

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

Wednesday, July 18, 2012

9:30 a.m.

Betty Easley Conference Center, Room 140

REVISED

1. Approve June 19, 2012, Internal Affairs Meeting Minutes. (Attachment 1)
2. Draft Report on the Status of Competition in the Telecommunications Industry. Approval is sought. (Attachments 2-Revised and 2)
3. FERC Orders 1000 and 1000-A: Continued briefing and discussion of options. Guidance is sought. (Attachment 3)
4. Update on U.S. EPA Proposed Rule on Greenhouse Gas Emissions for New Electric Generating Units. (Attachment 4)
5. Executive Director's Report. (No Attachment)
6. Other Matters.

BB/css

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6463.



State of Florida
Public Service Commission
INTERNAL AFFAIRS MINUTES

Tuesday, June 19, 2012

11:03 a.m. – 12:09 p.m.

Betty Easley Conference Center, Room 140

COMMISSIONERS PRESENT: Chairman Brisé
Commissioner Edgar
Commissioner Graham
Commissioner Balbis
Commissioner Brown

STAFF PARTICIPATING: Baez, Hill, Kiser, Crawford, Miller, Cibula, Futrell

OTHERS PARTICIPATING: Andy Tunnell – Gulf Power

Jim Beasley – Ausley McMullen Law Firm

1. Approve May 9, 2012, Internal Affairs Meeting Minutes.

The minutes were approved.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

2. Briefing on FERC Order 1000-A Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities. Guidance is sought.

After much discussion, the Commissioners voted to defer this matter to the July 18, 2012, Internal Affairs. The Chairman will address issues if circumstances change.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

3. Reorganization of the Commission's Divisions. Approval is sought.

The reorganization plan of the Commission's Divisions presented by the Executive Director was unanimously approved, effective July 1, 2012.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

Minutes of
Internal Affairs Meeting
June 19, 2012

Page Two

4. Executive Director's Report.

a) The Executive Director updated the Commissioners that the Florida Energy Efficiency and Conservation Act (FEECA) scope of work document has been disseminated and responses are starting to come in.

b) The Smart Meter staff workshop is scheduled for September 20, 2012, and the public is providing comments.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

5. Other Matters.

Commissioner Balbis introduced discussion on the proposed EPA rules and Mark Futrell briefed the Commissioners on the latest information. After some discussion, the Commissioners unanimously voted to request that EPA* extend the deadline for providing comments.

Commissioners participating: Brisé, Edgar, Graham, Balbis, Brown

* Reflects correction to minutes, as approved at the July 18, 2012, Internal Affairs.

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 13, 2012
TO: Braulio Baez, Executive Director
FROM: Office of Telecommunications (Fogleman, Miller)
Division of Economics (Shafer)
RE: 2012 Report on the Status of Competition in the Telecommunications Industry Staff
Recommended Revisions

MS

Staff has identified a few topics that required updating or clarification since the initial draft of the 2012 Report on the Status of Competition in the Telecommunications Industry was filed for the July 18, 2012 Internal Affairs. Attached is a list of the affected pages and suggested revised pages in track changes format to address the updates.

Attachment

cc: Charles Hill
S. Curtis Kiser

Summary of Staff Recommended Changes to Draft 2012 Competition Report

Report Pages Affected	Description of Change	Page Number
8	Clarifying language added to note that CenturyLink's acquisition of Qwest had no impact on CenturyLink's Florida access line counts and strikes language referring to CenturyLink's resale of wireless and video services. Other grammatical changes were also made on this page.	2
9	Language describing the general location of Windstream's service area moved up in the document.	3
14	Correction to Table 3-1 and grammatical correction	4
28	Additional language added to describe broadband penetration between certain demographic groups	5
34	Adds missing word	6
38	Updates status of Broadband Grant projects and makes other grammatical changes.	7

For 2011, AT&T reported losses of approximately 5 million local access lines nationwide when compared to a year earlier. Residential lines fell 16 percent during this period while business lines declined at 8 percent.¹⁵ AT&T associated ~~attributed~~ the access line declines to economic pressures and increased competition. Customers have disconnected traditional landline services, or switched to alternative technologies, such as wireless and VoIP. AT&T's strategy has been to offset these line losses by increasing non-access-line-related revenues from customer connections for data, video, and voice.¹⁶ For 2011, AT&T total operating revenues increased \$2.4 billion despite their access line losses. AT&T ~~has~~ capitalized on its opportunity to increase its wireless segment revenues for customers that choose AT&T Mobility as an alternative provider. In Florida, AT&T's ~~saw its residential~~ access lines decreased by 19 percent and business access lines increased 16 percent.¹⁷

Like AT&T, Verizon lost access lines nationally while experiencing an increase in operating revenue of \$4.3 billion.¹⁸ Verizon's access lines declined by about 7 percent in 2011. This represents a slower rate of access line loss than in 2009 and 2010 when Verizon lost 10 percent and 8 percent of its access lines, respectively. Verizon continues to report growth of 18 percent in its FiOS Internet service. In addition, Verizon reported that the number of subscribers for FiOS TV had increased 20 percent from last year.¹⁹ In Florida, Verizon experienced reductions of 21 percent in residential access lines and 10 percent in business access lines.²⁰

In 2011, the number of switched access lines provided by CenturyLink swelled to 14.5 million, from roughly 6.5 million a year earlier, as a result of its acquisition of Qwest ~~from roughly 6.5 million a year earlier~~. Factoring out approximately 8.5 million access lines from the Qwest acquisition, legacy CenturyLink experienced a loss of approximately 438,000 switched access lines nationally in 2011 compared to a year earlier.²¹ This figure represents an approximately 7 percent loss of AT&T's ~~in~~ access lines. While operating revenues increased to over \$15 billion for the newly combined CenturyLink and Qwest, CenturyLink's pre-acquisition operating revenues actually decreased \$380 million, or 5.4 percent, in 2011.²² ~~Unlike AT&T and Verizon, CenturyLink relies on reselling wireless and video services provided by other companies.~~²³ CenturyLink's acquisition of Qwest did not impact Florida access line counts.

¹⁵ AT&T Inc., Form 10-K, December 31, 2011, Exhibit 13, p. 11, <<http://www.sec.gov/Archives/edgar/data/732717/000073271712000025/ex13.htm>>, accessed on May 31, 2012.

¹⁶ Ibid.

¹⁷ Responses to Local Competition Data Request for 2011 and 2012.

¹⁸ Verizon Communications Inc., Form 10-K, December 31, 2011, Exhibit 13, <<http://www.sec.gov/Archives/edgar/data/732712/000119312512077846/d257450dex13.htm>>, accessed on May 31, 2012.

¹⁹ Ibid.

²⁰ Responses to Local Competition Data Request for 2011 and 2012.

