditions on Competitive ETCs

On November 4, 2008, the FCC approved two telecommunications mergers subject to agreement by the companies on several key conditions. The first merger was between Verizon Wireless and Alltel Corporation, and the second was the combination of the WiMAX network holdings of Sprint Nextel and Clearwire Corporation (Clearwire). The mergers will have an impact on the federal USF, specifically on the high-cost support. Both companies have agreed to a five-year phase out of the high-cost support they currently receive. The total federal high-cost support the companies would be reduced by 20 percent for the first year, and by an additional 20 percent per year for the subsequent 4 years. Competitive ETCs, like Alltel and Sprint Nextel, can request high-cost support if such funding is justified by a cost analysis. If the FCC adopts a different transition mechanism or a successor mechanism, then that rule would apply instead.

For 2008, the total high-cost fund was $4.4 billion. Competitive ETCs received approximately $1.3 billion of this amount.[288] Alltel received $414 million in 2008 and Sprint

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[287] FPSC Reply Comments to FCC NOI in WC Docket No.05-195; filed December 18, 2008.
[288] FCC, "Universal Service Monitoring Report," CC Docket No. 98-202, released December 31, 2008, Table 3.2, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287688A5.pdf>, accessed on April 2, 2009.

Nextel received $63 million in 2008.[289] Under the merger conditions, the reduction would represent an 11 percent decrease in the total size of the high-cost fund and a 36 percent decrease in the high-cost support that competitive ETCs receive.

If the further reform adopted by the FCC results in more significant reductions in high-cost support, then these carriers could potentially receive more support under the five-year phase down than under the new rules. Alternatively, if any reform results in more support being available to carriers (such as from a fund specifically for wireless carriers), then the merged companies could discontinue further phase downs and apply for support under the new rules.

C. Local Number Portability

Local number portability (LNP) allows end users the option to switch their telecommunications service provider without having to change their telephone numbers, as long as the location remains the same. In May 2009, the FCC reduced the porting interval timeframe for simple wireline and simple intermodal port requests from four business days to one business day.[290] The four business day porting interval for simple wireline port requests was adopted more than ten years ago. Since that time the telecommunications market has changed dramatically, and technological advances have enabled number porting to be accomplished in a much shorter period, as evidenced by the voluntary two and one-half hour wireless provider interval standard.

The North American Numbering Committee (NANC), a Federal Advisory Committee established by the FCC, must address the implementation issues for the new porting interval within 90 days of the effective date of the FCC Order. All providers subject to the FCC's LNP rules must comply with the 1-business day porting interval within 9 months from the date that the NANC submits its report to the FCC, except small providers, which will be allowed 15 months from the date that the NANC submits its report to the FCC to comply.

D. Forbearance

Section 10 of the federal Telecommunications Act of 1996 (the 1996 Act) allows a telecommunications carrier to petition the FCC to refrain, or forbear, from applying any statutory provision or regulation if the FCC determines the forbearance petition meets three criteria. To approve a forbearance petition, the FCC must find that:

- The regulation is not necessary to ensure that the carrier's service charges, practices, classification, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory.

- Enforcement of the regulation is not necessary for consumer protection.

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[289] Universal Service Administrative Company, High Cost Data Disbursement Search Tool, Spin Codes: 143008900, 143006742, 143000910, and 143010148, <http://www.usac.org/hc/tools/disbursements/default.aspx>, accessed on April 22, 2009.

[290] FCC 09-41, CC Docket No. 95-116, Telephone Number Portability, and WC Docket No. 07-244, Local Number Portability Porting Interval and Validation Requirements, Report And Order And Further Notice Of Proposed Rulemaking, released May 13, 2009.

- Forbearance is consistent with the public interest.

In determining whether forbearance is in the public interest, the FCC must consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions."[291] Possible outcomes include approval, denial, or approval in part and denial in part.

Forbearance petitions are "deemed granted" by operation of law if the FCC fails to act within one year from the date the petition is received.[292] A petitioning party may also withdraw its petition prior to FCC action or before the statutory deadline. State commissions are prohibited from applying any provision of the 1996 Act for which the FCC has granted forbearance. In one instance, forbearance was granted as a result of inaction by the FCC.[293] In recent years, there has been a significant increase in the number of forbearance petitions submitted to the FCC, with varying degrees of success. In 2008, Congress considered legislation to eliminate the "deemed granted" provision.[294] While this legislation was not enacted, similar legislation has been introduced this year.[295] Some recent decisions are summarized below.

1. Forbearance Decisions

a. Access Charges and VoIP

The FCC denied a petition filed by Feature Group IP, which asked the FCC to forbear from applying access charges to "voice-embedded Internet communications."[296] The petition sought a declaration from the FCC that such communications involve a net change in form and content and are therefore qualitatively distinguishable from the use of Internet protocol technology to provide Public Switched Telephone Network (PSTN)-equivalent services. The FCC noted that Feature Group IP only seemed to be seeking forbearance if the agency deemed that voice-embedded Internet communications are not exempt from access charges or that the enhanced service provider exemption is not maintained. Feature Group IP was, in essence, seeking a declaratory ruling as a preliminary matter. The FCC made clear that it makes no decisions or findings in the order concerning the current compensation rules for these types of communications, which are the subject of a pending rulemaking. Feature Group IP filed a petition for reconsideration with the FCC on February 20, 2009. AT&T, Embarq, and Verizon opposed Feature Group IP's petition, and a final decision has not yet been rendered.

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[291] 47 U.S.C. § 160(b).
[292] The FCC may extend the 1 year statutory deadline by 90 days; 47 U.S.C. § 160 (c).
[293] Verizon was granted forbearance by operation of law from regulation with respect to its broadband services on March 19, 2006.
[294] H.R. 3914 and S. 2469.
[295] H.R. 400.
[296] FCC 09-3, WC Docket No. 07-256, Feature Group IP Petition for Forbearance from Section 251(g) of the Communications Act and Sections 51.701(b)(1) and 69.5(b) of the Commission's Rules, Memorandum Opinion and Order, released January 21, 2009.

b. Accounting and Reporting Requirements

The FCC initiated rulemaking in September 2008 in response to a number of forbearance petitions filed by ILECs, including Qwest and Verizon, seeking relief from Automated Reporting Management Information System (ARMIS) service quality and infrastructure reports.[297] This proceeding follows the approval of a similar forbearance petition by AT&T in April 2008. The rules from which the carriers were granted forbearance relief were created under rate-of-return regulation to assign or allocate costs and revenues between interstate and intrastate operations and between regulated and unregulated operations.

In granting conditional relief from ARMIS reporting requirements, the FCC found that service quality information and customer satisfaction data may be useful to help customers make informed decisions in a competitive market.[298] As a result, the FCC sought comment on the scope of information to be collected and the means by which information should be gathered. The FCC emphasized that it does not preempt state accounting requirements adopted under state authority. Forbearance from additional ARMIS financial reports was granted in December 2008, on condition that carriers continue to file certain pole attachment data publicly with the FCC.[299]

c. D.C. Circuit Review of Verizon Forbearance Ruling

On June 19, 2009, a three-judge panel of the D.C. Circuit Court of Appeals (Court) issued its opinion that found that the FCC's reasoning for denying Verizon's forbearance petition was inadequate.[300] Verizon had requested forbearance from requirements to unbundle network elements at cost based rates in six Metropolitan Statistical Areas outside of Florida.[301] The FCC unanimously denied Verizon's petition in December 2007 finding that Verizon did not meet the forbearance standard.[302] In its decision, the Court ruled that the FCC unlawfully established a "newly minted bright-line" retail market-share test in determining whether forbearance was warranted. The test departed from FCC precedent by relying solely on actual, and not potential,

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[297] ARMIS Reports 43-05, 43-06, 43-07, and 43-08.

[298] FCC 08-203, WC Docket No. 08-190, Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering, and WC Docket No. 07-139, Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's ARMIS Reporting Requirements, Memorandum Opinion and Order and Notice of Proposed Rulemaking, released September 6, 2008.

[299] FCC 08-271, WC Docket No. 07-204, Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c), and WC Docket No. 07-273, Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, Memorandum Opinion and Order, released December 12, 2008.

[300] Verizon Telephone Companies v. Federal Communications Commissioner, et al., Case No. 08-1012, United States Court of Appeals for the District of Columbia Circuit, June 19, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291513A1.pdf>, accessed on June 24, 2009.

[301] Those Metropolitan Statistical Areas are: Boston, MA, New York, NY, Philadelphia, PA, Pittsburgh, PA, Providence, RI, and Virginia Beach, VA.

[302] FCC 07-212, WC Docket No. 06-172, Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Memorandum Opinion and Order, December 5, 2007, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-212A1.pdf>, accessed on June 24, 2009.

marketplace competition. Because the FCC's departure was unexplained, the Court remanded the decision back to the FCC.

E. VOICE OVER INTERNET PROTOCOL

In 2007, the FCC extended the TRS requirements to providers of VoIP services and required interconnected VoIP providers to route 711-dialed calls to an appropriate TRS center.[303] Persons dialing 711 from a telephone will automatically be connected to a TRS operator. Previously, 711 calls dialed by consumers of VoIP services may not have provided call detail information necessary to identify the caller's location. Carriers had until April 2008 to implement this requirement. As the implementation date approached, the FCC granted an extension until March 31, 2009.[304] The same extension of time was granted to traditional TRS providers to fulfill their obligation to implement a system to automatically call an appropriate PSAP when receiving an emergency 711-dialed call via an interconnected VoIP service. The FCC took this action based on the significant technical challenges presented by this requirement.

On May 13, 2008, the FCC adopted an order expanding consumer protections for customers of interconnected VoIP providers such as Vonage and Packet8. Interconnected VoIP providers are those whose customers can place calls to and receive calls from the public telephone network, rather than solely over the Internet. Interconnected VoIP providers are now required to notify customers before they discontinue, reduce, or impair service, as conventional providers currently must do. Interconnected VoIP providers can no longer discontinue service without notice, leaving customers unexpectedly without phone service or recourse.[305] This action was in response to the much publicized shut down of SunRocket in 2008 that left several thousand customers unexpectedly without service.

F. PROVISION OF SERVICES IN RESIDENTIAL MULTIPLE DWELLING UNITS

In May 2009, a three-judge panel of the D.C. Circuit Court of Appeals denied a cable industry challenge to a 2007 FCC order relating to exclusive video contracts (Video Order).[306] The Video Order specifically barred cable companies from entering into exclusive video contracts with multi-dwelling unit (MDU) buildings and from enforcing existing exclusivity clauses. The FCC expanded the definition of MDUs (apartment, cooperative, and condominium buildings) to include gated communities, mobile home parks, garden apartments, and other centrally managed real estate developments. The FCC found that competition (including competition for triple play services) and broadband deployment are harmed by exclusive contracts. While the FCC's Video Order was accompanied by FNPRM addressing this issue, the FCC has not issued an order addressing either exclusive marketing or bulk billing arrangements.[307]

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[303] FCC 07-110, WC Docket No. 04-36, IP- Enabled Services, Report and Order, released June 15, 2007.
[304] FCC DA 08-821, WC Docket No. 04-36, IP-Enabled Services, Order, released April 4, 2008.
[305] FCC 09-40, WC Docket No. 04-36, IP-Enabled Services, Report and Order, released May 13, 2009, ¶2.
[306] National Cable & Telecommunications Association, AT&T Inc, et al. v. Federal Communications Commissioner, et al., Case No. 08-1016, United States Court of Appeals for the District of Columbia Circuit, May 26, 2009, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-290966A1.pdf>, accessed on June 4, 2009.
[307] FCC 07-189, MB Docket No. 07-51, Exclusive Service Contracts for Provision of Video Services in Multiple

The FCC prohibited exclusive contracts for telecommunications providers in residential MDUs or other real estate developments (Telecom Order) in a companion order released in March 2008.[308] The Telecom Order is designed to provide regulatory parity between telecommunications and cable providers for residential customers.[309] The FCC found that exclusive contracts have impeded competition by blocking access to competitive provisioning of triple play services.

Dwelling Units and Other Real Estate Developments, Order and NPRM, November 13, 2007, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-189A1.pdf>, accessed on June 4, 2009.

[308] FCC 08-87, WT Docket No. 99-217, Promotion of Competitive Networks in Local Telecommunications Markets, Report and Order, March 21, 2008, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-87A1.pdf>, accessed on June 4, 2009.

[309] In 2001, the FCC released an order that prohibited carriers from entering into exclusive telecommunications contracts with owners of commercial multiple tenant environments.

**Indicates that the company did not respond to the Commission's data request.
^^Indicates that the company is in the process of canceling its certificate or has a pending bankruptcy.

1-800-RECONEX, Inc. d/b/a USTEL
360networks (USA) inc.
A.R.C. Networks, Inc. d/b/a InfoHighway
AboveNet Communications, Inc.
Access Communications, LLC.
Access Integrated Networks, Inc.
**Access One, Inc.
Access Point, Inc.
AccuTel of Texas, Inc.
ACN Communication Services, Inc.
Advanced Telecom of South Florida, Inc.
Advantage Group of Florida Communications, L.L.C.
Aero Communications, LLC
Affordable Phone Services, Inc. d/b/a High Tech Communications
Airespring, Inc.
ALEC, Inc.
Alternative Phone, Inc.
^^Alticomm, Inc.
American Fiber Network, Inc.
American Fiber Systems, Inc.
American Telephone Company LLC
Americatel Corporation
ANEW Broadband, Inc. d/b/a INSTANTEL PHONE SERVICE
Applied Technology Solutions, Inc.
Astro Tel, Inc.
AT&T Communications of the Southern States, LLC d/b/a AT&T
ATC Outdoor DAS, LLC
Atlantic.Net Broadband, Inc.
ATN, Inc. d/b/a AMTEL NETWORK, INC.
Backbone Communications Inc.
Baldwin County Internet/DSSI Service, L.L.C.
Bandwidth.com CLEC, LLC
BCN Telecom, Inc.
Beauty Town, Inc. d/b/a Anns Communication
BeCruising Telcom
Bellerud Communications, LLC
BellSouth Long Distance, Inc. d/b/a AT&T Long Distance Service
BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast
Benchmark Communications, LLC d/b/a Com One
BetterWorld Telecom LLC d/b/a BetterWorld Telecom
Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch
Bright House Networks Information Services (Florida), LLC
Broadband Communities of Florida, Inc.
Broadband Dynamics, LLC
BroadRiver Communication Corporation
Broadstar Communications, LLC
Broadstar, LLC d/b/a PrimeCast
Broadview Networks, Inc.
Broadwing Communications, LLC
Brydels Communications, LLC d/b/a AMIGOS - Tu Compania de Telefonos
BT Communications Sales LLC
BTEL, Inc.
Budget PrePay, Inc. d/b/a Budget Phone
BudgeTel Systems, Inc.
BullsEye Telecom, Inc.
Business Telecom, Inc. d/b/a BTI
Callis Communications, Inc.
Campus Communications Group, Inc.
CBB Carrier Services, Inc.
Cbeyond Communications, LLC
Centennial Florida Switch Corp.
^^Ciera Network Systems, Inc.
City of Daytona Beach
City of Gainesville, a municipal corporation d/b/a GRUCom
City of Lakeland
City of Ocala

City of Quincy d/b/a netquincy d/b/a netquincy.com d/b/a www.netquincy.com
Cleartel Telecommunications, Inc. d/b/a Now Communications, also d/b/a VeraNet Solutions
Clective Telecom Florida, LLC
**Clertech.com, Inc.
CloseCall America, Inc
CM Tel (USA) LLC
Cogent Communications of Florida LHC, Inc.
Comcast Business Communications, LLC d/b/a Comcast Long Distance
Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone
CommPartners, LLC
**Communication Lines, Inc.
**Communication Technology, Inc.
Communications Xchange, LLC
Comtech21, LLC
Comtel Telcom Assets LP d/b/a Excel Telecommunications
Comtel Telcom Assets LP d/b/a VarTec Solutions
Comtel Telcom Assets LP d/b/a VarTec Telecom
Conextel, Inc.
Connect Paging, Inc. d/b/a Get A Phone d/b/a/ New Talk, Inc.
Cordia Communications Corp.
CoreTel Florida, Inc. d/b/a CoreTel
^^Cost Plus Communications, LLC
Covista, Inc.
Cox Florida Telcom, L.P. d/b/a Cox Communications
Credicall USA Inc.
CTC Communications Corp. d/b/a One Communications
Custom Network Solutions, Inc.
Cypress Communications Operating Company, LLC
Dedicated Fiber Systems, Inc.
DeltaCom, Inc.
**DG-TEC, LLC
Dialtone Telecom, LLC
DIECA Communications, Inc. d/b/a Covad Communications Company
Digital Express, Inc.
DPI-Teleconnect, L.L.C.
DRS Training & Control Systems, Inc.
DSCI Corporation
DSL Internet Corporation d/b/a DSLi
DSLnet Communications, LLC
DukeNet Communications, LLC
Eagle Communications, Inc. d/b/a Eagle Telco, Inc.
Easy Telephone Services Company
**Economic Telecom, Inc.
^^Effectel Corp. d/b/a Porras and Company, PA
Elantic Telecom, Inc.
ElectroNet Intermedia Consulting, Inc.
Embarq Communications, Inc.
ENA Services, LLC
Enhanced Communications Network, Inc. d/b/a Asian American Association
^^Epicus Communications Group, Inc.
Ernest Communications, Inc.
EveryCall Communications, Inc.
eVox Communications, LLC
Excelacom Light, LLC
^^Excel Pager, Cellular, and Home Phone, Inc.
Express Phone Service, Inc.
ExteNet Systems, Inc.
Fast Phones, Inc. of Alabama
FiberLight, LLC
First Choice Technology, Inc.
First Communications, LLC
FL - CLEC LLC
FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom
FlatPhone, Inc. d/b/a FlatPhone