²¹ CenturyLink, Inc. Form 10-K, December 31, 2011 p. 50, <http://www.sec.gov/Archives/edgar/data/18926/000104746912001666/a2207599z10-k.htm#dk46301_item_7._management_s_discussio__ite03668>, accessed on May 31, 2012.

²² Ibid.

²³ Ibid, p. 8.

CenturyLink's access line loss in Florida was 7 and 8 percent for residential and business sectors, respectively.²⁴

The seven remaining smaller Florida carriers also experienced contraction in their respective service areas. Rural carriers in Florida saw their residential access lines fall by approximately 1 percent in 2011.²⁵ In Florida, Windstream is the largest of the "rural" ILECs and operates in northeast Florida. Windstream experienced an overall access line loss of only one percent, the lowest access line loss of any carrier in Florida. Nationally, Windstream has 1.9 million consumer voice lines in service.²⁶ Through an aggressive acquisition strategy, Windstream has shifted its revenue mix towards business and consumer broadband services. Windstream estimates that 69 percent of their 2012 revenues will be generated from these areas.²⁷

Even with the decline in wireline access lines, wireline telecommunications carriers continue to play a role with an evolving telecommunications ecosystem. For example, wireless carriers continue to be dependent on the wireline network. The majority of wireless call transport occurs over the wireline network, not over wireless facilities, a function commonly referred to as backhaul. While the economic sustainability of the wireline network appears to be tenuous as access lines continue to decline, it remains a crucial element in the mix of communications technologies.

C. Mergers / Acquisitions

Approval of merger and acquisition petitions for telecommunications carriers peaked nationally in 2006 with more than 90 communications companies consolidating their operations.²⁸ By comparison, 64 mergers and acquisitions occurred in 2011.²⁹ This figure represents a decrease of 19 percent from the previous year. Recent transactions of interest to Florida are described below.

1. Windstream / PAETEC

Windstream announced on August 1, 2011, that it ~~had~~ entered into an agreement to acquire PAETEC. Windstream, ~~an ILEC in northeast Florida~~, provides local service in 24 other states in addition to Florida.³⁰ By comparison, PAETEC is a competitive local exchange carrier and

²⁴ Responses to FPSC Local Competition Data Request for 2011 and 2012.

²⁵ Ibid.

²⁶ Windstream Corporation, Form 10-K, December 31, 2011, p. F-5, <<http://www.sec.gov/Archives/edgar/data/1282266/000128226612000010/a201110k.htm>> accessed on May 31, 2012.

²⁷ Ibid, p. 3.

²⁸ FCC, "2006 Completed Domestic Section 214 Transfer of Control Transactions," <<http://www.fcc.gov/wcb/cpd/214Transfer/214completed2006.html>>, accessed on April 23, 2012.

²⁹ FCC, "2011 Completed Domestic Section 214 Transfer of Control Transactions," <<http://www.fcc.gov/wcb/cpd/214Transfer/214completed2011.html>>, accessed on April 23, 2012.

³⁰ FCC, Public Notice, DA 11-1563, released September 15, 2011, <http://hraunfoss.fcc.gov/edocs_public

2. CLEC Market Composition

Table 3-1 shows the distribution for 2010 and 2011 of the number of CLECs by ranges of residential access lines served. Only one CLEC reported a total of more than 10,000 residential access lines greater than 10,000 in 2011 representing 35 percent of total CLEC residential lines served. ~~the market in 2011 compared to~~ In comparison, the top-3 carriers reported more than 10,000 residential access lines in 2010 accounting for ~~representing~~ 60 percent of the CLEC residential market in 2010. The number of CLECs reporting residential access lines declined from 64 in 2010 to 56 in 2011.

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

Number of Lines	2010		2011	
	Number of Providers	% of Total CLEC Res Lines	Number of Providers	% of Total CLEC Res Lines
20,000 or more	2	60	1	35
10,000 – 19,999	1	8	0	0
1,000 – 9,999	12	25	12	54
Less than 1,000	49	7	43	11

Source: Responses to FPSC data requests (2010-2012)

B. Wireline Market Share and Access Lines

Data collected for this year's edition of the report are as of December 31, 2011.³¹ 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.

³¹ The access lines of a CLEC related to AT&T, Verizon, or CenturyLink are accounted for as competitive lines only when those access lines are outside of the parent company's footprint.

the total number of American adults with broadband access would rise marginally, to 73 percent.⁶⁴

The demographic gap ~~seen within~~ home broadband adoption between whites, at 66 percent, and minorities blacks and Hispanics, at 50 percent, is nonexistent or reversed when it comes to Smartphone adoption. Forty-nine percent of blacks and forty-nine percent of Hispanics own Smartphones, compared to forty-five percent of white, non-Hispanic adults.⁶⁵ The largest growth in Smartphone adoption occurred in larger households (six or more persons), but other demographic groups with notable jumps in Smartphone adoption included those with annual incomes of less than \$25,000, retirees, and people aged 55-64.⁶⁶

A recent Pew study on Smartphone owners noted that:

- All major demographic groups experienced an increase in Smartphone adoption over the last year, with many groups at or above 60 percent.
- Only 13 percent in the 65+ age group own a Smartphone.⁶⁷

By December of 2011, mobile devices such as tablets, Smartphones, and e-book readers represented 8 percent of total Internet traffic in the U.S. There were over 400 different varieties of Smartphones offered on the market at that time. The most important factor cited when choosing a mobile device was price, followed by network quality, and operating system. Analysts have forecast that by the end of 2012 more than half of the U.S. market will use Smartphones as their primary mobile device.⁶⁸

⁶⁴ John B. Horrigan, "Broadband Adoption in 2012," March 20, 2012, <<http://www.technet.org/wp-content/uploads/2012/03/TechNet-NBP-Broadband-Report-3-20-2012-FINAL1.pdf>>, accessed June 10, 2012.

⁶⁵ Aaron Smith, Kathryn Zickuhr, "Digital Differences," April 13, 2012, <<http://pewinternet.org/Reports/2012/Digital-differences.aspx>>, accessed June 10, 2012.

⁶⁶ Comscore, "2012 Mobile Future in Focus," February 2012, <http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus>, accessed June 11, 2012.

⁶⁷ Aaron Smith, "46% of American Adults are Smartphone Owners," March 1, 2012, <<http://pewinternet.org/~media/Files/Reports/2012/Smartphone%20ownership%202012.pdf>>, accessed June 11, 2012.

⁶⁸ Comscore, "2012 Mobile Future in Focus," February 2012, <http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus>, accessed June 11, 2012.

Black, non-Hispanic survey participants subscribed to broadband services at a rate of 49 percent, compared to Hispanics at 51 percent and whites at 66 percent.

- Households with annual household incomes of over \$75,000 subscribe to broadband at the rate of 59 percent, in contrast to only 41 percent for households with incomes of less than \$30,000, 66 percent in the \$30,000 to \$49,000 range, and 81 percent in the \$50,000 to \$74,000 range.
- Fifty-four percent of adults with a disability use the Internet.
- Of respondents with a college degree, 85 percent accessed broadband at home compared to 22 percent without a high school diploma.⁸⁴

The Pew survey also found that 22 percent of American adults are not using the Internet at all, nearly half of whom said they do not use the Internet because they are not interested or it is not relevant to their lives. Only 21 percent of non-Internet users cited price related reasons. The most frequent online activities listed by adults included shopping at 71 percent, use of social networking sites at 61 percent, and online banking 61 percent.⁸⁵

2. Florida Broadband Trends

In Florida, 42 percent of households have a fixed broadband connection with download speeds of at least 3 Mbps and 73 percent of households have fixed broadband connections of 200 kbps or greater, according to the most recent FCC report.⁸⁶ The FCC also reported that cable modem service accounts for 56 percent of non-mobile broadband connections in Florida with download speeds greater than 200 kbps.⁸⁷ Mobile broadband connections account for 54 percent of all Florida broadband connections with download speeds in excess of 200 kbps.⁸⁸

⁸⁴ Aaron Smith, Kathryn Zickuhr, "Digital Differences," April 13, 2012, <<http://pewinternet.org/Reports/2012/Digital-differences.aspx>>, accessed June 10, 2012.

⁸⁵ Ibid.

⁸⁶ FCC, "Internet Access Services: Status as of June 30, 2011," released June 2012, Table 15 and Table 16, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314630A1.pdf>, accessed June 16, 2012.

⁸⁷ Ibid, Table 18.

⁸⁸ Ibid.

C. Florida Broadband Grant Projects

The Florida Department of Management Services received federal grant funding in January 2010 for \$2.5 million to develop a broadband map for Florida and broadband planning for the state. In September 2010, the Department was awarded an additional \$6.3 million to extend the mapping project through 2014 and initiate four additional broadband projects. The four projects are library technology assessments, E-rate assistance, broadband grants assistance, and regional broadband planning.

Broadband Mapping – Efforts to maintain the map are ongoing, focusing on building Florida’s database for household broadband availability and broadband use by anchor institutions. The most recently compiled data will be submitted for the national broadband map in October 2012.⁹⁵ Data will be updated bi-annually through the end of 2014.

Library Technology Assessment – This project ~~to inventory~~ and reported on Florida’s 180 public libraries ~~was on schedule to be~~ completed by the end of the 2nd quarter of 2012. The assessment ~~will help~~ to identify ~~those~~ libraries whose broadband needs are the greatest.

E-rate Assistance – In 2011, comparably populated states such as California, New York, and Texas received significantly more E-rate funding than Florida.⁹⁶ In an effort to improve Florida’s benefit from the program, the ~~eE~~-rate assistance team ~~has provided~~ technical training seminars throughout the state to assist potential applicants and served as a technical resource on multiple school and library ~~eE~~-rate applications, including follow-up assistance and application monitoring. The project is funded through 2014.

Grants Assistance – In Fiscal Year 2010, Florida ranked 48th in ~~F~~federal program grant funds per capita.⁹⁷ The grants assistance team seeks out broadband related grant funding opportunities, matches them to prospective recipient anchor institutions, and provides technical assistance in grant writing applications. The group recently assisted a group of panhandle and south Georgia hospitals in their efforts to secure grant funding for a regional telehealth broadband network.

Regional Broadband Planning – This project will develop and provide Florida communities with a broadband ~~a~~-planning process, tool kits, and training to local communities and regions who wish to develop broadband plans as part of their economic development efforts. This two-year project is approximately 50 percent complete and will soon enter ~~into~~ the pilot phase next in South Central and Southwest Florida, including Polk, Charlotte, Lee and Collier Counties.

⁹⁵ The Florida broadband map can be accessed online at <<http://www.connect-florida.org/>>.

⁹⁶ FCC, "Universal Service Monitoring Report, CC Docket 98-202, 2011 (data received through October 2011)," December 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf>, accessed on June 21, 2011.

⁹⁷ "Federal Aid to States for Fiscal Year 2010," U.S. Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce, Figure 5, issued September 2011, <<http://www.census.gov/prod/2011pubs/fas-10.pdf>>, accessed on June 20, 2012.

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 10, 2012
TO: Braulio Baez, Executive Director *BB*
FROM: Division of Regulatory Analysis (Shafer, Fogleman, Miller) *AF*
RE: Draft of the Report on the Status of Competition in the Telecommunications Industry
Critical Information: Please place on the July 18, 2012 Internal Affairs. FPSC approval of report is sought. Report due to the Governor and Legislature on August 1, 2012. *MS*

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

The attached draft report on the "Status of Competition in the Telecommunications Industry," has been prepared to fulfill the legislative requirement. Staff is seeking approval of the report. There are no remaining scheduled Internal Affairs dates prior to the August 1 due date.

Attachment

cc: S. Curtis Kiser
Charles H. Hill

DRAFT 07-03-12

Report on the Status of
**Competition in the
Telecommunications
Industry**

AS OF DECEMBER 31, 2011

Florida Public Service Commission
Office of Telecommunications

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List of Acronyms

Bus	Business
CAF	Connect America Fund
CDC	Centers for Disease Control
CLEC	Competitive Local Exchange Company
DSL	Digital Subscriber Line
ETCs	Eligible Telecommunication Carriers
FCC	Federal Communications Commission
FiOS	Verizon's trademark name for its fiber-to-the-home package of services
FPSC	Florida Public Service Commission, the Commission
F.S.	Florida Statutes
ICA	Interconnection agreement
ILEC	Incumbent Local Exchange Company
IP	Internet Protocol
kpbs	kilobites per second
LEC	Local Exchange Company
Mbps	Megabits per second
NBP	National Broadband Plan
Res	Residential
USF	Universal Service Fund
VoIP	Voice over Internet Protocol

Executive Summary

This report fulfills the statutory obligations set forth in Section 364.386, Florida Statutes (F.S.), which requires 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. The Commission is required to address specific topic areas within the realm of competition. On February 17, 2012, information requests were sent to the 10 incumbent local exchange companies (ILECs) and 280 competitive local exchange companies (CLECs) certificated by the Commission to operate in Florida, as of December 31, 2011.

Analysis of the data produced the following conclusions:

- Many CLECs reported offering a variety of services and packages comparable to those offered by ILECs. Subscribers to cable, wireless, and competitive wireline services continued to increase. These factors contribute to the conclusion that competitive providers are able to offer functionally equivalent services to both business and residential customers.
- The continued decrease in both business and residential ILEC access lines demonstrates customers are finding reasonable pricing packages and functionality with CLECs, cable providers, and wireless providers.
- Based on the continued growth of interconnected Voice over Internet Protocol (VoIP) services and wireless-only households, network reliability of non-ILEC providers is sufficient to satisfy customers. The FCC reported telephone penetration rate of 93 percent for Florida suggests that the overwhelming majority of Florida residents are able to afford telephone service.¹ The number and variety of competitive choices among all types of service providers and recent high customer satisfaction rates for interconnected VoIP providers suggests that competition is having a positive impact on the telecommunications market in Florida.