Florida Multi-Media Services, Inc. d/b/a Florida Multi Media
Florida Phone Systems, Inc.
Florida Public Telecommunications Association, Inc.
Florida Telephone Services, LLC
^^Fonix Telecom, Inc.
Fort Pierce Utilities Authority d/b/a GigaBand Communications
FPL FiberNet, LLC
France Telecom Corporate Solutions L.L.C.
Frontier Communications of America, Inc.
Ganoco, Inc. d/b/a American Dial Tone
Georgia Public Web, Inc
Global Capacity Group, Inc.
Global Connection, Inc of America
Global Crossing Local Services, Inc.
Global Crossing Telemanagement, Inc.
Global NAPS, Inc.
Global Response Corporation
Globalcom Inc. d/b/a GCI Globalcom Inc.
Globaltron Communications Corporation
Grande Communications Networks, Inc.
Granite Telecommunications, LLC
Great America Networks, Inc.
**Great American Telephone, Inc.
GTC Communications, Inc.
Harbor Communications, LLC
Hayes E-Government Resources, Inc.
Home Town Telephone, LLC
Hotwire Communications, Ltd.
IDS Telcom Corp. d/b/a Cleartel Communications
IDT America, Corp. d/b/a IDT
Image Access, Inc. d/b/a NewPhone, Inc.
Infotelecom, LLC
Intellicall Operator Services, Inc. d/b/a ILD
Interactive Services Network, Inc. d/b/a ISN Telcom
InterGlobe Communications, Inc.
^^InterLink Global,Corp.
Inter-Tel NetSolutions, Inc. d/b/a Mitel NetSolutions, Inc.
Intrado Communications Inc.
ITS Telecommunications Systems, Inc.
J C Telecommunication Co., LLC
Kenarl Inc. d/b/a Lake Wellington Professional Centre
Kentucky Data Link, Inc.
KG Communications, LLC d/b/a KG Communications
Kissimmee Utility Authority
KMC Data LLC d/b/a Hypercube Telecom, LLC
Knology of Florida, Inc.
^^LecStar Telecom, Inc.
Level 3 Communications, LLC
Lightyear Network Solutions, LLC
Litestream Holdings, LLC
Looking Glass Networks, Inc.
LPGA International Communications, LLC
M Telecom, LLC
Madison River Communications, LLC
Marco Island Cable, Inc.
Maryland TeleCommunication Systems, Inc.
Matrix Telecom, Inc. d/b/a Matrix Business Technologies
MCC Telephony of Florida, Inc.
McGraw Communications, Inc.
MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services
McLeodUSA Telecommunications Services, Inc.
^^Meridian TeleSystems, Inc.
MET Communications, Inc.
Metropolitan Telecommunications of Florida, Inc. d/b/a MetTel
Midwestern Telecommunications, Incorporated
Momentum Telecom, Inc.
MULTIPHONE LATIN AMERICA, INC.
Myatel Corporation
National Telecom & Broadband Services, LLC

Navigator Telecommunications, LLC
NET TALK.COM, INC.
Network Operator Services, Inc.
^^Network PTS, Inc.
Network Telephone Corporation d/b/a Cavalier Telephone d/b/a Cavalier Business Communications
NetworkIP, L.L.C. d/b/a Elite Telecom
Neutral Tandem-Florida, LLC
New Edge Network, Inc. d/b/a New Edge Networks
New Horizons Communications Corp.
NextG Networks of NY, Inc. d/b/a NextG Networks East
Nexus Communications, Inc. d/b/a Nexus Communications TSI, Inc.
nii Communications, Ltd.
Norlight Telecommunications, Inc.
Norlight, Inc. d/b/a Cinergy Communications
Norstar Telecommunications, LLC

North American Telecommunications Corporation
North County Communications Corporation
NOS Communications, Inc. d/b/a International Plus d/b/a O11 Communications d/b/a The Internet Business Association d/b/a I Vantage Network Solutions
Novus Communications, Inc.
NuVox Communications, Inc.
ONE SOURCE NETWORKS CLEC LLC
One Voice Communications, Inc.
^^OneStar Long Distance, Inc.
OneTone Telecom, Inc.
Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC
Orlando Telephone Company, Inc.
Pac-West Telecomm, Inc.
PaeTec Communications, Inc.
**Payless Telephone Company, Inc.
Peerless Network of Florida, LLC
Pelzer Communications Corporation
Phone Club Corporation
Phone XP, L.L.C.
Pilgrim Telephone, Inc.
PNG Telecommunications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect
^^Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos and d/b/a Phones For All
Preferred Long Distance, Inc.
Primus Telecommunications, Inc.
PriStar Communications L.L.C.
ProfitLab, Inc.
Progress Telecom, LLC
Protection Plus of the Florida Keys, Inc. d/b/a ENGAGE COMMUNICATIONS
QuantumShift Communications, Inc.
QuikVoIP, LLC
Qwest Communications Corporation
Reliant Communications, Inc.
ReTel Communications, Inc.
Rightlink USA, Inc.
Ring Connection, Inc.
RNK Inc. d/b/a RNK Communications Inc.
Sage Spectrum, LLC
Sage Telecom, Inc.
Sago Broadband, LLC
Sandhills Telecommunications Group, Inc. d/b/a SanTel Communications
Saturn Telecommunication Services Inc. d/b/a STS Telecom
SBC Long Distance, LLC d/b/a SBC Long Distance d/b/a AT&T Long Distance
Servi Express Caracol d/b/a Telefonica Express
^^ServiSense.com, Inc.
Shands Teaching Hospital and Clinics, Inc.
SIP Interchange Corporation
SKYNET360, LLC
SkyWay Telecom, Inc.
Smart City Networks

Smart City Solutions, LLC d/b/a Smart City Communications
Smart Network Solutions Communications Corp
SNC Communications, LLC
Solarity Communications, LLC
Southeastern Services, Inc.
Southern Light, LLC
Southern Telecom, Inc. d/b/a Southern Telecom of America, Inc.
^^Southern Telcom Network, Inc.
Spectrotel, Inc.
Sprint Communications Company Limited Partnership
StarVox Communications, Inc.
Sterling Telecom Inc.
STS Telecom, LLC
Sunesys, LLC
Sun-Tel USA, Inc.
Supra Telecommunications and Information Systems, Inc.
Swiftel, LLC
Syniverse Technologies, Inc.
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone
Talk America Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications
**Talk For Less, Inc.
Tallahassee Community College
TCG South Florida
TelCove Operations, Inc. d/b/a Level 3 Communications
Tele Circuit Network Corporation
Telecom Management, Inc. d/b/a Pioneer Telephone
Teledata Solutions, Inc. d/b/a TDSI, INC.
TeleDias Communications, Inc.
Telepak Networks, Inc.
Telovations Inc.
Telrite Corporation
Telscape Communications, Inc.
Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC
^^Terra Telecommunications Corp.
The Boeing Company
The Hamilton Telephone Company d/b/a Hamilton Telecommunications
The Other Phone Company, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications
The Phone Company
The Ultimate Connection, L.C. d/b/a DayStar Communications
Think 12 Corporation d/b/a Hello Depot
Time Warner Telecom of Florida, L.P.
^^Touch 1 Communications, Inc.
Touchtone Communications Inc. of Delaware
TQC Communications, Corp.
Trans National Communications International, Inc.
Transparent Technology Services Corporation d/b/a North Palm Beach Telephone Company
^^Trinsic Communications, Inc.
Tristar Communications Corp.
U.S. Metropolitan Telecom, LLC d/b/a Truwave Networks LLC
UCN, Inc.
Universal Telecom, Inc.
US LEC of Florida Inc. d/b/a PAETEC Business Services
US Telesis, Inc.
Utility Board of the City of Key West d/b/a Keys Energy Services
**Utility USA, Inc. d/b/a Vizon Telecom
VBNet, Incorporated
Verizon Avenue Corp. d/b/a Verizon Avenue
Verizon Florida LLC
Verizon Select Services Inc.
Vixxi Solutions, Inc.
VoDa Networks, Inc.
^^VoTTs Communications, LLC
Wholesale Carrier Services, Inc.

World-Link Solutions, Inc. d/b/a WL Solutions, Inc.
WTI Communications, Inc.
XFone USA, Inc.
XO Communications Services, Inc.
**Ygnition Networks, Inc.
Yipes Enterprise Services, Inc. d/b/a Reliance GlobalCOM Services, Inc.
YMax Communications Corp.
Zone Telecom, Inc.

1-800-RECONEX, Inc. d/b/a USTEL	X		X
Access Communications, LLC.	X		X
Access Integrated Networks, Inc.			X
Access Point, Inc.	X		X
ACN Communication Services, Inc.			X
Advantage Group of Florida Communications, L.L.C.	X	X	X
Affordable Phone Services, Inc. d/b/a High Tech Communications	X		
Airespring, Inc.			X
Alternative Phone, Inc.	X		
American Fiber Network, Inc.	X		X
American Telephone Company LLC	X		
ANEW Broadband, Inc. d/b/a INSTANTEL PHONE SERVICE			X
Astro Tel, Inc.	X	X	
AT&T Communications of the Southern States, LLC d/b/a AT&T	X	X	
Bellerud Communications, LLC	X		
BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast		X	
Benchmark Communications, LLC d/b/a Com One	X		
BetterWorld Telecom LLC d/b/a BetterWorld Telecom	X		
Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch			X
Broadstar Communications, LLC	X		
Broadwing Communications, LLC		X	
Budget PrePay, Inc. d/b/a Budget Phone	X		X
BullsEye Telecom, Inc.			X
Business Telecom, Inc. d/b/a BTI	X	X	X
Callis Communications, Inc.	X		
Campus Communications Group, Inc.	X		
Cbeyond Communications, LLC		X	
City of Daytona Beach		X	
Cleartel Telecommunications, Inc. d/b/a Now Communications, also d/b/a VeraNet Solutions	X	X	X
CloseCall America, Inc	X	X	X
Comtech21, LLC	X		
Comtel Telcom Assets LP d/b/a Excel			X

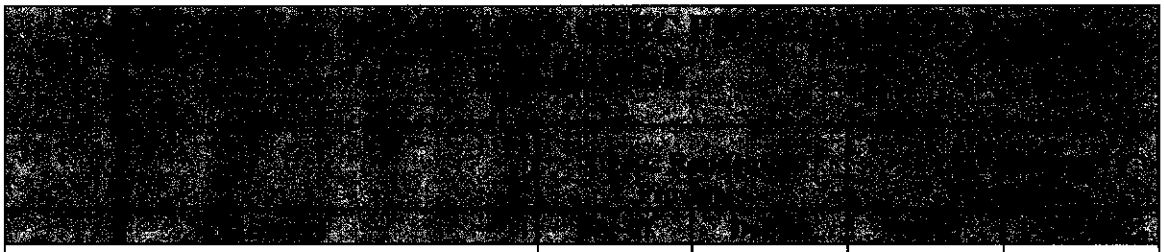
Telecommunications			
Connect Paging, Inc. d/b/a Get A Phone d/b/a/ New Talk, Inc.	X		
Covista, Inc.	X		
Custom Network Solutions, Inc.	X		
Cypress Communications Operating Company, LLC	X		
DeltaCom, Inc.	X	X	X
Dialtone Telecom, LLC	X		
DPI-Teleconnect, L.L.C.	X		X
DSL Internet Corporation d/b/a DSLi	X	X	X
Easy Telephone Services Company	X		
Embarq Communications, Inc.		X	
Ernest Communications, Inc.	X		X
EveryCall Communications, Inc.	X		
Express Phone Service, Inc.	X		X
First Communications, LLC	X		X
FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom	X		X
Florida Multi-Media Services, Inc. d/b/a Florida Multi Media		X	
Florida Phone Systems, Inc.		X	
France Telecom Corporate Solutions L.L.C.	X		
Ganoco, Inc. d/b/a American Dial Tone	X		X
Global Connection, Inc of America	X		
Global Crossing Local Services, Inc.	X		
Global Crossing Telemanagement, Inc.	X		X
Global Response Corporation	X		
Granite Telecommunications, LLC	X		X
Harbor Communications, LLC	X		
Home Town Telephone, LLC		X	
Hotwire Communications, Ltd.	X		
IDS Telcom Corp. d/b/a Cleartel Communications	X	X	X
Image Access, Inc. d/b/a NewPhone, Inc.	X		
Interactive Services Network, Inc. d/b/a ISN Telcom	X		
InterGlobe Communications, Inc.	X		
Inter-Tel NetSolutions, Inc. d/b/a Mitel NetSolutions, Inc.	X		

Knology of Florida, Inc.		X	
Level 3 Communications, LLC		X	
Lightyear Network Solutions, LLC			X
Matrix Telecom, Inc. d/b/a Matrix Business Technologies	X		X
MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services		X	X
MET Communications, Inc.	X		
Metropolitan Telecommunications of Florida, Inc. d/b/a MetTel	X	X	X
Momentum Telecom, Inc.			X
Navigator Telecommunications, LLC	X		
Network Telephone Corporation d/b/a Cavalier Telephone d/b/a Cavalier Business Communications		X	X
Nexus Communications, Inc. d/b/a Nexus Communications TSI, Inc.	X		X
Nii Communications, Ltd.			X
Norlight, Inc. d/b/a Cinergy Communications			X
North American Telecommunications Corporation		X	
NOS Communications, Inc. d/b/a International Plus d/b/a O11 Communications d/b/a The Internet Business Association d/b/a I Vantage Network Solutions	X		
NuVox Communications, Inc.	X	X	X
One Voice Communications, Inc.	X		
OneTone Telecom, Inc.		X	
Orlando Telephone Company, Inc.		X	
PaeTec Communications, Inc.	X		
Phone Club Corporation	X		
Phone XP, L.L.C.	X		
PNG Telecommunications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect	X		
QuantumShift Communications, Inc.	X		
Qwest Communications Corporation		X	
ReTel Communications, Inc.	X		
Ring Connection, Inc.	X		
RNK Inc. d/b/a RNK Communications Inc.		X	
Sandhills Telecommunications Group, Inc. d/b/a SanTel Communications			X

Saturn Telecommunication Services Inc. d/b/a STS Telecom	X	X	X
Servi Express Caracol d/b/a Telefonica Express	X		
Smart City Solutions, LLC d/b/a Smart City Communications			X
Southeastern Services, Inc.			X
Spectrotel, Inc.	X		
Sun-Tel USA, Inc.	X	X	X
Supra Telecommunications and Information Systems, Inc.	X	X	X
Swiftel, LLC	X		
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone		X	X
Talk America Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications	X		X
Tele Circuit Network Corporation	X		
TeleDias Communications, Inc.	X		
Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC	X		X
The Other Phone Company, Inc. d/b/a Cavalier Telephone d/b/a Cavalier Business Communications			X
The Ultimate Connection, L.C. d/b/a DayStar Communications	X	X	
Think 12 Corporation d/b/a Hello Depot	X		
Time Warner Telecom of Florida, L.P.	X		
Trans National Communications International, Inc.	X		X
Tristar Communications Corp.	X		
U.S. Metropolitan Telecom, LLC d/b/a Truwave Networks LLC	X		
Universal Telecom, Inc.	X		
US LEC of Florida Inc. d/b/a PAETEC Business Services	X	X	
Wholesale Carrier Services, Inc.	X		
WTI Communications, Inc.	X		
XO Communications Services, Inc.	X	X	
Zone Telecom, Inc.	X		
Total # of Companies = 119	**86**	**35**	**48**

Alachua	4	4	2	2
Alford	5	4	4	7
Alligator Point	0	0	1	0
Altha	0	0	0	0
Apalachicola	0	0	1	1
Apopka	10	11	17	20
Arcadia	11	9	11	12
Archer	10	12	6	7
Astor	3	1	5	6
Avon Park	11	9	13	13
Baker	3	3	4	4
Baldwin	9	5	8	8
Bartow	6	7	12	14
Belleglade	22	22	14	19
Belleview	11	11	10	16
Beverly Hills	7	5	8	9
Blountstown	2	2	0	0
Boca Grande	1	30	3	43
Boca Raton	34	1	33	3
Bonifay	9	8	7	7
Bonita Springs	8	9	15	21
Bowling Green	3	2	5	7
Boynton Beach	30	29	29	32
Bradenton	9	11	18	25
Branford	4	3	1	2
Bristol	0	0	0	0
Bronson	17	20	6	6
Brooker	1	1	0	0
Brooksville	20	21	18	20
Bunnell	13	16	11	14
Bushnell	12	9	8	9
Callahan	1	3	1	3
Cantonment	13	16	12	12
Cape Coral	7	6	13	18
Cape Haze	1	3	9	9
Carrabelle	0	0	0	0
Cedar Key	3	4	4	6
Celebration	1	1	5	8
Century	8	10	2	4
Chattahoochee	2	2	0	0
Cherry Lake	6	4	3	3
Chiefland	13	18	11	12

Chipley	15	18	10	12
Citra	2	1	1	1
Clearwater	17	13	28	31
Clermont	8	9	15	18
Clewiston	8	8	9	9
Cocoa	26	30	26	28
Cocoa Beach	16	17	17	20
Coral Springs	31	30	26	34
Cottondale	8	7	3	4
Crawfordville	4	5	7	10
Crescent City	3	3	1	1
Crestview	11	7	10	13
Cross City	7	8	5	8
Crystal River	5	6	11	16
Dade City	10	8	9	13
Daytona Beach	30	33	30	37
DeBary	18	17	16	18
Deerfield Beach	25	27	29	35
DeFuniak Springs	7	25	7	23
Deland	17	10	22	7
DeLeon Springs	9	31	7	35
Delray Beach	31	7	32	14
Destin	7	8	11	10
Dowling Park	1	1	0	0
Dunnellon	23	21	13	12
East Orange	10	0	11	0
East Point	0	11	0	15
Eau Gallie	24	24	23	26
Englewood	3	4	13	20
Eustis	12	11	9	11
Everglades	0	0	4	2
Fernadina Beach	25	25	16	17
Flagler Beach	10	12	10	11
Florahome	2	2	1	1
Florida Sheriffs' Boys Ranch	3	1	0	1
Forest	5	4	5	8
Freeport	3	6	4	10
Frostproof	5	16	9	25
Ft. Lauderdale	42	3	45	1
Ft. Meade	4	30	6	26
Ft. Myers	17	2	18	5
Ft. Myers Beach	5	6	8	10



Ft. Pierce	26	47	24	47
Ft. Walton Beach	15	4	14	12
Ft. White	1	10	1	18
Gainesville	33	35	24	29
Geneva	6	5	6	8
Glendale	2	2	1	0
Graceville	14	17	9	11
Grand Ridge	8	6	4	4
Green Cove Springs	18	20	12	15
Greensboro	1	1	0	0
Greenville	6	6	4	4
Greenwood	6	4	2	3
Gretna	1	1	0	0
Groveland	6	7	8	11
Gulf Breeze	15	13	15	17
Haines City	12	10	14	21
Hastings	3	4	3	3
Havana	17	18	8	8
Hawthorne	15	16	5	6
High Springs	2	2	2	2
Hilliard	2	2	1	1
Hobe Sound	15	16	18	16
Holley-Navarre	13	15	12	11
Hollywood	35	39	36	42
Homestead	31	36	27	29
Homosassa	7	6	10	10
Hosford	0	0	0	0
Howey-in-the-Hills	2	1	2	3
Hudson	8	6	14	18
Immokalee	7	6	12	13
Indian Lake	0	0	3	3
Indiantown	1	1	2	2
Interlachen	1	1	3	2
Inverness	11	6	8	11
Jacksonville	38	23	36	22
Jacksonville Beach	22	42	16	42
Jasper	2	1	3	2
Jay	12	12	6	7
Jennings	1	1	0	1
Jensen Beach	17	16	20	21
Julington	2	1	2	1
Jupiter	25	26	26	32

Keaton Beach	0	0	0	0
Kenansville	1	0	4	3
Keys	25	25	28	36
Keystone Heights	12	15	8	11
Kingsley Lake	0	0	1	0
Kissimmee	16	12	20	25
La Belle	8	8	10	13
Lady Lake	8	8	9	15
Lake Buena Vista	1	26	1	18
Lake Butler	2	11	2	17
Lake City	21	2	21	2
Lake Placid	7	13	10	24
Lake Wales	8	7	12	12
Lakeland	13	5	19	3
Laurel Hill	0	5	0	6
Lawtey	6	16	3	15
Lee	5	9	3	18
Leesburg	12	3	12	3
Lehigh Acres	11	1	14	6
Live Oak	3	1	3	0
Luraville	2	18	0	11
Lynn Haven	16	2	12	3
Macclenny	0	10	2	12
Madison	8	4	9	1
Malone	5	3	2	13
Marco Island	2	11	10	12
Marianna	10	9	11	6
Maxville	11	2	5	1
Mayo	2	3	2	2
McIntosh	4	33	1	27
Melbourne	33	1	26	1
Melrose	2	49	1	50
Miami	41	4	50	5
Micanopy	6	21	3	19
Middleburg	18	24	14	14
Milton	15	0	12	0
Molino	0	9	0	9
Monticello	10	2	7	3
Montverde	1	5	1	7
Moore Haven	7	10	7	15
Mount Dora	11	6	14	13
Mulberry	8	6	8	1

Munson	4	3	0	5
Myakka	3	12	4	23
Naples	14	4	19	15
New Port Richey	8	14	18	6
New Smyrna Beach	17	6	22	16
Newberry	19	6	7	16
North Cape Coral	7	37	16	35
North Dade	35	3	30	13
North Ft Myers	9	7	14	22
North Naples	6	20	13	20
North Port	6	6	10	6
Oak Hill	7	15	7	20
Ocala	19	4	14	4
Ocklawaha	2	12	4	12
Okeechobee	10	10	12	7
Old Town	14	1	6	0
Orange City	9	6	13	18
Orange Park	26	35	22	23
Orange Springs	2	47	0	51
Orlando	42	18	45	27
Oviedo	22	19	23	12
Pace	13	17	11	14
Pahokee	20	19	11	16
Palatka	16	19	15	21
Palm Coast	15	7	20	18
Palmetto	4	2	15	2
Panacea	3	29	2	25
Panama City	26	1	22	0
Panama City Beach	19	39	18	30
Paxton	1	25	0	31
Pensacola	31	1	27	1
Perrine	28	14	30	12
Perry	1	2	1	7
Pierson	10	10	7	20
Pine Island	3	19	5	21
Plant City	9	12	15	18
Polk City	5	0	9	1
Pomona Park	9	2	4	12
Pompano Beach	38	11	35	4
Ponce de Leon	7	33	3	40
Ponte Vedra Beach	15	5	13	4
Port Charlotte	9	2	14	1

Port St Joe	1	9	1	18
Port St. Lucie	31	32	28	33
Punta Gorda	5	2	12	17
Quincy	2	2	0	0
Raiford	1	0	0	0
Reedy Creek	3	2	16	15
Reynolds Hill	5	6	1	0
Salt Springs	2	2	3	4
San Antonio	4	2	6	8
Sanderson	0	0	0	0
Sanford	34	34	28	33
Sanibel-Captiva Island	0	2	7	10
Santa Rosa Beach	4	15	8	29
Sarasota	16	4	21	6
Seagrove Beach	4	25	6	22
Sebastian	23	11	19	18
Sebring	10	4	13	12
Shalimar	5	8	10	9
Silver Springs Shores	8	0	6	10
Sneads	7	5	4	5
Sopchoppy	3	3	3	2
Spring Lake Hills	5	3	5	7
St. Augustine	8	10	5	16
St. Cloud	11	22	14	21
St. Johns	24	3	19	1
St. Marks	2	10	2	13
St. Petersburg	14	14	24	8
Starke	12	15	8	30
Stuart	26	24	29	33
Sunny Hills	8	11	5	4
Tallahassee	20	23	19	23
Tampa	19	22	31	34
Tarpon Springs	4	5	18	21
Tavares	10	4	12	12
The Beaches	0	0	0	0
Titusville	25	25	25	22
Trenton	16	18	10	10
Trilacoochee	6	5	4	7
Tyndall AFB	0	0	0	0
Umatilla	9	8	5	5
Valparaiso	7	4	12	13
Venice	9	6	17	21

Vernon	12	11	4	6
Vero Beach	30	31	26	30
Waldo	1	1	1	1
Walnut Hill	0	0	0	0
Wauchula	9	8	9	10
Weekiwachee Springs	22	18	19	21
Weirsdale	6	5	3	5
Welaka	11	12	5	6
Wellborn	2	2	0	0
West Kissimmee	13	4	16	4
West Palm Beach	44	0	40	0
Westville	4	1	3	1
Wewahitchka	0	8	0	13
White Springs	3	11	2	11
Wildwood	9	5	8	13
Williston	11	13	9	22
Windermere	6	16	9	23
Winter Garden	15	17	19	26
Winter Haven	12	4	17	18
Winter Park	19	47	20	44
Yankeetown	7	7	6	7
Youngstown-Fountain	10	11	6	7
Yulee	12	14	7	9
Zephyr Hills	6	7	12	18
Zolfo Springs	5	6	4	3

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Access Point, Inc.	X
Advantage Group of Florida Communications, L.L.C.	X
ANEW Broadband, Inc. d/b/a INSTANTEL PHONE SERVICE	X
Astro Tel, Inc.	X
BetterWorld Telecom LLC d/b/a BetterWorld Telecom	X
Broadstar, LLC d/b/a PrimeCast	X
Broadwing Communications, LLC	X
BullsEye Telecom, Inc.	X
Callis Communications, Inc.	X
Cbeyond Communications, LLC	X
City of Quincy d/b/a netquincy d/b/a netquincy.com d/b/a www.netquincy.com	
CommPartners, LLC	
Communications Xchange, LLC	
Comtech21, LLC	X
Comtel Telecom Assets LP d/b/a Excel Telecommunications	X
Comtel Telecom Assets LP d/b/a VarTec Solutions	
Comtel Telecom Assets LP d/b/a VarTec Telecom	
Cost Plus Communications, LLC	
Cox Florida Telcom, L.P. d/b/a Cox Communications	
Cypress Communications Operating Company, LLC	X
DIECA Communications, Inc. d/b/a Covad Communications Company	
DSL Internet Corporation d/b/a DSLi	X
Embarq Communications, Inc.	X
ENA Services, LLC	
FLATEL, Inc. d/b/a Florida Telephone Company d/b/a Oscatel d/b/a Telephone USA d/b/a Global Telecom	X
Florida Multi-Media Services, Inc. d/b/a Florida Multi Media	X
Florida Telephone Services, LLC	
Global Crossing Local Services, Inc.	X
Harbor Communications, LLC	X
Hotwire Communications, Ltd.	X
Interactive Services Network, Inc. d/b/a ISN Telcom	X
Inter-Tel NetSolutions, Inc. d/b/a Mitel NetSolutions Inc.	X
Knology of Florida, Inc.	X
Level 3 Communications, LLC	X
Lightyear Network Solutions, LLC	X
MCC Telephony of Florida, Inc.	
National Telecom & Broadband Services, LLC	
North American Telecommunications Corporation	X
NuVox Communications, Inc.	X

Optical Telecommunications, Inc. d/b/a Hcontrol Corporation d/b/a SH Services LLC	
Orlando Telephone Company, Inc.	X
PaeTec Communications, Inc.	X
Phone XP, L.L.C.	X
Qwest Communications Corporation	X
RNK Inc. d/b/a RNK Communications Inc.	X
Saturn Telecommunication Services Inc. d/b/a STS Telecom	X
Southeastern Services, Inc.	X
T3 Communications, LLC d/b/a Tier 3 Communications d/b/a Naples Telephone and d/b/a Fort Myers Telephone	X
TelCove Operations, Inc. d/b/a Level 3 Communications	
Telovations Inc.	
Time Warner Telecom of Florida, L.P.	X
Trans National Communications International, Inc.	X
US LEC of Florida Inc., d/b/a PAETEC Business Services	X
U.S. Metropolitan Telecom, LLC d/b/a Truwave Networks LLC	X
Verizon Access Transmission Services	
XO Communications Services, Inc.	X
Zone Telecom, Inc.	X

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Bright House Networks, Comcast	Verizon	11/16/07	070691-TP 080036-TP	Complaint against Verizon for alleged failure to facilitate transfer of customer numbers.	Pending	Order PSC-08-0344-PCO-TP modifies the procedures for this process.
DSLI	Bellsouth	12/03/07	0760408T	Complaint involving the inability to send entire faxes or faxes being only partially received.	01/15/08	Bellsouth and DSLI resolved the faxing issue.
Astrotel	Verizon	03/27/08	0773172T	Complaint regarding Verizon disconnecting local service too soon when their customers switch providers.	04/17/08	Verizon stated that the disconnect was human error, and agreed to correct it.
Flatel, Inc.	Verizon	07/15/08	0786992T	Complaint that Verizon was enabling certain types of calls that resulted in a fee to Flatel.	10/13/08	Flatel could not provide proof that they were being charged or that it had submitted any payments to Verizon.
Astrotel	Verizon	08/13/08	0791471T	Complaint against Verizon for improperly fulfilling a conversion request, resulting in loss of service.	08/27/08	Verizon discovered the errors that created the service disruption and remedied the issue.
Astrotel	Verizon	08/13/08	0791590T	Complaint against Verizon for not fulfilling orders in a timely fashion.	08/15/08	Verizon fulfilled the order.
Astrotel	Verizon	08/14/08	0791794T	Complaint against Verizon for not fulfilling orders in a timely fashion.	08/15/08	Verizon fulfilled the order and contacted the customer to assure operable service.
Astrotel	Verizon	08/15/08	0791850T	Complaint against Verizon for not fulfilling orders in a timely fashion.	08/22/08	Verizon fulfilled the order.

CLEC	ILEC	Date Filed	Docket Number	Complaint	Date Closed	Resolution
Astrotel	Verizon	09/08/08	0795435T	Complaint against Verizon for not fulfilling orders in a timely fashion.	12/09/08	Verizon discovered a system error that they are attempting to resolve.
Phone Club Corp	Bellsouth	12/03/08	0811634T	Complaint against Bellsouth for inappropriate charges to PCC.	Pending	Waiting on response from the PSC.
Astrotel	Verizon	12/08/08	0812297T	Complaint against Verizon for not adding all features to customer's service.	12/19/08	Astrotel cancelled its order, and Verizon had to manually correct some invalid address information.
Bright House Networks	Verizon	12/09/08	080701-TP	Complaint against Verizon for alleged violations of electrical codes.	Pending	Verizon is doing an internal review; the PSC has the option to reinspect or close the docket.
Astrotel	Verizon	12/12/08	0813377T	Complaint against Verizon for errors resulting in temporary loss of service.	12/12/08	Verizon repaired problem with service.
Astrotel	Verizon	12/16/08	0813838T	Complaint against Verizon for improperly billing an Astrotel customer.	12/23/08	Verizon phoned customer and apologized, and corrected billing error.
Astrotel	Verizon	12/16/08	0813881T	Complaint against Verizon for not fulfilling orders in a timely fashion.	12/19/08	Verizon discovered a system error that they are attempting to resolve.
Astrotel	Verizon	12/16/08	0813882T	Complaint against Verizon for not fulfilling orders in a timely fashion and causing line outages.	12/19/08	Verizon is working to resolve system errors that create delays and outages.

APPENDIX [illegible]: SUMMARY OF COMPLAINTS FILED BY CLECS						
CLEC	ILEC	Date Opened	Complaint Docket Number	Description	Date Closed	Resolution
Astrotel	Verizon	12/16/08	0813884T	Complaint against Verizon for not fulfilling orders in a timely manner.	11/18/08	Verizon is working to resolve system errors.

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Eligibility for participation in the Lifeline and Link-Up programs is determined by subscriber enrollment in any one of the following qualifying programs:

Program-Based Criteria

- Temporary Cash Assistance (TCA)
- National School Lunch's Free Lunch Program
- Temporary Assistance to Needy Families (TANF)
- Food Stamps
- Medicaid
- Low-Income Home Energy Assistance Program (LIHEAP)
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance (Section 8)
- Bureau of Indian Affairs programs:

-Tribal TANF
-Head Start Subsidy
-National School Lunch Program

Income-Based Criteria

1. 150 percent of the Federal Poverty Guidelines.[310]

[310] The 2009 Legislature passed Legislation that increased the income-based Lifeline eligibility threshold in Florida from 135 percent of the Federal Poverty Guidelines to 150 percent, effective July 1, 2009. The Florida income-based criterion applies only to AT&T, Embarq, and Verizon; the other Florida ILECs do not currently enroll Lifeline applicants on the basis of income. Alltel and Sprint Nextel (wireless carriers) were designated as ETCs in Florida by the FCC and are subject to the income-based criterion established by federal regulation. TracFone has voluntarily provided Lifeline benefits to subscribers in Florida based on the 135 percent Federal Poverty Guideline income test.

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3G	*Third-generation technology.* Used in the context of mobile telephone standards. 3G networks are wide area cellular telephone networks that evolved to incorporate high-speed Internet access and video telephony.
4G	*Fourth-generation technology.* 4G is the stage of broadband mobile communications that will supersede 3G. End-to-end IP and high-quality streaming video will likely be among 4G's distinguishing features.
911/E911	*Basic 911/Enhanced 911.* Basic 911 systems forward all emergency 911 calls to the appropriate public safety answering point (PSAP). E911 systems are able to automatically forward the caller's location (ALI) and call back number (ANI) to the appropriate PSAP.
Access Line	The circuit or channel between the demarcation point at the customer's premises and the serving end or class 5 central office.
Broadband	A term describing evolving digital technologies offering consumers integrated access to voice, high-speed data services, video on demand services, and interactive information delivery services.
BPL	*Broadband over Power Lines.* The use of power line communications technology to provide broadband Internet access through a computer plugged into any electrical outlet in your home.
Circuit	A fully operational two-way communications path.
CLEC	*Competitive Local Exchange Company.* Any company certificated by the Florida Public Service Commission to provide local exchange telecommunications service in Florida on or after July 1, 1995.
Coaxial Cable	A high-capacity cable widely used in voice, video, and data applications. Coaxial cable includes one physical channel that carries the signal surrounded (after a layer of insulation) by another concentric physical channel, both running along the same axis. The outer channel serves as a ground and a shield against external interference.
Commercial Agreement	A contractual arrangement between an ILEC and CLEC to purchase network components or other services not required pursuant to state or federal law.
DOCSIS	*Data Over Cable Service Interface Specification.* DOCSIS defines the communications and operation support interface requirements for a data over cable system.