Wireline Competition

The following data relates exclusively to the ILEC and CLEC wireline market and does not reflect the number of wireless and VoIP subscribers in Florida. For the first time, total wireline business access line exceeded total residential lines. This report addresses changes in the telecommunications market for the period January 1, 2011, through December 31, 2011. Significant findings relating to the wireline market as of December 2011 include:

¹ FCC, “Telephone Subscribership in the United States as of July 2011,” December 2011, Table 3, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311523A1.pdf>, accessed on June 20, 2012.

CLEC Market Share²

- CLECs' market share of all wireline access lines in (residential and business) Florida remained steady at 20 percent as of December 2011.
- CLEC residential market share decreased to 2 percent in 2011, from 4 percent in 2010.
- CLEC business market share decreased to 36 percent in 2011, from 39 percent in 2010.

CLEC Access Lines

- Total CLEC access lines increased by 4 percent from December 31, 2010, to December 31, 2011.
 - CLEC residential access lines decreased by 51 percent.³
 - CLEC business access lines increased by 11 percent.
- CLEC business access lines were 94 percent of total CLEC access lines served in 2011, compared to 64 percent in 2001.

ILEC Access Lines

- Total ILEC access lines decreased by 8 percent from December 31, 2010, to December 31, 2011.
 - ILEC residential lines decreased by 16 percent.
 - ILEC business lines increased by 8 percent.
- ILEC residential lines accounted for 58 percent of total ILEC access lines in 2011.
- ILEC business access lines were 42 percent of total ILEC lines served in 2011, compared to 28 percent in 2001.

² 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 CenturyLink are reported as competitive lines only when those access lines are outside of the parent company's footprint.

³ Approximately 85 percent of the decline was associated with two particular CLECs that admitted to reporting errors for the year ending December 2010; revised data for that period was not provided.

Intermodal Competition

Wireless and VoIP services compete with traditional wireline service and represent a significant 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 the FPSC relies on information collected from other sources for this analysis. However, the number of wireless handsets in service and VoIP customers in Florida far exceeds the 1.2 million wireline access lines served by CLECs. Four ILECs and forty-six CLECs furnished VoIP data. Highlights relating to wireless, VoIP, and broadband services include:

Wireless

- Approximately 17.6 million wireless handsets were in service in Florida as of June 2011, the most current data available.⁴
- The Centers for Disease Control (CDC) estimate that nearly 34 percent of U.S. households were wireless only as of December 2011.⁵

VoIP

- An estimated 2.4 million Florida residential VoIP subscribers were reported as of December 2011, an increase of 20 percent over the 1.9 million estimated in 2010.
- Forty-six CLECs and four ILECs voluntarily reported 665,217 VoIP lines to the FPSC as of December 2011. This figure is an increase of 43 percent from December 2010.
- The Florida Cable Telecommunications Association (FCTA) reported 2 million residential cable digital voice (VoIP) subscribers as of December 2011, an increase of 16 percent from the number reported for December 2010.

Broadband

- Forty-two percent of Florida households have a fixed broadband connection with download speeds of at least 3 Mbps.
- Seventy-three percent of households have fixed broadband connections of 200 kbps or greater.⁶

⁴ FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2012, Table 18, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed on June 20, 2012.

⁵ Stephen J. Blumberg, Julian V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2011," June 28, 2012, pp. 1-3, <<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>>, accessed on June 29, 2012.

⁶ FCC, "Internet Access Services: Status as of June 30, 2011," released June 2012, Table 15 and Table 16, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314630A1.pdf>, accessed June 16, 2012.

Chapter I: Introduction and Background

Chapter 364, F.S., sets forth the principles by which the FPSC regulates wireline telecommunications companies. Commission oversight is primarily focused on traditional local telephone companies, ILECs. Competitors to the ILECs, known as CLECs, and interexchange companies are subject to minimal regulation.⁷ The Commission does not regulate wireless, broadband, or VoIP services.

Chapter 364, F.S., requires the Commission to prepare and 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 of each year. Section 364.386, F.S., as amended by the 2011 Florida Legislature, requires that the report address the following four issues:

1. 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.
2. The ability of customers to obtain functionally equivalent services at comparable rates, terms, and conditions.
3. The overall impact of competition on the maintenance of reasonably affordable and reliable high-quality telecommunications services.
4. A list and short description of any carrier disputes filed under Section 364.16, F.S.

As of December 31, 2011, 10 ILECs and 280 CLECs were certificated by the Commission to operate in Florida.

A. Provisions and Goals of Chapter 364, F.S.

1. Chapter 364, F.S.

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.”

⁷ The 2011 Florida Legislature passed legislation, effective July 1, 2011, that eliminated FPSC regulatory oversight of intrastate interexchange carriers, with the exception that those carriers remain subject to section 364.02(12) and (13), and section 364.163, F.S., pertaining to intercarrier compensation and network access services.

2. Recent Changes to Chapter 364, F.S.

The 2011 Florida Legislature amended Chapter 364, F.S., and some of those changes will directly affect the form of this and future reports. The Commission may no longer request access line data by exchange (local calling scope) from local exchange telecommunications companies (LECs). In addition, Section 364.386, F.S., contained six issues the Commission report was required to address and the amended statutes have only four issues to be addressed. The statutes previously required the Commission to provide a summary of all complaints filed by CLECs against ILECs. The amended statute requires a list and short description of all carrier disputes filed under new Section 364.16, F.S.

The amended statutes became effective July 1, 2011. Pursuant to Section 364.386, F.S., the Commission is required to make an annual request to local exchange telecommunications providers, on or before March 1 of each year, for the data required to complete the report. A provider of local exchange telecommunications service is required to file its response with the Commission on or before April 15 of each year. The FPSC data request was mailed on February 17, 2012, and responses were due April 15, 2012.

Chapter II. Wireline Market Overview

A. Economy

According to the U.S. Commerce Department, the economy continued to recover in 2011, though growth slowed considerably from a year earlier. Gross Domestic Product, the best measure of overall economic activity, grew by 1.5 percent in 2011, after climbing 3.1 percent in 2010.⁸ Unemployment figures remained high through 2011, averaging around 9 percent through the first three quarters of the year before declining below 9 percent in the fourth quarter.⁹ In 2011, Florida's economic growth remained positive for the second year after declining for the previous two years. The state's gross domestic product ranks Florida thirty-seventh in the nation in real growth with a gain of 0.5 percent.¹⁰ Florida's per capita personal income grew 3.5 percent in 2011 over 2010, ranking Florida forty-fifth in the country with respect to state growth. The national average was 4.3 percent.¹¹ The unemployment rate in Florida was worse than the national average during each month of 2011 and reached 9.9 percent in December.¹² Unemployment in Florida has continued to improve slightly and had fallen to 8.7 percent by April 2012.