GLOSSARY OF TERMS	
DSL	*Digital Subscriber Line.* A family of technologies (including variations such as asynchronous DSL, high bit-rate DSL, very high bit-rate DSL, etc.) that provide high-speed Internet access. DSL is typically provided by traditional wireline telecommunications companies via a copper loop to the customer's premises. DSL is the principal competition of cable modems.
ETC	*Eligible Telecommunications Carrier.* An ETC designated under Section 214(e), F.S., is eligible to receive specific federal universal service support.
Exchange	An ILEC's central office or group of central offices, together with the subscribers' stations and lines connected thereto, forming a local system which furnishes means of telephonic communication without toll charges between subscribers within a specified area, usually a single city, town, or village.
FiOS	FiOS is Verizon's suite of voice, video, and broadband services provisioned over fiber optic cable directly to the customer's premises. FiOS can currently provide Internet access with maximum download speed of 50 Mbps and upload speed of 20 Mbps.
ILEC	*Incumbent Local Exchange Company.* Any company certificated by the FPSC to provide local exchange telecommunications service in Florida on or before June 30, 1995.
Intermodal	The use of more than one type of technology or carrier to transport telecommunications services from origination to termination. When referring to local competition, intermodal refers to nonwireline voice communications such as wireless or VoIP.
Internet Protocol (IP)	The term refers to all the standards that keep the Internet functioning. IP describes software that tracks the Internet address of nodes, routes outgoing messages, and recognizes incoming messages.
IXC	*Intrastate Interexchange Company.* Any entity that provides intrastate interexchange telecommunications services.
Local Loop	See Access Line.
Local Platform	The commercial replacement for UNE-P. The local platform provides an end-to-end circuit. See UNE-P.
LTE	*Long Term Evolution.* LTE is a technology standard for the future provision of 4G wireless services.
PSTN	*Public Switched Telephone Network.* The PSTN is the network that provides switching and transmission facilities to the general public.

GLOSSARY OF TERMS	
Resale	The 1996 Act requires ILECs to offer to its competing telecommunications carriers, at wholesale rates, any telecommunications service that the ILEC provides to its customers at retail rates, so that the competing carriers can resell the services.
Smartphone	A mobile phone offering advanced capabilities, often including wireless data capability. The BlackBerry Storm and the iPhone are considered smartphones.
Switch	A mechanical, electrical, or electronic device that opens or closes circuits, completes or breaks an electrical path, or selects paths or circuits.
Switched Access	Local exchange telecommunications company-provided exchange access services that offer switched interconnections between local telephone subscribers and long distance or other companies. Long distance companies use switched access for origination and termination of user-dialed calls.
Tariff	A statement by a regulated telecommunications company that sets out the services offered by that company. A tariff provides the rates, terms, and conditions under which regulated services are provided and also states the general obligations of the company and customers. Tariffs are subject to review by regulatory agencies and must be adhered to by the common carrier to ensure nondiscrimination between customers. In Florida, CLECs are not required to file tariffs, but they must file price lists if they offer basic local telecommunications service.
Telecommunications Act of 1996 (the 1996 Act)	The federal Telecommunications Act of 1996 established a national framework to enable CLECs to enter the local telecommunications marketplace.
TRO	*Triennial Review Order.* The FCC released the TRO on August 21, 2003; the Order became effective on October 2, 2003. In this Order, the FCC determined that ILECs do not have to unbundle certain broadband elements, including FTTH loops in greenfield situations, broadband capabilities of FTTH loops in overbuild situations, the packet-switched capabilities of hybrid loops, and packet switching.
TRRO	*Triennial Review Remand Order.* The FCC released the TRRO in February 2005. In this Order, the FCC eliminated unbundled local switching as a UNE, effective March 11, 2005, with a transition period extending until March 11, 2006. This decision effectively eliminated the combination of local elements known as UNE-P. In its place, the ILECs continue to provide the same service but at higher market-based rates, a service referred to as local platform.

TRS	*Telecommunications Relay System.* TRS enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a communications assistant.
UNE	*Unbundled Network Element.* The Telecommunications Act of 1996 requires that the ILECs unbundle certain network elements and make them available to CLECs. UNEs are defined as physical and functional elements of the network, for example, Network Interface Devices, local loops and subloops, operations support services, etc.
UNE-P	*Unbundled Network Element–Platform.* An unbundled combination that provided an end-to-end circuit. The TRRO eliminated the UNE-P effective March 11, 2005, with a transition period extending until March 11, 2006. Now available through a commercial agreement, UNE-P is known as the local platform. See Local Platform.
U-verse	U-verse is AT&T's brand name for a group of services provided via Internet Protocol (IP), including television service, Internet access, and voice telephone service. Similar to Verizon's FiOS service, AT&T's U-verse is deployed using fiber optic cable.
Universal Service	This term describes the financial support mechanisms that constitute the national universal service fund. This fund provides compensation to telephone companies or other communications entities for providing access to telecommunications services at reasonable and affordable rates throughout the country, including public institutions and rural, insular, high-cost areas.
VRS	*Video Relay Service.* Video Relay Service is a form of Telecommunications Relay Service that enables individuals with hearing disabilities who use American Sign Language to communicate with voice telephone users through video equipment, rather than through typed text.
VoIP	*Voice over Internet Protocol.* The technology used to transmit voice conversations over a data network using Internet Protocol.
Wi-Fi	Wi-Fi is a standard originally licensed by the Wi-Fi Alliance to describe the underlying technology of wireless local area networks (WLAN) based on the specific methods and techniques of wireless local area network operation.
WiMAX	*Worldwide Interoperability for Microwave Access.* Defined by the WiMAX Forum, formed in April 2001, to promote protocol conformance and interoperability. The Forum describes WiMAX as a standards-based technology enabling the delivery of last mile wireless broadband access as an alternative to cable and DSL.

GLOSSARY OF TERMS	
Wireline	A term used to describe the technology used by a company to provide telecommunications services. Wireline is synonymous with "landline" or land-based technology.

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 2, 2009

TO: Mary Andrews Bane, Executive Director

FROM: Office of Strategic Analysis and Governmental Affairs (Rudd, Shafer, Trapp, Lovett)
Office of Regulatory Compliance (Salak)
Office of Service, Safety and Consumer Assistance (Hoppe)
Office of General Counsel (Teitzman, Miller)
Division of Administrative Services (Lynn)

RE: Briefing on 2009 Legislative Session and Implementation Plans for 2009 Legislative Directives
CRITICAL INFORMATION: Briefing only. Please place on July 14, 2009, Internal Affairs.

The Legislature's only Constitutional requirement is to pass the state's budget. A breakdown of the Florida Public Service Commission (PSC) budget is included in materials that follow. The 2009 Legislature passed just 202 general bills, one of which requires implementation on the part of the PSC.

Senate Bill 2626 created the "Consumer Choice and Protection Act," which includes revisions to the existing regulatory framework for telecommunications. The bill also designates the Department of Management Services as the primary agency for the development of a strategic plan for broadband deployment and use in the state. This bill is discussed in greater detail in the following supporting material.

2009 Budget Issues

In yet another fiscally constrained year, initial PSC budget proposals from the House and Senate ranged from: reductions of three to seven FTE; no trust fund sweep to up to a $4.5 million trust fund sweep; and a graduated salary reduction from two percent to five percent.

The final Fiscal Year 2009-10 Conference Committee Reports included:

- A reduction of three FTE,
- $4.5 Million Trust Fund sweep,
- Two percent pay reduction for employees earning more than $45,000,
- Guidelines for replacement of motor vehicles,
- Continued restrictions on travel,
- The requirement for a plan for the efficient transfer of data center functions to the Southwood Shared Resource Center, and
- The requirement for a plan regarding the distribution, utilization, and procurement method of cell phones, PDAs, and other wireless devices.

On May 27, Governor Crist vetoed the two percent salary reduction for employees earning more than $45,000. Agencies are now required to make other budget reductions in the amount the salary reductions would have saved the agencies.

Salaries and Benefits - $22,150,091

Other Personal Services - $200,588

Expenses - $4,280,019

Operating Capital Outlay - $387,546

Acquisition of Motor Vehicles - $72,055

Proviso – The department may purchase one or more vehicles for replacement when the mileage of a vehicle is in excess of 200,000 miles, or based on an emergency or unforeseen circumstances.

Contracted Services - $479,706

Risk Management Insurance - $87,433

Transfer to Department of Management Services for Human Resource Services– $132,588

Data Processing Services - $76,708

Total: Utilities Regulation/Consumer Assistance - $27,866,734

Unobligated cash balance amount transferred to the General Revenue Fund - $4,000,000

Senate Bill 2626 amends Chapter 364, F.S., making reforms to the existing regulatory framework for telecommunications. The bill also designates the Department of Management Services as the primary agency for the development of a strategic plan for broadband deployment and use in the state. The analysis of the legislation is divided between telecommunications reform and broadband matters.

1. Telecommunications Regulation

Summary

The legislation primarily impacts the oversight of incumbent local exchange companies by the Florida Public Service Commission (PSC or Commission). Basic service is redefined for the purposes of regulatory oversight. Basic service will include only single line flat-rate residential service without any additional features, either priced individually or as part of a combination of services offered for one price. The additional features would also include unregulated services such as Internet or video services. The revised definition reclassifies flat-rate single line business customers and residential customers that subscribe to more than one line or at least one additional feature as nonbasic service. Nonbasic service does not have the same degree of service quality protection previously available for basic service. In addition, the bill eliminates certain regulatory requirements of nonbasic services (any service other than basic, interconnection services, and network access services).

Significant changes to PSC jurisdiction include the following—

- All single line business customers and any residential customers that subscribe to any nonbasic or unregulated services on an a la carte basis are now considered nonbasic subscribers. Previously, the local service component was classified as basic service and, as such, rate increases in any 12-month period were limited to the change in inflation less one percent. [Section 364.02(1)&(10) and 364.051(3), F.S.].
- Nonbasic subscribers are now subject to 10 percent rate increases in a 12-month period, a reduction from the 20 percent increases previously allowed, if competitors are present. [Sections 364.02(1)&(10) and 364.051(5)(a), F.S.].
- The PSC no longer has authority to resolve service quality complaints of any business customers or nonbasic residential customers [Sections 364.02(1) & (10) and 364.051(5)(b), F.S.].
- The PSC's authority to compel repairs or improvements is restricted to facilities serving single-line residential customers without nonbasic or unregulated services (Section 364.15, F.S.).
- The income eligibility criteria for Lifeline service is increased to 150 percent of the federal poverty guidelines from the existing 135 percent. This pertains to AT&T, Embarq, and Verizon. [Section 364.10(3)(a), F.S.].
- The PSC authority over the terms of contracts between telecommunications companies and their subscribers is no longer applicable to incumbent local exchange companies. [Sections 364.051(1)(c) and 364.19, F.S.].

- The requirement that companies file tariffs (schedules) containing rates, terms, and conditions of service is eliminated. However, companies may continue filing tariffs (schedules) with the PSC or they have the option to publish this information electronically [Sections 364.04(1), 364.10(3)(a), and 364.051(5)(a), F.S.].
- Companies continue to be required to inform customers of this information annually, but the method is not specified. The new law does, however, specify that the requirement for a bill insert to annually inform customers of the prices of services they subscribe is eliminated (Section 364.3382, F.S.).
- The price cap for operator services is removed (Section 364.3376(3), F.S.).
- Certificated carriers are allowed to merge or transfer ownership to other certificated carriers without any state regulatory oversight (Section 364.33, F.S.).

Proposed Implementation

Rule Review—The rules will be reviewed to determine if modifications are needed to reflect:

- the change in name from "tariffs" to "schedules;"
- the ability of companies to choose whether to file tariffs, now known as schedules, or publish rates and terms through other reasonable, publicly accessible means, including a website;
- the impact, if any, of the change in the definitions of basic and nonbasic;
- the elimination of quality of service authority for nonbasic services for ILECs;
- the elimination of operator services rate caps; and
- the change in certification requirements—acquiring ownership or control of a telecommunications facility without prior approval of the commission.

Script Changes for Consumers Complaint Intake—Because the PSC will no longer be resolving nonbasic telecommunications complaints, the complaint intake script will need to be modified so that nonbasic complaints can be filtered and redirected to the Department of Agriculture and Consumer Services.

Lifeline—All forms and promotional materials for Lifeline will need to be changed to reflect the change in poverty level requirements for AT&T, Embarq, and Verizon. The income test is now 150 percent, up from 135 percent, to be eligible to receive Lifeline discounts.

2. Broadband Deployment Administration

The bill created a new section of the statute to acknowledge the importance of broadband Internet service and authorizes the Department of Management Services (DMS) to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to:

- conduct a needs assessment of broadband Internet service including wireless and wireline Internet service providers, to create maps at the census tract level that will show geographic gaps in coverage, identify download and upload transmission speeds, and provide a baseline assessment of statewide broadband deployment in terms of percentage of households with broadband availability;

- create a strategic plan defining goals and strategies for increasing the use of broadband Internet service in the state;
- build and facilitate local technology planning teams or partnerships with members representing cross-sections of the community; and
- establish a grant program to provide funds to encourage the use of broadband Internet service in rural, unserved, and underserved areas.

DMS is also authorized to:

- apply for and accept federal funds for these purposes, as well as donations and gifts from individuals, foundations, and private organizations;
- enter into contracts that are necessary to carry out the goals of the section;
- establish any committee to administer or carry out the purposes of the section; and
- adopt necessary rules, including the authority to establish definitions of terms pertinent to the section.

Proposed Implementation

Staff will continue to participate in the DMS-led collaborative on broadband offering assistance and technical support as appropriate.

SB 2626 was approved by the Governor on June 24, 2009.

Attachment A: SB 2626—Side By Side

Section 4.Section 364.02, Florida Statutes, is amended to read:

364.02Definitions.As used in this chapter, the term:

(1)"Basic local telecommunications service" means voice grade, single-line, flat-rate residential, ~~and flat-rate single line business~~ local exchange service that provides ~~services which provide~~ dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term includes ~~shall include~~ any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

… … …

(10)"Nonbasic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163. Any combination of basic service along with a nonbasic service or an unregulated service is nonbasic service.

EFFECT: Section 364.02(1), F.S. and section 364.02(10), F.S. amends the statute to define any residential customers that subscribe to any nonbasic or unregulated services on an a la carte basis or as part of a combination of services, and single line business customers, as nonbasic subscribers.

Previously, the local service component was classified as basic service and, as such, rate increases were limited to the change in inflation less one percent in any 12-month period.

IMPLEMENTATION: Rules must be reviewed to determine whether modifications are necessary as a result of the change to the definition of "basic local telecommunications service" and "nonbasic service."

All tariffs will now be called schedules.

SB 2626—Side By Side

364.013 Emerging and advanced services.Broadband service and the provision of voice-over-Internet-protocol (VoIP) are exempt from commission jurisdiction and shall be free of state regulation, except as delineated in this chapter ~~or as specifically authorized by federal law~~, regardless of the provider, platform, or protocol. Notwithstanding the exemptions in this chapter, a competitive local exchange telecommunications company is entitled to interconnection with a local exchange telecommunications company to transmit and route voice traffic between both the competitive local exchange telecommunications company and the local exchange telecommunications company regardless of the technology by which the voice traffic is originated by and terminated to an end user. The commission shall afford such competitive local exchange telecommunications company all substantive and procedural rights available to such companies regarding interconnection under the law.

EFFECT: Section 364.013, F.S., is amended to remove the language "specifically authorized by federal law" in reference to jurisdiction of "emerging and advanced services." Where the statute previously stated that broadband and voice-over-Internet-protocol (VoIP) would be "free of state regulation," the proposed act adds that they "are exempt from commission jurisdiction." The Act also adds language designed to require incumbent local exchange telephone companies to allow competitive local exchange telecommunications companies interconnection to the public switched telephone network, regardless of the technology employed to provide voice service.

Also, current arbitration authority is clarified to insure all voice providers, including cable, are afforded the opportunity to file a complaint or a new agreement with the PSC.

IMPLEMENTATION: No action required until requested by an affected party.

SB 2626—Side By Side

364.04 Schedules of rates, tolls, rentals, ~~contracts~~, and charges; filing; public inspection.

(1)~~Upon order of the commission,~~ Every telecommunications company shall publish through electronic or physical media ~~file with the commission, and shall print and keep open to public inspection~~, schedules showing the rates, tolls, rentals, ~~contracts~~, and charges of that company for service to be performed within the state. A telecommunications company may, as an option, file the published schedules with the commission or publish its schedules through other reasonably publicly accessible means, including on a website. A telecommunications company that does not file its schedules with the commission shall inform its customers where a customer may view the telecommunications companys schedules.

(2)The schedules ~~schedule, as printed and open to public inspection~~, shall plainly state the places ~~between which~~ telecommunications service will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in anywise change, affect, or determine any of the aggregate of the rates, tolls, rentals, or charges for the service rendered.

~~(3)A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to, and for convenient inspection by, the public at such places as may be designated by the commission. Any such schedule shall be immediately produced by the telecommunications company upon the demand of any person.~~

~~(4)A notice printed in bold type and stating that such schedules are on file and open to inspection by any person, the places where the schedules are kept, and that the agent will assist any person to determine from such schedules any rate, toll, rental, rule, or regulation which is in force shall be kept posted by every telecommunications company as the commission designates.~~

EFFECT: Section 364.04(1), F.S., is amended to eliminate the requirement that companies file tariffs (schedules) with the PSC containing rates, terms and conditions of service. Companies have the option to continue voluntarily filing tariffs (schedules) with the PSC or they have the option to publish this information electronically.

Section 364.04, F.S., subsections (2), (3), and (4), are amended to conform to changes noted in (1), including the removal of any language that describes the previously required written schedule of fees and contracts.

Note: Companies are still required to inform customers of this information annually, but the method is not specified. The new law does, however, specify that the requirement for an annual bill insert to inform customers of the prices of services they subscribe to is eliminated. This provision is made in section 364.3382, F.S.

IMPLEMENTATION: Rule modifications will be necessary to permit companies to choose whether to file tariffs, now known as schedules, or publish rates and terms through other reasonable publicly accessible means, including a website. Rules will be reviewed to change any reference to "tariffs" to "schedules."

In the near-term, the companies will need to weigh the option of detariffing and altering their systems if they choose to not maintain tariffs with the PSC. Since an option is involved, it is difficult to determine the final impact, but in the short-term it appears to be minimal. Regardless of the option chosen, a process will need to be in place for the PSC to obtain the tariff information in order to handle complaints and insure correct charges.

SB 2626—Side By Side

364.051 Price regulation.

(1) SCHEDULE. Notwithstanding any other provisions of this chapter, the following local exchange telecommunications companies shall become subject to the price regulation described in this section on the following dates:

(c) Each company subject to this section is ~~shall be~~ exempt from rate base, rate of return regulation, and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, ~~and~~ 364.18, and 364.19.

EFFECT: Section 364.051(1)(c), F.S., is amended to include section 364.19, F.S., as one of the statutes from which price regulated companies are exempt. Section 364.19 F.S., reads, in part, "the commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons." As a result, should local exchange telecommunications companies in Florida begin providing services to either basic or nonbasic customers through service "agreements" or contracts, this provision would completely eliminate PSC oversight of the agreements.

IMPLEMENTATION: If the ILECs begin requiring service agreements for residential customers, as some have in other states, there will be no review by the PSC. The PSC will still be able to obtain the service agreement and contract when necessary to be able to resolve a customer issue.

SB 2626—Side By Side

(4)

(b) For purposes of this section, evidence of damage occurring to the lines, plants, or facilities of a local exchange telecommunications company ~~that is subject to the carrier-of-last-resort obligations~~, which damage is the result of a tropical system occurring after June 1, 2005, and named by the National Hurricane Center, constitutes a compelling showing of changed circumstances.

EFFECT: Section 364.051(4)(b), F.S., is modified to remove the phrase "that is subject to the carrier of last resort obligations," so that local exchange telecommunications companies may seek recovery of damages sustained as a result of named tropical storms after June 1, 2005. Prior to this change, companies would not have been able to request recovery.

Paragraph 364.051(4)(b)8., F.S., is amended to delete obsolete language.

IMPLEMENTATION: The PSC will once again be in the position to respond to storm recovery petitions.

SB 2626—Side By Side

(5)NONBASIC SERVICES.Price regulation of nonbasic services shall consist of the following:

(a)Each company subject to this section ~~shall, at its option, maintain tariffs with the commission or otherwise publicly publish the terms, conditions, and rates for each of its nonbasic services, and~~ may set or change, on 1 days notice, the rate for each of its nonbasic services. ~~For a company electing to publicly publish the terms, conditions, and rates for each of its nonbasic services, the commission may establish guidelines for the publication. The guidelines may not require more information than what is required to be filed with a tariff.~~ The price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any nonbasic service category may be increased in an amount not to exceed 10 20 percent within a 12-month period, and the rate shall be presumptively valid. However, the price for any service that was treated as basic service before July 1, 2009, may not be increased by more than the amount allowed for basic service as provided in paragraph (2)(c) and subsection (3). ~~However, for purposes of this subsection, the prices of:~~

~~1.A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and~~

~~2.Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,~~

~~shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 2000; provided, however, that a petition to increase such rates may be filed pursuant to subsection (4) utilizing the standards set forth therein~~. There shall be a flat-rate pricing option for multi line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. ~~Nothing contained in~~ This chapter does not ~~section shall~~ prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, nonbasic services in a specific geographic market or to a specific customer by deaveraging the price of any nonbasic service, packaging nonbasic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company may ~~shall~~ not engage in any anticompetitive act or practice ~~or, nor~~ unreasonably discriminate among similarly situated customers.

EFFECT: Section 364.051(5)(a), F.S., is amended to delete references to conform to proposed changes in section 364.04(1) F.S. relating to tariffing. Nonbasic subscribers are now subject to a maximum rate increase of 10 percent in a 12-month period, a reduction from the 20 percent maximum rate increase. Obsolete language relating to the SUNCOM network is also deleted.

In addition, the pricing guidelines for basic services contained in section 364.051(2)(c), F.S., and 364.051(3), F.S. remain in effect for all basic services prior to July 1, 2009.

IMPLEMENTATION: For pricing purposes only, the basic vs. nonbasic categories remain virtually unchanged. The pricing for basic remains at inflation minus 1 percent and the pricing for nonbasic will be capped at 10 percent. Staff's review of these increases remains unchanged.

SB 2626—Side By Side

(b) The commission has ~~shall have~~ continuing regulatory oversight of nonbasic services for purposes of ~~ensuring~~ ~~resolution of service complaints,~~ preventing cross-subsidization of nonbasic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service. The cost standard for determining cross-subsidization is whether the total revenue from a nonbasic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and nonvolume-sensitive costs.

~~(c) The price charged to a consumer for a nonbasic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.~~

EFFECT: Section 364.051(5)(b), F.S., is amended to remove PSC authority to resolve service quality complaints of any business customers or nonbasic residential customers.

This section is also amended to provide that the price charged for a nonbasic service shall cover the direct costs of providing the service. This change moves existing text from repealed section 364.051(5)(c), F.S. to the current section.

Section 364.051(5), F.S., paragraph (c) is repealed.

IMPLEMENTATION: PSC script changes for consumer complaint intake of nonbasic complaints must be made to reflect that the Commission no longer has authority to resolve nonbasic service complaints. Nonbasic service complaints will be filtered and redirected to the Department of Agriculture and Consumer Services.

SB 2626—Side By Side

364.08 Unlawful to charge other than schedule rates or charges; free service and reduced rates prohibited.

(1)A telecommunications company may not charge, demand, collect, or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file or otherwise published and in effect at that time. A telecommunications company may not ~~refund or remit, directly or indirectly, any portion of the rate or charge so specified or~~ extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

EFFECT: Section 364.08(1), F.S., is amended to eliminate specific language that currently forbids companies from refunding or remitting any portion of a rate or charge to any subscriber. More general antidiscrimination language still applies; however, it may now be permissible to apply credits or refunds to certain customers as a promotional or incentive offer.

IMPLEMENTATION: Credit, gift cards, rebates and waivers of charges are currently given to customers under the promotional offerings in order to meet competitors' offerings. Under 364.10, F.S., the companies may not give undue or unreasonable preference to anyone. With this change, the PSC will still need to address any allegations of undue discrimination.

SB 2626—Side By Side

(2)A telecommunications company subject to this chapter may provide ~~not, directly or indirectly, give any free or reduced service between points within this state. However, it shall be lawful for the commission to authorize~~ employee concessions without approval by the commission ~~if in the public interest~~.

Section 8.Section 364.09, Florida Statutes, is repealed.

EFFECT: Section 364.08(2), F.S., is amended to allow telecommunications company employee concessions without the approval of the Commission.

Section 364.09, F.S., is repealed removing the prohibition on giving rebates or special rates.

IMPLEMENTATION: This section is repealed, but 364.10, F.S, still does not allow undue discrimination. The PSC may still address undue discrimination issues.

SB 2626—Side By Side

(3)(a) Each ~~Effective September 1, 2003, any~~ local exchange telecommunications company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier ~~authorized by the commission to reduce its switched network access rate pursuant to s. 364.164 shall have tariffed~~ ~~and~~ shall provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 150 ~~135~~ percent or less of the federal poverty income guidelines for Lifeline customers. Such a test for eligibility must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low-income assistance programs.

EFFECT: The Act amends section 364.10(3)(a), F.S., regarding Lifeline service. The language is amended to state that local exchange telecommunications companies with more than 1 million access lines that have been designated as eligible telecommunications carriers (AT&T, Embarq, and Verizon) must provide Lifeline service to customers who meet an income eligibility test of 150 percent of the federal poverty guidelines.

Obsolete language relating to conditions established in a repealed section of the statute is deleted.

IMPLEMENTATION: All PSC forms and promotional materials for Lifeline will need to be changed to reflect the change in poverty level requirements. The income test is now 150 percent, up from 135 percent, to be eligible to receive Lifeline discounts.

SB 2626—Side By Side

364.15 Compelling repairs, improvements, changes, additions, or extensions.Whenever the commission finds, on its own motion or upon complaint, that repairs or improvements to, or changes in, any telecommunications facility ought reasonably to be made, or that any additions or extensions should reasonably be made to any telecommunications facility, in order to promote the security or convenience of the public or employees or in order to secure adequate service or facilities for basic local telecommunications services consistent with the requirements set forth in this chapter, the commission shall make and serve an order directing that such repairs, improvements, changes, additions, or extensions be made in the manner to be specified in the order. This section authorizes the commission to impose only those requirements that it is otherwise authorized to impose under this chapter.

EFFECT: Section 364.15, F.S., is amended so that the PSC may only compel repairs or improvements to facilities for "basic local" service that it is "otherwise authorized to impose under this chapter." The Commission will no longer have the authority to compel repairs or improvements for nonbasic subscribers (i.e. any customer with any calling features, more than one line or which receives unregulated services from the telephone company.)

IMPLEMENTATION: Review rules to determine what changes, if any, must be made to reflect that service quality standards no longer apply to nonbasic services.

Note: The August 18, 2009, PSC Agenda includes ongoing rulemaking which will address this part of the law. Comments from rulemaking participants regarding the impact of the new law are due July 13.

SB 2626—Side By Side

364.33 Certificate of necessity prerequisite to construction, operation, or control of telecommunications facilities.Except for a transfer of a certificate of necessity from one person to another or to the parent or affiliate of a certificated person as provided in this section, a person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval. A certificate of necessity or control thereof may be transferred from a person holding a certificate, its parent or an affiliate to another person holding a certificate, its parent or an affiliate and a person holding a certificate, its parent or an affiliate may acquire ownership or control of a telecommunications facility through the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership of a person holding a certificate without prior approval of the commission by giving 60 days written notice of the transfer or change of control to the commission and affected customers. This section does not require approval by the commission prior to the construction, operation, or extension of a facility by a certificated company within its certificated area nor in any way limit the commissions ability to review the prudence of such construction programs for ratemaking as provided under this chapter.

EFFECT: Section 364.33, F.S., is amended to remove PSC authority to approve the transfer of a certificate of necessity from one person to another or to the parent or affiliate of the certificated person. Certificated carriers are allowed to merge or transfer ownership to other certificated carriers without any state regulatory oversight. The company must notify the Commission 60 days prior to such transfer or change of control.

IMPLEMENTATION: Rules must be reviewed and modified to reflect the change in acquiring ownership or control of a telecommunications facility without prior Commission approval. Prior to the law change, CLECs were not required to come to the PSC for merger approval. In the past several years, the PSC has dealt with 4 ILEC changes in ownership.

All forms and materials referring to the transfer of a certificate will need to be reviewed and edited to reflect this change.

SB 2626—Side By Side

662 ~~(3)For operator services, the commission shall establish~~
663 ~~maximum rates and charges for all providers of such services~~
664 ~~within the state.~~

...

672 4. When requested, provide the procedure for reporting
673 service difficulties and methods of obtaining refunds.
674 b)Not intentionally charge for incompleted calls and
675 provide full refund or credit for Any misbilled or incomplete
676 calls.
677 c)Bill for services in accordance with their published
678 schedules ~~approved in their tariff and~~ only at the rates set
679 forth therein ~~tariff or otherwise approved rate,~~ and disclose
680 their names on bills which include charges for services
681 rendered.

EFFECT: Section 364.3376(3), F.S., is amended to remove the authority of the PSC to establish maximum rates and charges for operator services. The commission will no longer establish maximum rates and charges for operator services.

Paragraph 364.3376(4)(c), F.S., is amended to replace the phrase "approved tariff" with "published schedules."

IMPLEMENTATION: The PSC currently has a rulemaking docket open which will address the elimination of the caps.

SB 2626—Side By Side

364.3382 Disclosure.

~~(1)~~ A local exchange telecommunications company, when a residential customer initially requests service, shall advise each residential customer of the least-cost service available to that customer. Annually~~, in the form of a bill insert~~, the local exchange telecommunications company shall advise each residential customer of the price of each service option selected by that customer. The requirement of an annual notice ~~through a bill insert~~ does not apply to interexchange service.

~~(2) Copies of both the written notices and information provided to customer service representatives concerning the disclosure required pursuant to subsection (1) shall be submitted to the commission for prior approval.~~

EFFECT: Section 364.3382, F.S., is amended to delete the companies' obligation to include a bill insert to notify customers on an annual basis of the price of each service option selected by the customer. Companies continue to be required to notify customers of this information annually, but the method is not specific. The PSC will no longer approve the annual bill insert.

IMPLEMENTATION: Review rules to determine the impact of eliminating the requirement to provide notification through a bill insert of the price of each service option selected by the customer and of eliminating prior approval of notice by the Commission. Currently the review of bill inserts has been delegated to staff, but none have been submitted for several years.

SB 2626—Side By Side

768 ... The commission shall resolve on an
769 expedited basis any complaints of anticompetitive behavior
770 concerning a local preferred carrier freeze. The
771 telecommunications company that is asserting the existence of a
772 local preferred carrier freeze, which is the subject of the
773 complaint, shall have the burden of proving through competent
774 evidence that the customer did in fact request the freeze.

EFFECT: Section 364.603, F.S., relates to the methodology for changing telecommunications providers. The Commission shall resolve any complaints of anticompetitive behavior concerning a local preferred carrier freeze on an expedited basis. The company asserting the existence of a freeze shall have the burden of proof that a customer requested the freeze.

IMPLEMENTATION: The PSC receives complaints from companies and consumers that a preferred carrier freeze has been placed on a line to prevent a customer from changing providers. Upon receipt of the complaints, staff intervenes to determine if the preferred carrier freeze is authorized and have it removed, if necessary. This process is handled informally. Staff will continue to resolve these cases quickly and will bring them before the Commission, when necessary, on an expedited basis. Also, staff will review the rules to determine if it believes a rule change is necessary.

SB 2626—Side By Side

Section 2. (1) The Legislature finds that broadband Internet service is critical to the economic development of the state and is beneficial for libraries, schools, colleges and universities, health care providers, and community organizations. The Legislature further finds that barriers exist to the statewide deployment of broadband Internet service, especially in rural, unserved, or underserved communities. The Legislature therefore intends to promote the efficient and effective deployment of broadband Internet service throughout the state through a coordinated statewide effort.

And lines 85 through 147

EFFECT: Section 2 acknowledges the importance of broadband Internet service and authorizes the Department of Management Services to work collaboratively with Enterprise Florida, Inc., state agencies, local governments, private businesses, and community organizations to create and enact a strategic plan that encourages use and deployment of those services.

IMPLEMENTATION: Staff is participating in workshops with the Department of Management Services, other state agencies, and interested parties relating to state broadband policy and procurement of stimulus funding.

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 2, 2009

TO: Mary Andrews Bane, Executive Director

FROM: Office of Strategic Analysis and Governmental Affairs (Marr, Futrell)
Division of Administrative Services (Lynn)
Office of the General Counsel (Miller)

RE: U.S. Department of Energy Grant for State Public Utility Commissions to Implement Electricity-Related Initiatives of the American Recovery and Reinvestment Act of 2009
Critical Information: Please place on the July 14, 2009 Internal Affairs. Approval to Proceed is Sought

The Commission has an opportunity to pursue a grant from the U.S. Department of Energy (DOE) that would provide assistance to state public utility commissions (PUCs) to implement the electricity-related initiatives of the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA provides funding for electricity sector activities and initiatives that could affect electric utility investment in renewable energy, smart grid, energy storage, electric and hybrid-electric vehicles, demand response equipment, coal with carbon capture and storage, and transmission. The purpose of the grant is to assist state PUCs in managing the increase in regulatory activities resulting from ARRA electricity-related initiatives. Staff seeks Commission approval to pursue this grant opportunity.

DOE has designated $46 million to fund grants for 50 state PUCs and the District of Columbia with Florida's allocation at $1,217,160. The Commission can use the funds to hire additional staff, provide training to staff and hire consultants to provide training or assistance to staff involved with ARRA electricity-related activities. Staff recommends the funds primarily be used for staff training. Additional training and expertise will enhance the competence of staff to analyze utility investments related to ARRA funding opportunities.