With continued high unemployment and moderate economic growth during 2011 it is likely that Florida consumers also took steps to save more and spend less of any discretionary income. The economy was likely a contributing factor to Florida ILECs losing approximately 440,000 access lines, or roughly 8 percent of their wireline market in 2011.¹³ Competitive wireline carriers gained approximately 42,000 access lines in 2011, an increase of 4 percent.

B. Incumbent Carriers

In Florida, the three largest ILECs providing wireline service are AT&T, CenturyLink, and Verizon. These providers continued to experience access line losses in the national wireline market in 2011.¹⁴ Verizon and AT&T are also the largest wireless carriers nationwide and both increased wireless subscribership in 2011. In addition, both Verizon and AT&T have experienced increased subscription of digital voice services provided over VoIP as consumers transition from traditional circuit switched services.

⁸ U.S. Department of Commerce, Bureau of Economic Analysis, "Widespread Economic Growth Across States in 2011," June 5, 2012, <http://www.bea.gov/newsreleases/regional/gdp_state/gsp_newsrelease.htm>, accessed on June 11, 2012.

⁹ Unemployment Rate, U.S. Bureau of Labor Statistics, <<http://data.bls.gov/timeseries/LNS14000000>>, accessed on June 12, 2012.

¹⁰ Ibid, p. 3.

¹¹ Ibid, p. 4.

¹² United States Department of Labor, Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey" <<http://data.bls.gov/timeseries/LASST12000003>> and <<http://data.bls.gov/timeseries/LNS14000000>>, accessed on June 12, 2012.

¹³ Responses to FPSC Local Competition Data Request for 2011 and 2012.

¹⁴ While CenturyLink experienced access line growth, this growth was attributed directly to its acquisition of Qwest. See CenturyLink, Inc. Form 10-K, December 31, 2011 p. 50, <http://www.sec.gov/Archives/edgar/data/18926/000104746912001666/a2207599z10-k.htm#dk46301_item_7._management_s_discussio__ite03668>, accessed on May 31, 2012.

For 2011, AT&T reported losses of approximately 5 million local access lines nationwide when compared to a year earlier. Residential lines fell 16 percent during this period while business lines declined at 8 percent.¹⁵ AT&T associated the access line declines to economic pressures and increased competition. Customers have disconnected traditional landline services, or switched to alternative technologies, such as wireless and VoIP. AT&T's strategy has been to offset these line losses by increasing non-access-line-related revenues from customer connections for data, video and voice.¹⁶ For 2011, AT&T total operating revenues increased \$2.4 billion despite their access line losses. AT&T has capitalized on its opportunity to increase its wireless segment revenues for customers that choose AT&T Mobility as an alternative provider. In Florida, AT&T saw its residential lines decrease by 19 percent and business lines increased 16 percent.¹⁷

Like AT&T, Verizon lost access lines nationally while experiencing an increase in operating revenue of \$4.3 billion.¹⁸ Verizon's access lines declined by about 7 percent in 2011. This represents a slower rate of access line loss than in 2009 and 2010 when Verizon lost 10 percent and 8 percent of its access lines, respectively. Verizon continues to report growth of 18 percent in its FiOS Internet service. In addition, Verizon reported that the number of subscribers for FiOS TV had increased 20 percent from last year.¹⁹ In Florida, Verizon experienced reductions of 21 percent in residential access lines and 10 percent in business access lines.²⁰

In 2011, the number of switched access lines provided by CenturyLink swelled to 14.5 million as a result of its acquisition of Qwest from roughly 6.5 million a year earlier. Factoring out approximately 8.5 million access lines from the Qwest acquisition, legacy CenturyLink experienced a loss of approximately 438,000 switched access lines nationally in 2011 compared to a year earlier.²¹ This figure represents an approximate 7 percent loss in access lines. While operating revenues increased to over \$15 billion for the newly combined CenturyLink and Qwest, CenturyLink's pre-acquisition operating revenues actually decreased \$380 million, or 5.4 percent, in 2011.²² Unlike AT&T and Verizon, CenturyLink relies on reselling wireless and video services provided by other companies.²³ CenturyLink's access line loss in Florida was 7 and 8 percent for residential and business sectors, respectively.²⁴

¹⁵ AT&T Inc., Form 10-K, December 31, 2011, Exhibit 13, p. 11, <<http://www.sec.gov/Archives/edgar/data/732717/000073271712000025/ex13.htm>>, accessed on May 31, 2012.

¹⁶ Ibid.

¹⁷ Responses to Local Competition Data Request for 2011 and 2012.

¹⁸ Verizon Communications Inc., Form 10-K, December 31, 2011, Exhibit 13, <<http://www.sec.gov/Archives/edgar/data/732712/000119312512077846/d257450dex13.htm>>, accessed on May 31, 2012.

¹⁹ Ibid.

²⁰ Responses to Local Competition Data Request for 2011 and 2012.

²¹ CenturyLink, Inc. Form 10-K, December 31, 2011 p. 50, <http://www.sec.gov/Archives/edgar/data/18926/000104746912001666/a2207599z10-k.htm#dk46301_item_7._management_s_discussio__ite03668>, accessed on May 31, 2012.

²² Ibid.

²³ Ibid, p. 8.

²⁴ Responses to FPSC Local Competition Data Request for 2011 and 2012.

The seven remaining smaller Florida carriers also experienced contraction in their respective service areas. Rural carriers in Florida saw their residential access lines fall by approximately 1 percent in 2011.²⁵ In Florida, Windstream is the largest of the “rural” ILECs. Windstream experienced an overall access line loss of only one percent, the lowest access line loss of any carrier in Florida. Nationally, Windstream has 1.9 million consumer voice lines in service.²⁶ Through an aggressive acquisition strategy, Windstream has shifted its revenue mix towards business and consumer broadband services. Windstream estimates that 69 percent of their 2012 revenues will be generated from these areas.²⁷

Even with the decline in wireline access lines, wireline telecommunications carriers continue to play a role with an evolving telecommunications ecosystem. For example, wireless carriers continue to be dependent on the wireline network. The majority of wireless call transport occurs over the wireline network, not over wireless facilities, a function commonly referred to as backhaul. While the economic sustainability of the wireline network appears to be tenuous as access lines continue to decline, it remains a crucial element in the mix of communications technologies.

C. Mergers / Acquisitions

Approval of merger and acquisition petitions for telecommunications carriers peaked nationally in 2006 with more than 90 communications companies consolidating their operations.²⁸ By comparison, 64 mergers and acquisitions occurred in 2011.²⁹ This figure represents a decrease of 19 percent from the previous year. Recent transactions of interest to Florida are described below.