The terms of the grant require the preparation and maintenance of implementation plans on the use of the funds. Also, the Commission would be required to maintain separate accounting records for the funds received and expended, and quarterly status reports would be filed with the DOE. The application deadline is August 31, 2009. Grants are expected to be awarded by DOE on December 15, 2009. State PUCs would have four years following the issuance of the grant to expend the funds. Attachment A provides a description of the grant, and the benefits and costs to the Commission of receiving the grant funds. Attachment B is a copy of the Funding Opportunity Announcement from the DOE.

If the Commission chooses to move forward with the grant application, staff will prepare a draft application package for consideration at the August 18, 2009, Internal Affairs meeting. Considerable research has been performed to familiarize staff with the forms and DOE requirements. NARUC staff have been consulted for guidance in the application process. The Division of Administration has registered with the federal grant websites and will be ready to complete the necessary forms to obtain spending authority.

**U.S. Department of Energy Funding for
State Public Utility Commissions Pursuant to
the American Recovery and Reinvestment Act of 2009**

Funding Opportunity Number: DE-FOA-0000100

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) provides funding to state and local governments, utilities and other parties for a variety of energy-related purposes. Specifically, utilities may pursue grants and loan guarantees for smart grid and advanced metering investments, renewable energy, demonstration projects for carbon capture and storage, electric vehicles and hybrid-electric vehicles and demand response equipment. The grant offered by the U.S. Department of Energy (DOE) is designed to assist State Public Utility Commissions (PUCs) in carrying out the increase in regulatory activities related to the electricity provisions of the ARRA. For example, if a regulated utility were to receive a grant or loan guarantee pursuant to the ARRA, the state PUC would consider such assistance received by the utility in a rate case, a limited proceeding or in a cost recovery proceeding.

DOE has allocated $46 million for 50 state PUCs and the District of Columbia. The funds will be distributed on a formula basis with each grantee receiving a base of $750,000 with the balance allocated by 2008 state population. Florida ranks fourth in population in 2008 and would rank fourth in the grant received at $1,217,160. The funds must be expended within four years of receipt of the grant.

The objectives of the grant initiative are to 1) create jobs; 2) increase the capacity of PUCs to manage a significant increase in dockets and other regulatory actions resulting from ARRA electricity-related activities; and 3) facilitate timely consideration by PUCs of ARRA electricity-related activities. Accordingly, the Commission has the ability to hire additional staff to train staff in ARRA –related activities and to hire consultants to assist staff.

The Funding Opportunity Announcement (FOA) for this grant explains that DOE intends these funds to supplement and not supplant normal state appropriations for state PUCs. The DOE notes states cannot use these ARRA funds to off-set normal appropriations for PUC staff or activities. The DOE will assess the funding provided by (1) the number of state PUC electricity specialists trained in ARRA electricity-related topical areas, (2) the number of electricity specialists hired by state PUCs, and (3) the number of ARRA electricity-related dockets managed by state PUCs.

Impact on the Commission

Benefits to the Commission - Staff believes the grant funds will most effectively be used to provide training to Commission staff for ARRA electricity-related topics. The Commission will realize increased productivity of staff that is better trained in energy related issues and nascent technologies. A greater level of competence in technical issues will enable staff to understand the issues and expeditiously analyze and assess issues presented in dockets. The Commission

may also use the training dollars to cross-train staff not currently working in electricity-related areas so that staff can temporarily be assigned to meet peak workload demands.

Costs to the Commission - The grant application process is detailed and requires the preparation of a package of documents including a narrative describing the project and a projected budget with justification data for each of the four years of the grant. Additional forms are also needed to address wage information if the state PUC proposes to hire staff, environmental impact and lobbying activities. Complying with terms of the grant will require detailed recordkeeping of receipts, expenses and workload statistics and compiling quarterly progress reports for the DOE.

Summary of Tasks to be Completed During the Application Process

- Register online:
  Dunn and Bradstreet Data Universal Number System (DUNS)
  Central Contractor Registration (CCR)
  FedConnect
- Complete an online application, Form SF 424; deadline: August 31, 2009
- Complete form for Certifications and Assurances (regarding, lobbying, debarment, suspension, civil judgments, criminal convictions involving fraud, embezzlement, theft, etc., drug-free workplace and non- discrimination)
- Identify the Project Performance Site/Location (3 digit congressional code)
- Provide a project narrative file (a concise, 3 page summary of how the project objectives will be accomplished)
- Complete a Project Summary/Abstract File (1 page suitable for posting on the internet)
- Compile a four-year budget (with full justification)
- Complete a Form on Prevailing Wage Information
- Complete a Form on Environmental Impact per the National Environmental Policy Act
  (NEPA) of 1969
- Complete Form SF-LLL Disclosure of Lobbying Activities

Deliverables to DOE After Award of a Grant

- Project Management Plan (PMP) – provides details regarding the work elements needed to manage and report on activities included in the grant, such as administration of the grant, opening and managing dockets and conducting staff training. The PMP will cover the four years of the grant and match the project budget for carrying out the tasks and completing the deliverables. The PMP is due 60 days after the grant is awarded and revised periodically as warranted.

- Workforce Development Plan (WDP) - describes the development of in-house

expertise and the hiring, retaining and training personnel in electricity topic areas. The WDP is due 90 days after the contract is awarded and revised as necessary through out the term of the grant.

- ARRA Case Monitoring Reports - summarize the status of all ARRA electricity-related activity work products, such as dockets, final orders, legal findings, etc. The reports shall contain key dates and a link to the work product. This report is due six months after the contract is awarded and every three months thereafter.

When the grant is awarded, the Division of Administrative Services (ADM) will:

- Prepare a 14-day budget amendment for FY 09/10. Once approved, the budget amendment will give the PSC the necessary spending authority to expend the grant funds for this current FY (09/10).

- Special accounting codes will be set up to track the ARRA related receipts and expenses.

- ADM will prepare another budget amendment for spending authority for FY 10/11.

- The spending authority for FYs 11/12 and 12/13 will be approved through a Legislative Budget Request (LBR). The LBR will be due October 15, 2010.

It will be important to develop a clear audit trail and to ensure the ARRA funds received supplement the current budget, not supplant it until expiration of the performance period. The Office of Planning and Budget has advised the grant funds can be deposited into the Florida Public Service Regulatory Trust Fund.

Issues with Implementation That Need Further Review

The FOA contains a few statements that are open-ended and do not adequately describe the potential impact to the Commission. Staff is in the process of obtaining a written clarification of these issues from the Department of Energy.

- Additional information can be requested of the Commission as determined by the DOE.

- The DOE will provide technical assistance and training on ARRA electricity- related topics at some time in the future. All staff hired by funds through the grant are expected to attend. The FOA does not specify when or where the training will take place.

- By signing the application, applicants provide a written assurance that they will

comply with ALL requirements set forth in the 407 pages of the American Reinvestment and Recovery Act.

- The grant application requires compliance with Federal cost principles referenced in 10 CFR Part 600.

- Special terms and conditions may apply to projects funded by the Act relating to:
- Reporting, tracking and segregation of incurred costs
- Reporting on job creation and preservation
- Publication of information on the internet
- Access to records by the Government Accountability Office
- Ensuring that wage rates are comparable to those prevailing on projects of a similar character

Next Steps

If the Commission chooses to proceed, staff will complete all documents necessary to file the application with DOE. The draft application will be submitted to the Commission for final review at the August 18, 2009, Internal Affairs meeting. If the Commission approves the content of the application, the application will be filed with DOE prior to the deadline of 3:00pm ET, August 31, 2009. Staff will begin drafting a Project Management Plan and prepare the associated budgets for the four-year term of the grant.

Grants will be awarded by December 15, 2009. Upon receipt of the funds, Division of Administration will prepare a 14-day budget amendment for FY 09/10 and set up special accounting codes for the funds received and to be expended. Staff will finalize the Project Management Plan and begin implementation.

FINANCIAL ASSISTANCE
FUNDING OPPORTUNITY ANNOUNCEMENT

U. S. Department of Energy

National Energy Technology Laboratory

Recovery Act – State Electricity Regulators Assistance

Funding Opportunity Number: DE-FOA-0000100

Announcement Type: Amendment 000001

CFDA Number: 81.122

Issue Date:	**06/15/2009**
Letter of Intent Due Date:	**Not Applicable**
Pre-Application Due Date	**Not Applicable**
Application Due Date:	**08/31/2009 at 3:00:00 PM Eastern Time**

The purpose of this Amendment is to make an Administrative Modification to Part IV- Application and Submission Information, Section E - Submission Dates and Times, Sub-section (2) Application Due Date to reflect an application due date of August 31, 2009. The modified text is highlighted in yellow.

NOTE: REGISTRATION/SUBMISSION REQUIREMENTS

Registration Requirements

There are several one-time actions you must complete in order to submit an application in response to this Announcement (e.g., obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number, register with the Central Contractor Registration (CCR), and register with FedConnect). Applicants who are not registered with CCR and FedConnect, should allow at least 10 days to complete these requirements. It is suggested that the process be started as soon as possible.

Applicants must obtain a DUNS number. DUNS website: http://fedgov.dnb.com/webform.

Applicants must register with the CCR. CCR website: http://www.ccr.gov/

Applicants must register with FedConnect to submit their application. FedConnect website: www.fedconnect.net

Questions

Questions relating to the **system requirements or how an application form works** must be directed to Grants.gov at 1-800-518-4726 or **support@grants.gov**.

Questions regarding the **content** of the announcement must be submitted through the FedConnect portal. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. It is recommended that you register as soon after release of the FOA as possible to have the benefit of all responses. More information is available at **http://www.compusearch.com/products/fedconnect/fedconnect.asp**. DOE will try to respond to a question within 3 business days, unless a similar question and answer have already been posted on the website.

Questions pertaining to the **submission** of applications through FedConnect should be directed by e-mail to support@FedConnect.net or by phone to FedConnect Support at 800-899-6665.

Application Preparation and Submission

Applicants must download the application package, application forms and instructions, from Grants.gov. Grants.gov website: http://www.grants.gov/
(Additional instructions are provided in Section IV A of this FOA.)

Applicants must submit their application through the FedConnect portal. FedConnect website: www.fedconnect.net
(Additional instructions are provided in Section IV H of this FOA.)

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PART I – FUNDING OPPORTUNITY DESCRIPTION

A. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA 2009)

Projects under this FOA will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously. Accordingly, special consideration will be given to projects that promote and enhance the objectives of the Act, especially job creation, preservation and economic recovery, in an expeditious manner.

Be advised that special terms and conditions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Access to records by Inspectors General and the Government Accountability Office;
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Ensuring that iron, steel and manufactured goods are produced in the United States;
- Ensuring wage rates are comparable to those prevailing on projects of a similar character;
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
- Certification and Registration.

These special terms and conditions will be based on provisions included in Titles XV and XVI of the Act. The special terms and conditions can be found at http://management.energy.gov/policy_guidance/1672.htm.

The Office of Management and Budget (OMB) has issued Initial Implementing Guidance for the Recovery Act. See M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009 and M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009. OMB will be issuing additional guidance concerning the Act in the near future. Applicants should consult the DOE website, www.energy.gov, the OMB website http://www.whitehouse.gov/omb/, and the Recovery website, www.recovery.gov regularly to keep abreast of guidance and information as it evolves.

Recipients of funding appropriated by the Act shall comply with requirements of applicable Federal, State, and local laws, regulations, DOE policy and guidance, and instructions in this FOA, unless relief has been granted by DOE. Recipients shall flow down the requirements of applicable Federal, State and local laws, regulations, DOE policy and guidance, and instructions in this FOA to subrecipients at any tier to the extent necessary to ensure the recipient's compliance with the requirements.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related OMB Guidance. Applicants for projects funded by sources other than the Recovery Act should plan to keep separate records for Recovery Act funds and ensure those records comply with the requirements of the Act. Funding provided through the Recovery Act that is supplemental to an existing grant is one-time funding.

Applicants should require their first tier subawardees to obtain a DUNS number (or update the existing DUNS record) and register with the Central Contractor Registration (CCR).

B. DESCRIPTION OF FUNDING OPPORTUNITY

1. Background:

The American Recovery and Reinvestment Act of 2009 (ARRA) includes funding for electricity sector activities and initiatives that will significantly affect utility investment in the electric power sector. State Public Utility Commissions (PUC), through their regulatory oversight of electricity investment and other decisions for their jurisdictional electric utilities, will be involved in implementing key facets of ARRA electricity-related initiatives. Some examples include:

- The ARRA requires Governors to certify that their state has or will pursue certain energy efficiency policies for its utilities in order to receive State Energy Program ARRA funds. Implementation of these policies may impact electric utilities through required infrastructure improvements, energy procurements, rate adjustments, etc. that will require PUC approval.
- Transmission lines that receive ARRA loan guarantees cannot be sited and approved (e.g. approval of cost allocations) without PUC approvals. Approval of these projects may increase the need for PUCs to work with counterparts in adjacent states on siting and cost allocation considerations for multi-state transmission projects supported with ARRA funding.
- ARRA-funded clean coal with carbon capture and sequestration activities will need to be coupled with state PUC approval for any ratepayer-funded portions of these new demonstration power plants.
- ARRA Smart Grid utility investments must be approved by PUCs. Additionally, per ARRA requirements, PUCs must approve matching funding from ratepayers for ARRA Smart Grid projects.
- As a result of the ARRA, renewable energy electricity procurements by utilities will need to be approved by PUCs, or at least renewable portfolio standards need to be adjusted, examined or considered.

To ensure that PUCs can meet the increased demands caused by the increased workload required to fully address the electricity sector initiatives included in the ARRA, DOE intends to make funding available to PUCs to hire additional staff so they can ensure appropriate technical expertise will be dedicated to regulatory activities pertaining to ARRA electricity-related initiatives. ARRA electricity-related activities include but are not necessarily limited to energy efficiency, electricity-based renewable energy, energy storage, smart grid electric and hybrid-electric vehicles, demand-response equipment, coal with carbon capture and storage, and transmission.

The intent of the funds made available through the ARRA State Electricity Regulators Assistance Initiative is to supplement, not supplant, normal state appropriations for PUC staffing, expressly for the purpose of addressing the significant increase in PUC workload created by ARRA electricity-related initiatives.

The US Department of Energy (DOE), Office of Electricity Delivery and Energy Reliability (OE) also intends, at a later date and through a separate action, to increase the level of technical assistance provided to states for the purpose of providing training and technical assistance to PUCs on ARRA electricity-related topics. It is expected that all PUC staff hired by funds through this initiative will avail themselves of training available by DOE.

2. Statutory Authority:

American Recovery and Reinvestment Act of 2009 (ARRA).

3. Purpose/Objectives:

The primary purposes of this initiative are to: 1) increase the capacity of state PUCs to manage a significant increase in dockets and other regulatory actions resulting from ARRA electricity-related activities; 2) facilitate timely consideration by PUCs of ARRA electricity-related investments; and 3) create jobs. Electricity-related ARRA activities include, but are not necessarily limited to: energy efficiency, electricity-based renewable energy, energy storage, smart grid, electric and hybrid-electric vehicles, demand response equipment, coal with carbon capture and storage, and transmission.

The results of the funding provided for the projects will be assessed according to the following performance metrics:

- Number of electricity specialists hired by state PUCs
- Number of state PUC electricity specialists trained in ARRA electricity-related topical areas
- Number of ARRA electricity-related dockets managed by PUCs

The intent of the funds made available through this Funding Opportunity Announcement (FOA) is to supplement, not supplant, normal state appropriations for PUC staffing, expressly for the purpose of addressing the significant increase in PUC workload created by ARRA electricity-related initiatives. States cannot use these ARRA funds to off-set normal appropriations for PUC staff or activities.

4. Benefits:

The anticipated benefit of this initiative is the increased likelihood of achieving ARRA's goals of job creation, modernizing our nation's infrastructure, and enhancing energy independence by taking advantage in a timely way of opportunities that will occur from state PUCs' review and timely consideration of all ARRA-related activities by their jurisdictional electric utilities, and other initiatives that ARRA funds may cause.

C. FORMULA FOR ALLOCATION OF FUNDS

The formula for allocating the $46,000,000 is comprised of a base allocation ($38,250,000), with the balance ($7,750,000) distributed based on population according to the 2008 U.S. Census data. The proposed funding allocation is contained in Attachment A.

PART II – AWARD INFORMATION

A. TYPE OF AWARD INSTRUMENT

DOE anticipates awarding grants under this program announcement.

B. ESTIMATED FUNDING

Approximately $46,000,000 is expected to be available for new awards under this announcement. The funds will be distributed on a formula-basis in accordance with the funding allocations contained in Attachment A.

C. MAXIMUM AND MINIMUM AWARD SIZE

In accordance with the funding allocation, as shown in Attachment A, DOE anticipates that the awards will range from $763,577 to $1,686,869.

D. EXPECTED NUMBER OF AWARDS

DOE anticipates making approximately 51 awards under this announcement.

E. PERIOD OF PERFORMANCE

DOE anticipates making awards with performance periods of up to four (4) years.

F. TYPE OF APPLICATION

DOE will accept only new applications under this announcement.

PART III - ELIGIBILITY INFORMATION

A. ELIGIBLE APPLICANTS

Eligibility for award is restricted to Public/Regulatory Commissions of the 50 U.S. States and the District of Columbia (hereinafter "States").

B. COST SHARING

Cost sharing is not required.

PART IV – APPLICATION AND SUBMISSION INFORMATION

A. ADDRESS TO REQUEST APPLICATION PACKAGE

Application forms and instructions are available at Grants.gov. To access these materials, go to http://www.grants.gov, select "Apply for Grants," and then select "Download Application Package." Enter the CFDA and/or the funding opportunity number located on the cover of this announcement and then follow the prompts to save the application package. Once you have SAVED the application package and completed all the required documentation, you will submit your application via the Fedconnect portal. **DO NOT use the Save & Submit selection in Grants.gov.**

B. LETTER OF INTENT AND PRE-APPLICATION

1. Letter of Intent.

Letters of Intent are not required.

2. Pre-application

Pre-applications are not required.

C. CONTENT AND FORM OF APPLICATION – SF 424

You must complete the mandatory forms and any applicable optional forms (e.g., SF-LLL-Disclosure of Lobbying Activities) in accordance with the instructions on the forms and the additional instructions below. **Files that are attached to the forms must be in Adobe Portable Document Format (PDF) unless otherwise specified in this announcement.**

1. SF 424 - Application for Federal Assistance

Complete this form first to populate data in other forms. Complete all required fields in accordance with the pop-up instructions on the form. To activate the instructions, turn on the "Help Mode" (Icon with the pointer and question mark at the top of the form). The list of certifications and assurances referenced in Field 21 can be found on the DOE Financial Assistance Forms Page at http://management.energy.gov/business_doe/business_forms.htm under Certifications and Assurances.

PLEASE NOTE: By signing the SF 424, Applicants are providing their written assurance that they will comply with ALL requirements set forth in the American Reinvestment and Recovery Act.

2. Project/Performance Site Location(s)

Indicate the primary site where the work will be performed. If a portion of the project will be performed at any other site(s), identify the site location(s) in the blocks provided.

Note that the Project/Performance Site Congressional District is entered in the format of the 2 digit state code followed by a dash and a 3 digit Congressional district code, for example VA-001. Hover over this field for additional instructions.

Use the Next Site button to expand the form to add additional Project/Performance Site Locations.

3. Other Attachments Form

Submit the following files with your application and attach them to the Other Attachments Form. Click on "Add Mandatory Other Attachment" to attach the Project Narrative. Click on "Add Optional Other Attachment," to attach the other files.

Project Narrative File - Mandatory Other Attachment

The project narrative must include a concise summary (not to exceed 3 pages when printed using standard 8.5" by 11" paper with 1 inch margins) of the approach for executing the project as defined in the Statement of Project Objectives (SOPO). Do not include any Internet addresses (URLs) that provide information necessary to review the application. Save the information in a single file named "Project.pdf," and click on "Add Mandatory Other Attachment" to attach.

The Department of Energy's, National Energy Technology Laboratory has provided the following SOPO for this initiative, which will be included in the resultant award. The SOPO and project narrative may be released to the public by DOE in whole or in part at any time.

STATEMENT OF PROJECT OBJECTIVES (SOPO)

A. OBJECTIVES

The objectives of this initiative are to: 1) increase the capacity of state PUCs to manage a significant increase in dockets and other regulatory actions resulting from ARRA electricity-related activities; 2) facilitate timely consideration by PUCs of ARRA electricity-related investments; and 3) create jobs.

The initiative focuses on building state PUC capacity to ensure timely consideration by appropriate regulatory processes for ARRA electricity-related activities and investments. Electricity-related ARRA activities include, but are not necessarily limited to: energy efficiency, electricity-based renewable energy,energy storage, smart grid, electric and hybrid-electric vehicles, demand response equipment, coal with carbon capture and storage, and transmission.

B. SCOPE OF WORK

The following activities are addressed:

- Increasing the capacity of the State PUCs to manage a significant increase in dockets and other regulatory actions resulting from ARRA electricity-related activities;
- Facilitating timely consideration by PUCs of ARRA electricity-related investments

The projects will be assessed according to the following performance metrics:

- Number of electricity specialists hired by the PUC,
- Number of PUC electricity specialists trained in ARRA electricity-related topical areas, and
- Number of ARRA electricity-related dockets managed by the PUC

C. TASKS TO BE PERFORMED

Note: These are tasks that will be included in the Grant award; however subtasks may be added to the Project Management Plan, if needed, to help better describe the project approach.

Task 1.0 - Project Management Plan

The Recipient will prepare a Project Management Plan that details the work elements (e.g., administration of the grant, opening and managing dockets, conducting workshops or other proceedings on topics relevant to this FOA, etc.), required to manage and report on activities in accordance with the ARRA and grant requirements. This Plan will also document the 4-year plan and project budget for carrying out all Tasks and completing all Deliverables under this Grant. With the understanding that PUC workload is at times unpredictable, it is anticipated that this document will be periodically revised during the performance period, but at all times will provide sufficient detail to plan, carry out and monitor all project activities. (A Project Management Plan template is provided in Attachment C.)

Task 2.0 – Workforce Development Plan

The Recipient will prepare and follow a Workforce Development Plan that results in development of in-house expertise within the PUC funded by this FOA. The Plan will address acquiring/hiring, retaining, and training personnel in electricity topic areas.

Task 3.0 – ARRA Case Monitoring Reports

The Recipient will provide quarterly reports summarizing the status of all ARRA electricity-related PUC activities (e.g., typical PUC work products, such as dockets, final orders, legal findings, workshops, etc.) being serviced by staff supported with funding under this FOA. The reports shall include key dates for the PUC work products, as well as the work products themselves. Actual work products may not necessarily be included if a summary of each with a URL link to the PUC website for the full work product is provided. For example, the name of any docket and a link to the docket itself may be provided.

D. DELIVERABLES

Note: These are the deliverables that will be included in the Grant award; however additional deliverables may be added to the Project Management Plan, if needed, to help better describe the project approach.

Deliverable 1.0 – Project Management Plan (Plan due 60 days after the award and revised as necessary throughout the performance period.)

Deliverable 2.0 – Workforce Development Plan (Plan due 90 days after the award and revised periodically if necessary throughout the performance period.)

Deliverable 3.0 – ARRA Case Monitoring Reports (The initial Report is due six months after the award and subsequent reports are due thereafter on 3 month intervals.)

Note: The periodic, topical, and final deliverables and reports shall be submitted in accordance with the "Federal Assistance Reporting Checklist". A sample checklist is included in Attachment B of this FOA.

- **Project Summary/Abstract File**

  The project summary/abstract must contain a summary of the proposed activity suitable for dissemination to the public. It should be a self-contained document that identifies the name of the applicant, the project director/principal investigator(s), the project title, the objectives of the project, a description of the project, including methods to be employed, the potential impact of the project (i.e., benefits, outcomes), and major participants (for collaborative projects). This document must not include any proprietary or sensitive business information as the Department may make it available to the public. The project summary must not exceed one (1) page when printed using standard 8.5" by 11" paper with 1" margins (top, bottom, left and right) with font no smaller than 11 point. Save this information in a file named "Summary.pdf," and click on "Add Optional Other Attachment" to attach.

- **SF 424 A Excel, Budget Information – Non-Construction Programs File**

  You must provide a separate budget for each year of support requested and a cumulative budget for the total project period. Use the SF 424-A Excel, "Budget Information – Non Construction Programs" form on the DOE Financial Assistance Forms Page at http://management.energy.gov/business_doe/business_forms.htm.
  You may request funds under any of the Object Class Categories as long as the item and amount are necessary to perform the proposed work, meet all the criteria for allowability under the applicable Federal cost principles, and are not prohibited by the funding restrictions in this announcement (See PART IV, G). Save the information in a single file named "SF424A.xls," and click on "Add Optional Other Attachment" to attach.

- **Budget Justification File**

  You must justify the costs proposed in each Object Class Category/Cost Classification Category (e.g., identify key persons and personnel categories and the estimated costs for each person or category; provide a list of equipment and cost of each item; identify proposed subaward/consultant work and cost of each subaward/consultant; describe purpose of proposed travel, number of travelers, and number of travel days; list general categories of supplies and amount for each category; and provide any other information you wish to support your budget). Provide the name of your cognizant/oversight agency, if you have one, and the name and phone number of the individual responsible for negotiating your indirect rates. If cost sharing is required, you must have a letter from each third party contributing cost sharing (i.e., a party other than the organization submitting the application) stating that the third party is committed to providing a specific minimum dollar amount of cost sharing. In the budget justification, identify the following information for each third party contributing cost sharing: (1) the name of the organization; (2) the proposed dollar amount to be provided; (3) the amount as a percentage of the total project cost; and (4) the proposed cost sharing – cash, services, or property. By submitting your application, you are providing assurance that you have signed letters of commitment. Successful applicants will be required to submit these signed letters of commitments. Save the budget justification information in a single file named "Budget.pdf," and click on "Add Optional Other Attachment" to attach.

- **ARRA 2009 Prevailing Wage Information**

  Applications shall provide information which validates that all laborers and mechanics on projects funded directly by or assisted in whole or in part by and through funding appropriated by the Act are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of title 40, United States Code (Davis-Bacon Act). For guidance on how to comply with this provision,

see http://www.dol.gov/esa/whd/contracts/dbra.htm. Save the ARRA 2009 prevailing wage assurance in a single file named "ARRAWage.pdf," and click on "Add Optional Other Attachment" to attach.

- **NEPA**

  All Projects receiving financial assistance from DOE must be reviewed under the National Environmental Policy Act (NEPA) of 1969 – 42 U.S.C. Section 4321 et seq. The first step in DOE's NEPA review process requires financial assistance recipients to submit information to DOE regarding the potential environmental impacts of the project receiving DOE funds. Applicants must complete the Environmental Checklist (DOE PMC EF-1) on-line at the following site: https://www.eere-pmc.energy.gov/NEPA.asp

3. SF-LLL Disclosure of Lobbying Activities

If applicable, complete SF- LLL. Applicability: If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the grant/cooperative agreement, you must complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying."

Summary of Required Forms/Files

Your application must include the following documents:

Name of Document	Format	File Name
Application for Federal Assistance – SF424	Form	N/A
Project/Performance Site Location(s)	Form	N/A
Other Attachments Form: Attach the following files to this form:	Form	N/A
Project Narrative File	PDF	Project.pdf
Project Summary/Abstract File	PDF	Summary.pdf
SF 424 A Excel, Budget Information – Non-Construction Programs File	Excel	SF424A.xls
Budget Justification File	PDF	Budget.pdf
ARRA 2009 Prevailing Wage Information	PDF	ARRAWage.pdf
NEPA	PDF	See Instructions
SF-LLL Disclosure of Lobbying Activities, if applicable.	Form	N/A

D. SUBMISSIONS FROM SUCCESSFUL APPLICANTS

If selected for award, DOE reserves the right to request additional or clarifying information for any reason deemed necessary, including, but not limited to:

- Indirect cost information
- Other budget information
- Name and phone number of the Designated Responsible Employee for complying with national policies prohibiting discrimination (See 10 CFR 1040.5)
- Representation of Limited Rights Data and Restricted Software, if applicable
- Commitment Letter from Third Parties Contributing to Cost Sharing, if applicable

E. SUBMISSION DATES AND TIMES

1. Pre-application Due Date

Pre-applications are not required.

2. Application Due Date

Applications should be received by August 31, 2009, not later than 3:00 PM Eastern Time. You are encouraged to transmit your application well before the deadline.

F. INTERGOVERNMENTAL REVIEW

This program is not subject to Executive Order 12372 – Intergovernmental Review of Federal Programs.

G. FUNDING RESTRICTIONS

Cost Principles: Costs must be allowable in accordance with the applicable Federal cost principles referenced in 10 CFR Part 600. The cost principles for commercial organization are in FAR Part 31.

H. OTHER SUBMISSION AND REGISTRATION REQUIREMENTS

1. Where to Submit

APPLICATIONS MUST BE SUBMITTED THROUGH FEDCONNECT TO BE CONSIDERED FOR AWARD. Submit electronic application through the FedConnect portal at www.FedConnect.net. Information regarding how to submit application via FedConnect can be found at https://www.fedconnect.net/FedConnect/PublicPages/FedConnect_Ready_Set_Go.pdf. Further, it is the responsibility of the applicant, prior to the offer due date and time, to verify successful transmission.

2. Registration Process

There are several one time actions you must complete in order to submit an application in response to this Announcement (e.g., obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number, register with the Central Contract Registry (CCR), and register with FedConnect). Applicants, who are not registered with CCR and FedConnect, should allow at least 10 days to complete these requirements. It is suggested that the process be started as soon as possible.

Part V - APPLICATION REVIEW INFORMATION

A. REVIEW AND AWARD PROCESS

Applications under this funding opportunity will be reviewed and awarded in accordance with the final 2009 American Recovery and Reinvestment Act (ARRA) Formula Allocations, included as Attachment A to this announcement.

B. ANTICIPATED NOTICE OF SELECTION AND AWARD DATES

DOE anticipates making all awards by December 15, 2009.

Part VI - AWARD ADMINISTRATION INFORMATION

A. AWARD NOTICES

1. Notice of Award

An Assistance Agreement issued by the contracting officer is the authorizing award document. It normally includes either as an attachment or by reference: (1). Special Terms and Conditions; (2). Applicable program regulations, if any; (3). Application as approved by DOE; (4). DOE assistance regulations at 10 CFR part 600; (5). National Policy Assurances To Be Incorporated As Award Terms; (6). Budget Summary; and (7). Federal Assistance Reporting Checklist, which identifies the reporting requirements.

B. ADMINISTRATIVE AND NATIONAL POLICY REQUIREMENTS

1. Administrative Requirements

The administrative requirements, which includes Property/Equipment purchases, for DOE grants and cooperative agreements are contained in 10 CFR part 600 (See: http://ecfr.gpoaccess.gov). Grants and cooperative agreements made to universities, non-profits and other entities subject to OMB Circular A-110 are subject to the Research Terms and Conditions located on the National Science Foundation web site at http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp.

2. ARRA 2009 Award Administration Information

Special Provisions relating to work funded under American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 shall apply. These provisions can be found at http://management.energy.gov/policy_guidance/1672.htm.

3. Special Terms and Conditions and National Policy Requirements

Special Terms and Conditions and National Policy Requirements
The DOE Special Terms and Conditions for Use in Most Grants and Cooperative Agreements are located at http://management.energy.gov/business_doe/business_forms.htm.
The National Policy Assurances To Be Incorporated As Award Terms are located at DOE http://management.energy.gov/business_doe/business_forms.htm.

Intellectual Property Provisions
The standard DOE financial assistance intellectual property provisions applicable to the various types of recipients are located at http://www.gc.doe.gov/financial_assistance_awards.htm. The provision that applies to the PUCs is NRD-1003.

C. REPORTING

Reporting requirements are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2. A sample checklist is included in Attachment B of this FOA. Financial and progress reports will be used to adhere to transparency and oversight requirements detailed in the Recovery Act and posted on http://www.recovery.gov. Please note that the due date of certain reports may change.

PART VII - QUESTIONS/AGENCY CONTACTS

A. QUESTIONS

Questions regarding the content of the announcement must be submitted through the FedConnect portal. You must register with FedConnect to respond as an interested party to submit questions, and to view responses to questions. It is recommended that you register as soon after release of the FOA as possible to have the benefit of all responses. More information is available at http://www.compusearch.com/products/fedconnect/fedconnect.asp. DOE/NNSA will try to respond to a question within 3 business days, unless a similar question and answer have already been posted on the website.

Questions relating to the registration process, system requirements, how an application form works, or the submittal process must be directed to Grants.gov at 1-800-518-4726 or support@grants.gov. DOE cannot answer these questions.

B. AGENCY CONTACT

Name:	Amanda Lopez
E-mail:	Amanda.Lopez@netl.doe.gov
FAX:	(304) 285-4683
Telephone (Optional):	(304)285-4220

PART VIII - OTHER INFORMATION

A. MODIFICATIONS

Notices of any modifications to this announcement will be posted on Grants.gov and the FedConnect portal. You can receive an email when a modification or an announcement message is posted by registering with FedConnect as an interested party for this FOA. It is recommended that you register as soon after release of the FOA as possible to ensure you receive timely notice of any modifications or other announcements. More information is available at http://www.fedconnect.net and http://www.compusearch.com/products/fedconnect.asp.

B. GOVERNMENT RIGHT TO REJECT OR NEGOTIATE

DOE reserves the right, without qualification, to reject any or all applications received in response to this announcement and to select any application, in whole or in part, as a basis for negotiation and/or award.

C. COMMITMENT OF PUBLIC FUNDS

The Contracting Officer is the only individual who can make awards or commit the Government to the expenditure of public funds. A commitment by other than the Contracting Officer, either explicit or implied, is invalid.

APPENDICES/REFERENCE MATERIAL

- Attachment A – Proposed Fund Allocation
- Attachment B – Reporting Requirements Checklist
- Attachment C – Project Management Plan Template

ATTACHMENT A

Proposed Fund Allocation for Recovery Act – State Electricity Regulators Assistance
The formula for allocating the $46,000,000 is comprised of a base allocation ($38,250,000), with the balance ($7,750,000) distributed based on population according to the 2008 U.S. Census data.