1. Windstream / PAETEC

Windstream announced on August 1, 2011, that it had entered into an agreement to acquire PAETEC. Windstream, an ILEC in northeast Florida, provides local service in 24 other states.³⁰ By comparison, PAETEC is a competitive local exchange carrier and provides telecommunications services primarily to business customers in 46 states, including Florida. Over the past several years, both companies have been actively growing through mergers and acquisitions. For example, Windstream has acquired Hosted Solutions, Q-Com, Iowa Telecom,

²⁵ Ibid.

²⁶ Windstream Corporation, Form 10-K, December 31, 2011, p. F-5, <<http://www.sec.gov/Archives/edgar/data/1282266/000128226612000010/a201110k.htm>> accessed on May 31, 2012.

²⁷ Ibid, p. 3.

²⁸ FCC, “2006 Completed Domestic Section 214 Transfer of Control Transactions,” <<http://www.fcc.gov/wcb/cpd/214Transfer/214completed2006.html>>, accessed on April 23, 2012.

²⁹ FCC, “2011 Completed Domestic Section 214 Transfer of Control Transactions,” <<http://www.fcc.gov/wcb/cpd/214Transfer/214completed2011.html>>, accessed on April 23, 2012.

³⁰ FCC, Public Notice, DA 11-1563, released September 15, 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1563A1.pdf>, accessed on April 23, 2012. Those states are Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Texas and Wisconsin.

and NuVox, among others, while PAETEC acquired Cavalier Telecom, Xeta, and McLeod. The acquisition was approved by the FCC on November 22, 2011.³¹

2. AT&T / T-Mobile

On March 20, 2011, AT&T Inc. and Deutsche Telekom AG announced that they entered into an agreement under which AT&T would acquire T-Mobile USA from Deutsche Telekom in a transaction valued at approximately \$39 billion.³² AT&T asserted that the acquisition was necessary and in the public interest to increase its wireless capacity in the rapidly expanding mobile data market. Approval of the acquisition would have also made AT&T the largest wireless carrier in the United States. The acquisition, however, was blocked by the FCC and the Department of Justice. AT&T announced on December 19, 2011, that it was ending its bid to acquire T-Mobile USA.³³ Shortly after AT&T's announcement, the FCC approved a different AT&T acquisition of select wireless licenses from Qualcomm.³⁴ While this spectrum acquisition was not as robust as the T-Mobile USA merger would have been, the FCC states that it expects that consumers will benefit from faster mobile download speeds in select markets.³⁵

3. CenturyLink / Qwest

On April 22, 2010, the boards of directors of CenturyLink and Qwest Communications Company, LLC, (Qwest) announced approval of an agreement under which CenturyLink would acquire Qwest.³⁶ The merger was completed on April 1, 2011.³⁷ The result of this merger created the third largest telecommunications company in the United States, providing service in 37 states, including Florida.

4. Knology / WOW!

Knology, a cable company offering a full suite of video, voice, and data services jointly announced on April 18, 2012, their merger agreement with WOW!³⁸ Knology offers services in

³¹ FCC, Public Notice, DA 11-1934, released November 22, 2011, < http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1934A1.doc>, accessed on April 23, 2011.

³² "AT&T to Acquire T-Mobile USA From Deutsche Telekom," AT&T News Release, released March 20, 2011, <<http://www.att.com/gen/press-room?pid=19358&cdvn=news&newsarticleid=31703&mapcode=corporate|financial>>, accessed on April 23, 2012.

³³ "AT&T Ends Bid To Add Network Capacity Through T-Mobile USA Purchase," AT&T News Release, released December 19, 2011, <<http://www.att.com/gen/press-room?pid=22146&cdvn=news&newsarticleid=33560&mapcode=corporate|wireless-networks-general>>, accessed on April 23, 2012.

³⁴ FCC, Order, WT Docket No. 11-18, FCC 11-188, released December 22, 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-188A1.pdf>, accessed on April 25, 2012.

³⁵ Ibid; Those markets are New York, Boston, Philadelphia, Los Angeles, and San Francisco.

³⁶ "CenturyLink and Qwest Agree to Merge," CenturyLink / Qwest Joint Press Release, April 22, 2010, <<http://www.centurylinkqwestmerger.com/downloads/pressreleases/CenturyLink%20Qwest%20Merger%20Press%20Release%204-22-2010.pdf>>, accessed on April 23, 2012.

³⁷ "CenturyLink and Qwest Complete Merger," CenturyLink News Release, April 1, 2011, < <http://www.centurylinkqwestmerger.com/downloads/news/CTL-Q%20Merger%20Close%20Release%20FINAL.pdf> >, accessed on April 23, 2012.

³⁸ "WOW! To Acquire Knology For \$19.75 Per Share In Cash", Knology News Release, released April 18, 2012, <<http://phx.corporate-ir.net/phoenix.zhtml?c=130221&p=irol-newsArticle&ID=1684427&highlight=>>, accessed on April 24, 2012.

ten markets in the southeastern United States (including Florida)³⁹ and three markets in the midwestern United States. WOW!, a competitive cable provider providing video, voice, and data provides services in Michigan, Illinois, Ohio, and Indiana. Once complete, the combined entity will have over 800,000 customers, and its products and services will be available to more than 2.8 million households in 13 states.

³⁹ Specifically, Panama City and portions of Pinellas County, Florida.

Chapter III. Status of Wireline Competition In Florida

A. Wireline Access Lines In Florida

1. 2011 Summary of Results

During 2011, total traditional wireline access lines for ILEC and CLEC combined declined 6 percent, from approximately 6.4 million in 2010, to 6.0 million as of December 2011.⁴⁰ Residential wireline access lines declined by 6 percent, or 624,000 access lines, in 2011. From 2001 through December 2011, combined wireline residential access lines have declined by 64 percent, or nearly 5.1 million lines.

Total wireline business access lines, ILEC and CLEC combined, increased by more than 222,000 lines, or 7.6 percent, between December 2010 and December 2011. The net increase was comprised of an increase of 234,000 ILEC business lines and a decrease of 16,000 CLEC business access lines. AT&T accounts for all of the increase in ILEC business access lines, more than offsetting slight losses by Verizon, CenturyLink, and the rural ILECs. The trend of business access lines has been more stable over the period from 2001 to 2011, fluctuating in response to the business cycle during the time period. Residential lines have consistently trended downward for all the individual ILECs and the CLECs in the aggregate over the same ten-year period.

The composition of ILEC and CLEC access lines served has also undergone a noticeable shift since 2001. As of December 2011, total ILEC business lines were 42 percent of total ILEC lines served, compared to 28 percent in 2001. CLEC business access lines were 94 percent of total CLEC access lines served in 2011, compared to 64 percent in 2001.

⁴⁰ VoIP connections reported by CLECs and cable companies are not included in wireline CLEC market share analyses.

2. CLEC Market Composition

Table 3-1 shows the distribution for 2010 and 2011 of the number of CLECs by ranges of residential access lines served. Only one CLEC reported a total of residential access lines greater than 10,000 representing 35 percent of the market in 2011 compared to the top 3 carriers representing 60 percent of the market in 2010. The number of CLECs reporting residential access lines declined from 64 in 2010 to 56 in 2011.

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

Number of Lines	2010		2011	
	Number of Providers	% of Total CLEC Res Lines	Number of Providers	% of Total CLEC Res Lines
20,000 or more	2	60	1	35
10,000 – 19,999	1	8	0	0
1,000 – 9,999	12	25	12	55
Less than 1,000	49	7	43	11

Source: Responses to FPSC data requests (2010-2012)

B. Wireline Market Share and Access Lines

Data collected for this year's edition of the report are as of December 31, 2011.⁴¹ 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.

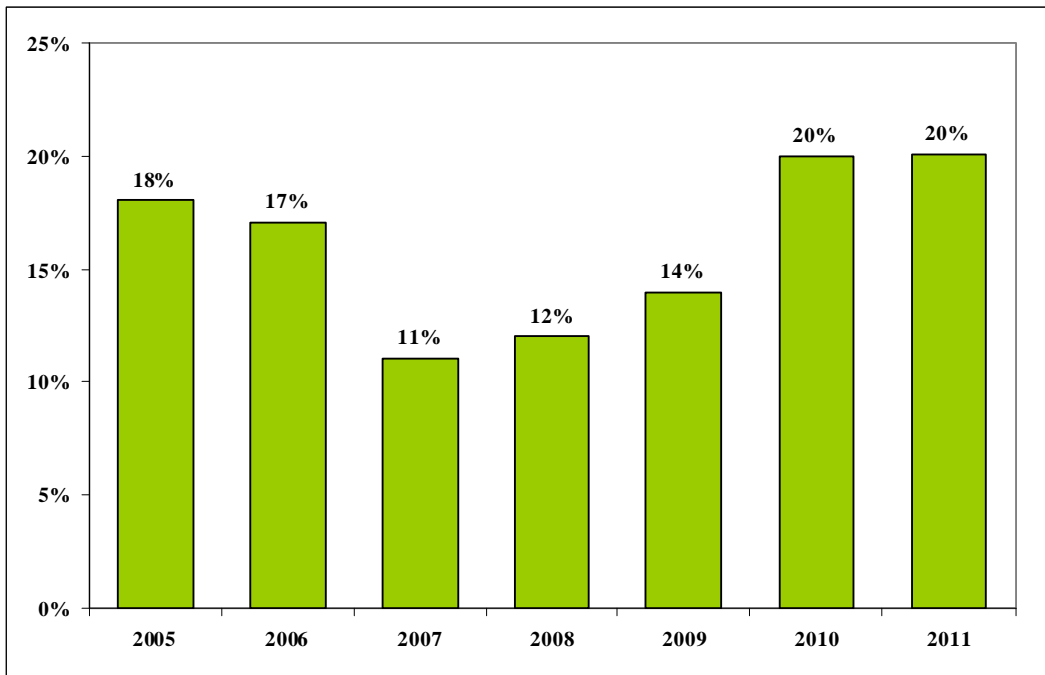
⁴¹ The access lines of a CLEC related to AT&T, Verizon, or CenturyLink are accounted for as competitive lines only when those access lines are outside of the parent company's footprint.

1. CLEC Market Share

a. Florida

Calculations based on responses to the Commission's data request indicated the overall CLEC wireline market share was 20 percent as of December 2011, the same percent as in 2010. Figure 3-1 provides the CLEC wireline market share percentages for total access lines (combined residential and business lines) from 2005 through 2011.

Figure 3-1. Florida CLEC Market Share

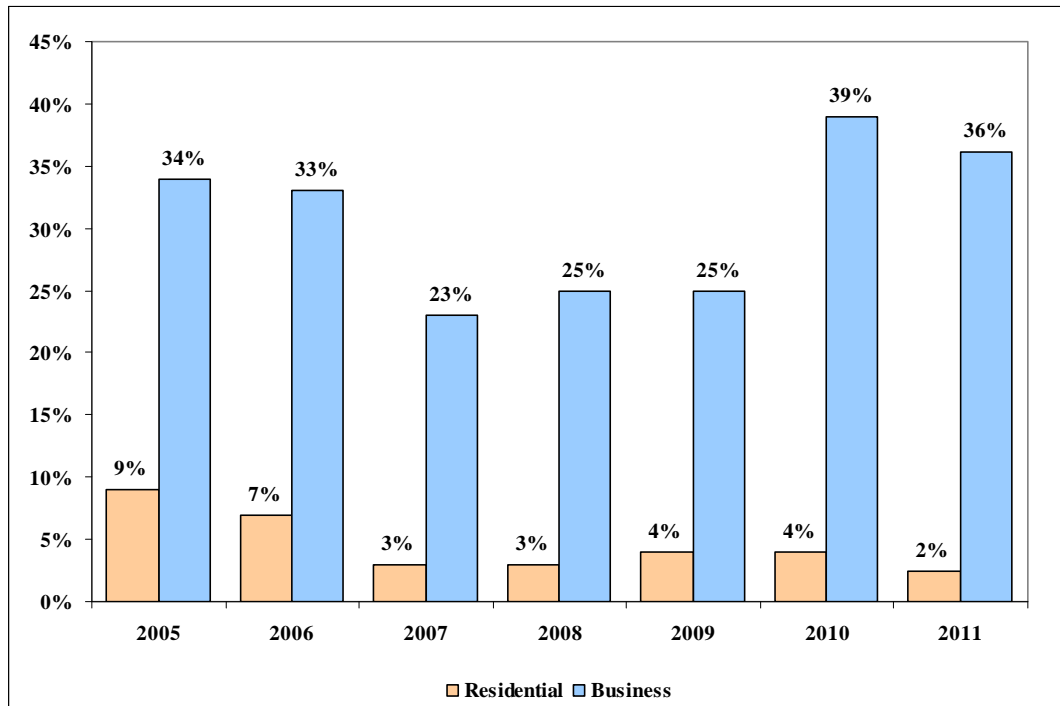


Source: Responses to FPSC data requests (2006-2012)

Figure 3-2 shows the CLEC residential and business market shares for 2005 to 2011.

- CLEC residential market share decreased to 2 percent as of December 2011.
- CLEC business market share decreased to 36 percent in 2011.