States, Territories and District of Columbia	Population (according to the 2008 U.S. Census data)	Percent of U.S. Population	Funding Based on Population	Funding Base	Total Funding
Alabama	4,661,900	1.53%	$ 118,824	$ 750,000	$ 868,824
Alaska	686,293	0.23%	$ 17,493	$ 750,000	$ 767,493
Arizona	6,500,180	2.14%	$ 165,679	$ 750,000	$ 915,679
Arkansas	2,855,390	0.94%	$ 72,779	$ 750,000	$ 822,779
California	36,756,666	12.09%	$ 936,869	$ 750,000	$ 1,686,869
Colorado	4,939,456	1.62%	$ 125,899	$ 750,000	$ 875,899
Connecticut	3,501,252	1.15%	$ 89,241	$ 750,000	$ 839,241
Delaware	873,092	0.29%	$ 22,254	$ 750,000	$ 772,254
District of Columbia	591,833	0.19%	$ 15,085	$ 750,000	$ 765,085
Florida	18,328,340	6.03%	$ 467,160	$ 750,000	$ 1,217,160
Georgia	9,685,744	3.19%	$ 246,874	$ 750,000	$ 996,874
Hawaii	1,288,198	0.42%	$ 32,834	$ 750,000	$ 782,834
Idaho	1,523,816	0.50%	$ 38,840	$ 750,000	$ 788,840
Illinois	12,901,563	4.24%	$ 328,840	$ 750,000	$ 1,078,840
Indiana	6,376,792	2.10%	$ 162,534	$ 750,000	$ 912,534
Iowa	3,002,555	0.99%	$ 76,530	$ 750,000	$ 826,530
Kansas	2,802,134	0.92%	$ 71,422	$ 750,000	$ 821,422
Kentucky	4,269,245	1.40%	$ 108,816	$ 750,000	$ 858,816
Louisiana	4,410,796	1.45%	$ 112,424	$ 750,000	$ 862,424
Maine	1,316,456	0.43%	$ 33,554	$ 750,000	$ 783,554
Maryland	5,633,597	1.85%	$ 143,591	$ 750,000	$ 893,591
Massachusetts	6,497,967	2.14%	$ 165,623	$ 750,000	$ 915,623
Michigan	10,003,422	3.29%	$ 254,971	$ 750,000	$ 1,004,971
Minnesota	5,220,393	1.72%	$ 133,060	$ 750,000	$ 883,060
Mississippi	2,938,618	0.97%	$ 74,901	$ 750,000	$ 824,901
Missouri	5,911,605	1.94%	$ 150,677	$ 750,000	$ 900,677
Montana	967,440	0.32%	$ 24,659	$ 750,000	$ 774,659
Nebraska	1,783,432	0.59%	$ 45,457	$ 750,000	$ 795,457
Nevada	2,600,167	0.86%	$ 66,274	$ 750,000	$ 816,274
New Hampshire	1,315,809	0.43%	$ 33,538	$ 750,000	$ 783,538
New Jersey	8,682,661	2.86%	$ 221,307	$ 750,000	$ 971,307
New Mexico	1,984,356	0.65%	$ 50,578	$ 750,000	$ 800,578
New York	19,490,297	6.41%	$ 496,777	$ 750,000	$ 1,246,777
North Carolina	9,222,414	3.03%	$ 235,065	$ 750,000	$ 985,065
North Dakota	641,481	0.21%	$ 16,350	$ 750,000	$ 766,350
Ohio	11,485,910	3.78%	$ 292,758	$ 750,000	$ 1,042,758
Oklahoma	3,642,361	1.20%	$ 92,838	$ 750,000	$ 842,838
Oregon	3,790,060	1.25%	$ 96,603	$ 750,000	$ 846,603

Pennsylvania	12,448,279	4.09%	$ 317,287	$ 750,000	$ 1,067,287
Rhode Island	1,050,788	0.35%	$ 26,783	$ 750,000	$ 776,783
South Carolina	4,479,800	1.47%	$ 114,183	$ 750,000	$ 864,183
South Dakota	804,194	0.26%	$ 20,498	$ 750,000	$ 770,498
Tennessee	6,214,888	2.04%	$ 158,408	$ 750,000	$ 908,408
Texas	24,326,974	8.00%	$ 620,056	$ 750,000	$ 1,370,056
Utah	2,736,424	0.90%	$ 69,747	$ 750,000	$ 819,747
Vermont	621,270	0.20%	$ 15,835	$ 750,000	$ 765,835
Virginia	7,769,089	2.56%	$ 198,022	$ 750,000	$ 948,022
Washington	6,549,224	2.15%	$ 166,929	$ 750,000	$ 916,929
West Virginia	1,814,468	0.60%	$ 46,248	$ 750,000	$ 796,248
Wisconsin	5,627,967	1.85%	$ 143,448	$ 750,000	$ 893,448
Wyoming	532,668	0.18%	$ 13,577	$ 750,000	$ 763,577
Total	304,059,724	100.00%	$ 7,750,000	$ 38,250,000	$ 46,000,000

U.S. Census data: (http://www.census.gov/popest/states/tables/NST-EST2008-01.xls)

DOE F 4600.2
(5/09)
All Other Editions Are Obsolete

ATTACHMENT B

U.S. Department of Energy
FEDERAL ASSISTANCE REPORTING CHECKLIST AND INSTRUCTIONS

1. Identification Number: FOA: DE-FOA-0000100 | Recovery Act – State Electricity Regulators Assistance

3. Recipient:

4. Reporting Requirements:	Frequency	No. of Copies	Addressees
A. MANAGEMENT REPORTING ☒ Progress Report ☐ Special Status Report	Q,F	**Upload only 1 copy to the address in the next column at the interval specified in the previous column.**	https://www.eere-pmc.energy.gov/SubmitReports.aspx
B. SCIENTIFIC/TECHNICAL REPORTING (Reports/Products must be submitted with appropriate DOE F 241. The 241 forms are available at www.osti.gov/elink) Report/Product — Form ☐ Final Scientific/Technical Report — DOE F 241.3 ☐ Conference papers/proceedings* — DOE F 241.3 ☐ Software/Manual — DOE F 241.4 ☐ Other (see Special Instructions) — DOE F 241.3 ** Scientific and technical conferences only*			http://www.osti.gov/elink-2413 http://www.osti.gov/elink-2413 http://www.osti.gov/estsc/241-4pre.jsp
C. FINANCIAL REPORTING ☒ SF-425, Federal Financial Report	Q,F		https://www.eere-pmc.energy.gov/SubmitReports.aspx
D. CLOSEOUT REPORTING ☐ Patent Certification ☒ Property Certification ☐ Other (see Special Instructions)	F		https://www.eere-pmc.energy.gov/SubmitReports.aspx
E. OTHER REPORTING ☒ Annual Indirect Cost Proposal ☐ Annual Inventory Report of Federally Owned Property, if any ☐ Other	A		https://www.eere-pmc.energy.gov/SubmitReports.aspx
F. AMERICAN RECOVERY AND REINVESTMENT ACT REPORTING ☒ Reporting and Registration Requirements	Q		http://www.federalreporting.gov

FREQUENCY CODES AND DUE DATES:

A - Within 5 calendar days after events or as specified.

F - Final; 90 calendar days after expiration or termination of the award.

Y - Yearly; 90 days after the end of the reporting period.

S - Semiannually; within 30 days after end of reporting period.

Q - Quarterly; within 30 days after end of the reporting period. ARRA Reporting and Registration Requirements are due 10 days after the end of the reporting period.

5. Special Instructions: Forms are available at https://www.eere-pmc.energy.gov/forms.aspx.

Federal Assistance Reporting Instructions (5/09)

A. MANAGEMENT REPORTING

Progress Report

The Progress Report must provide a concise narrative assessment of the status of work and include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:

1. The DOE award number and name of the recipient.

2. The project title and name of the project director/principal investigator.

3. Date of report and period covered by the report.

4. A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.

5. A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.

6. Cost Status. Show approved budget by budget period and actual costs incurred. If cost sharing is required break out by DOE share, recipient share, and total costs.

7. Schedule Status. List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance. You may use your own project management system to provide this information.

8. Any changes in approach or aims and reasons for change. Remember significant changes to the objectives and scope require prior approval by the contracting officer.

9. Actual or anticipated problems or delays and actions taken or planned to resolve them.

10. Any absence or changes of key personnel or changes in consortium/teaming arrangement.

11. A description of any product produced or technology transfer activities accomplished during this reporting period, such as:

    A. Publications (list journal name, volume, issue); conference papers; or other public releases of results. Attach or send copies of public releases to the DOE Program Manager identified in Block 15 of the Assistance Agreement Cover Page.

    B. Web site or other Internet sites that reflect the results of this project.

C. Networks or collaborations fostered.

D. Technologies/Techniques.

E. Inventions/Patent Applications

F. Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

B. SCIENTIFIC/TECHNICAL REPORTS

N/A

C. FINANCIAL REPORTING

Recipients must complete the SF-425 as identified on the Reporting Checklist in accordance with the report instructions. A fillable version of the form is available at http://www.whitehouse.gov/omb/grants/grants_forms.aspx.

D. CLOSEOUT REPORTS

Property Certification

The recipient must provide the Property Certification, including the required inventories of non-exempt property, located at http://grants.pr.doe.gov.

E. OTHER REPORTING

Annual Indirect Cost Proposal and Reconciliation

Requirement. In accordance with the applicable cost principles, the recipient must submit an annual indirect cost proposal, reconciled to its financial statements, within six months after the close of the fiscal year, unless the award is based on a predetermined or fixed indirect rate(s), or a fixed amount for indirect or facilities and administration (F&A) costs.

Cognizant Agency. The recipient must submit its annual indirect cost proposal directly to the cognizant agency for negotiating and approving indirect costs. If the DOE awarding office is the cognizant agency, submit the annual indirect cost proposal to the DOE Administrator at the address listed in Block 16 of the Assistance Agreement Cover Page.

F. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT) REPORTING

Refer to the award term entitled, Reporting and Registration Requirements, of the Special Terms and Conditions for Grants and Cooperative Agreements for details on the reporting requirements under Section 1512 of the Recovery Act. The reports are due no later than

ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

ATTACHMENT C
PROJECT MANAGEMENT PLAN
{Agreement Title}[1]
{Date Prepared}

WORK PERFORMED UNDER AGREEMENT
DE-OE0000XXX
SUBMITTED BY
{Organization Name}
{Organization Address}
{City, State, Zip Code}
PRINCIPAL INVESTIGATOR
{Name}
{Phone Number}
{Fax Number}
{E-Mail}

SUBMITTED TO
U. S. Department of Energy
National Energy Technology Laboratory
{FPM Name}
{FPM Email}

[1]NOTE: { } denotes required information.

1. **EXECUTIVE SUMMARY**

Provide a description of the project that includes the objective, project goals and expected results. The summary should also include a succinct project background and project rationale. For purposes of the application, this information should be a summary of the pertinent information that is included in the Project Narrative (Field 7), so that the Project Management Plan is a stand-alone document.

2. **RISK MANAGEMENT**

The Applicant (Recipient) shall provide a summary description of the proposed approach to identify, analyze, and respond to perceived risks associated with the proposed project. Project risk events are uncertain future events that, if realized, impact the success of the project. Since risk is inherent to all projects, regardless of the level of complexity, cost or visibility, project risk must be addressed to the appropriate level for every project. It is recognized that the depth of analysis and the complexity and cost of the resulting risk management approach (and plan) will differ from project to project and among organizations. Commonly accepted approaches, such as those supported by The Project Management Institute's A Guide to the Project Management Book of Knowledge, should be considered.

As a minimum, the Recipient should provide sufficient information with the application to demonstrate an appropriate approach to managing risks during project execution. This must include the initial identification of significant technical, resource and management issues that have the potential to impede project progress and strategies to minimize impacts from those issues.

3. **MILESTONE LOG**

The Recipient is to provide milestones for the project. Each milestone is to include a title, planned completion date and a description of the method/process/measure used to verify completion. The milestones developed should be quantitative and show progression towards project goals. It is expected that the Recipient will have a milestone at least semi-annually or every six months of the project schedule: however, milestones should not be developed to meet this expected schedule. Milestones are different than success criteria (Section 6) in that milestones typically show progress through the execution of the project, whereas success criteria are used by the DOE to determine if specific goals were met the completion of the project.

Format for the milestone log should be as follows:

Title: {Milestone Title}
Planned Date: {Planned Completion Date}
Verification Method: {Milestone Verification Method}

4. **FUNDING AND COSTING PROFILE**

The Recipient shall provide a table that shows, by year, the amount of government funding going to each project member and cost share provided (if applicable) by members. The table shall also calculate totals and cost sharing percentages. Table 1 "Project Funding

Profile" below is an example.

Table 1 – Sample Project Funding Profile

Budget Category	Year 1	Year 2	Total
Personnel			
Fringe Benefits			
Travel			
Equipment			
Supplies			
Contractual			
Other			
Total Direct Charges			
Indirect Charges			
Total			

The Recipient shall also provide a table that projects, by month, the expenditure of the government funds for each year. While it is recognized that out year costing profiles are less certain and the nature of specific tasks are dependent on successful or unsuccessful completion of the current RD&D approach, the Recipient should provide their estimates of out-year costs to the extent practical. Table 2 – "Project Spending Plan" provides an example.

Table 2 – Project Spending Plan

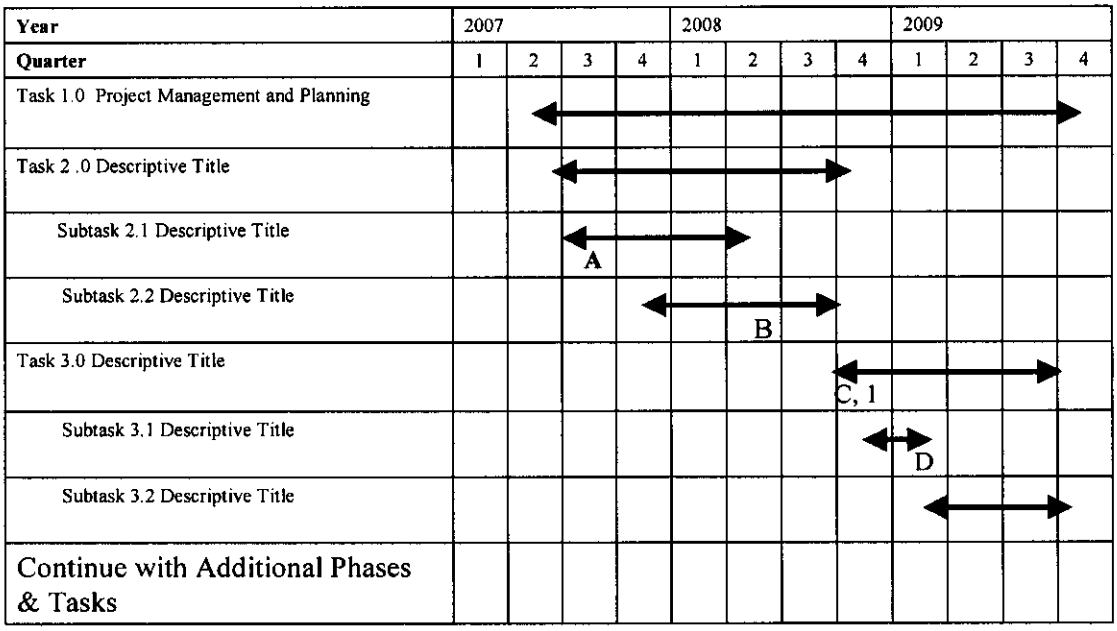
Monthly Spending Plan (Year 1)	
November	5
December	10
January	10
February	10
March	20
April	20
May	20
June	20
July	10
August	10
September	10
October	10
Total ($s in thousands)	**155**

Note: Create one spend plan for each year during the project period (actual starting month may be different than in the example). Cost sharing is not required for this grant. However, recipients may reflect non-federal funds in the Project Funding Profile and as a separate column in the Project Spending Plan, if applicable.

5. PROJECT TIMELINE

The Recipient shall provide a timeline of the project broken down by each task and subtask, as described in the Statement of Project Objectives. The timeline shall include for each task, a start date, end date, approximate cost and team members participating on the task and their role. The timeline shall also show any interdependencies with other tasks and note the milestones identified in the Milestone Log (Section 3). It is highly recommended that the Recipient consider using a commercial software package to generate the timeline as a Gantt chart (see Figure 1 as an example) or other applicable format.

Figure 1 – Sample Project Timeline (Gantt Chart)



A, B, C etc. – Milestones from Milestone Log

1,2,3 etc – Decision Points

Note: Timelines for each task and subtask has an associated level of effort, typically budgeted cost

6. SUCCESS CRITERIA

The success criteria should correlate to the performance metrics in the Funding Opportunity Announcement. Usually, the success criteria pertain to desirable outcomes, results and observations from the experimental efforts. The success criteria should not be based on interpretations.

Success Criteria are different than milestones (Section 3) in that milestones typically show progress through the execution of the budget period and project, whereas success criteria are used by the DOE to determine if specific project goals and objectives were met. Typically, these goals and objectives represent requirements established by the program as evidence of progress in advancing a technology area or scientific/engineering knowledge.

7. AGREEMENT STATEMENT OF PROJECT OBJECTIVES

The Statement of Project Objectives (SOPO) from the Agreement will be inserted here. Note that Task 1.0 (or other designation) of the SOPO entails the work necessary to manage the project and to update the Project Management Plan submitted with the

application. The Project Management Plan submitted as a work product under Task 1.0 (or other designation) serves as the base project cost, schedule and scope and is the basis for reporting quarterly progress in the Progress Report defined in the "Federal Assistance Reporting Checklist and Instructions"