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



Source: Responses to FPSC data requests (2006-2012)

b. National

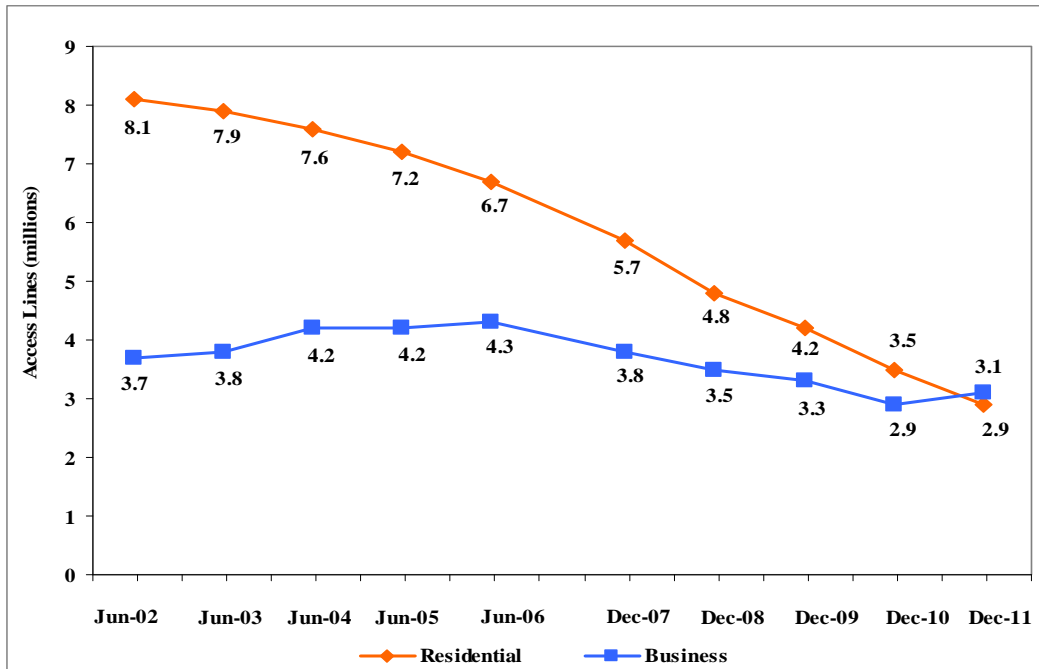
The FCC reports Florida's CLEC market share at 40 percent as of June 2011.⁴² The FCC started including VoIP subscriber lines in the market share calculations with its December 2008 Local Competition Report. The inclusion of VoIP subscriber lines account for the majority of the difference in market share totals calculated by the FPSC compared to those reported by the FCC.

⁴² FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2012, Table 9, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed June 20, 2012.

2. Access Line Overview

Local exchange companies were serving approximately 6.2 million lines in Florida as of December 31, 2011, a decline of 5.5 million lines from June 30, 2001. As Figure 3-3 illustrates, the number of residential lines has declined every year since 2001. The number of business lines has varied within a relatively narrow range of since 2002, generally lagging the business cycle. Business lines increased approximately 222,000 in 2011. For the first time since the FPSC has been producing this report, total (ILEC and CLEC) business access lines exceed total ILEC and CLEC residential access lines.

Figure 3-3. Florida Access Line Trends



Source: Responses to FPSC data requests (2003-2012)

Table 3-2 displays the residential and business access line counts for ILECs and CLECs from 2009 to 2011. Between December 2010 and December 2011:

- Total access lines in Florida decreased by 6 percent.
- Total ILEC access lines decreased by 8 percent, reflecting a 16 percent decrease in residential lines and a 6 percent increase in business lines.
- Total CLEC access lines increased by 4 percent.
- ILEC business access lines accounted for 42 percent of total ILEC lines in December 2011, compared to 28 percent in June 2001.
- CLEC business access lines accounted for 94 percent of total CLEC lines in December 2011, compared to 64 percent in June 2001.

Table 3-2. Florida Access Line Comparison

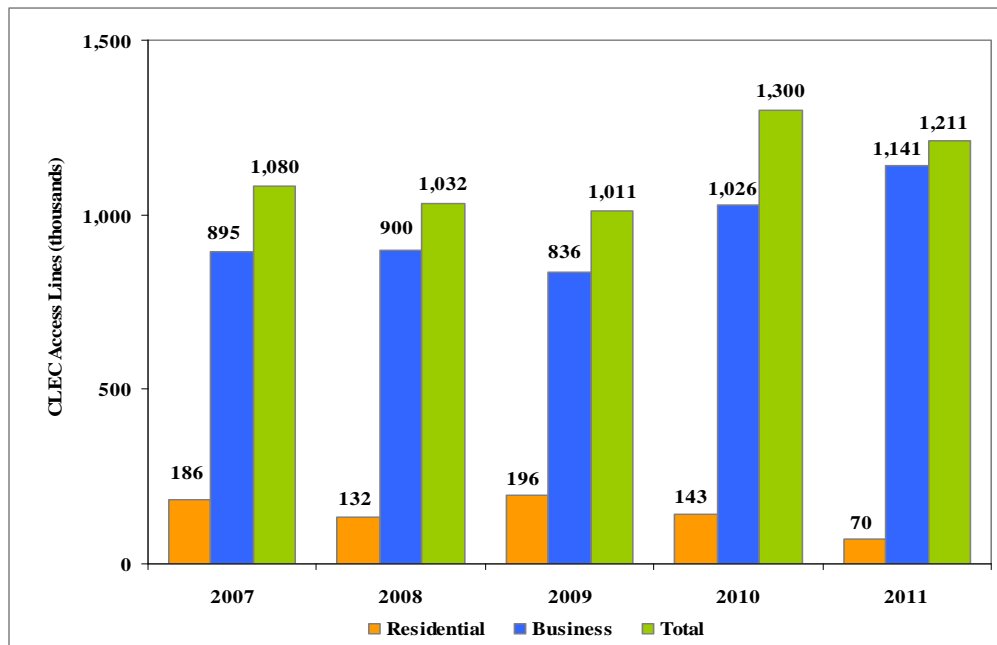
	Dec-09			Dec-10			Dec-11			Change from 2010
	Res	Bus	Total	Res	Bus	Total	Res	Bus	Total	
ILECs	3,960,176	2,433,601	6,393,777	3,360,755	1,906,314	5,267,069	2,809,826	2,013,846	4,823,672	<8>%
CLECs	196,214	829,176	1,025,390	142,873	1,025,993	1,168,866	70,259	1,140,816	1,211,075	4%
Total	4,156,390	3,262,777	7,404,448	3,503,628	2,932,307	6,435,935	2,880,085	3,154,662	6,034,747	<6%>

Source: Responses to FPSC data requests (2010-2012)

Figure 3-4 graphically displays CLEC residential and business access line counts from 2007 to 2011.

- CLEC residential access lines decreased by more than 70,000 from December 2010 to December 2011, a 51 percent decrease.⁴³
- CLEC business access lines increased by approximately 115,000 from December 2010 to December 2011, a gain of 11 percent.

Figure 3-4. Florida CLEC Lines



Source: Responses to FPSC data requests (2008-2012)

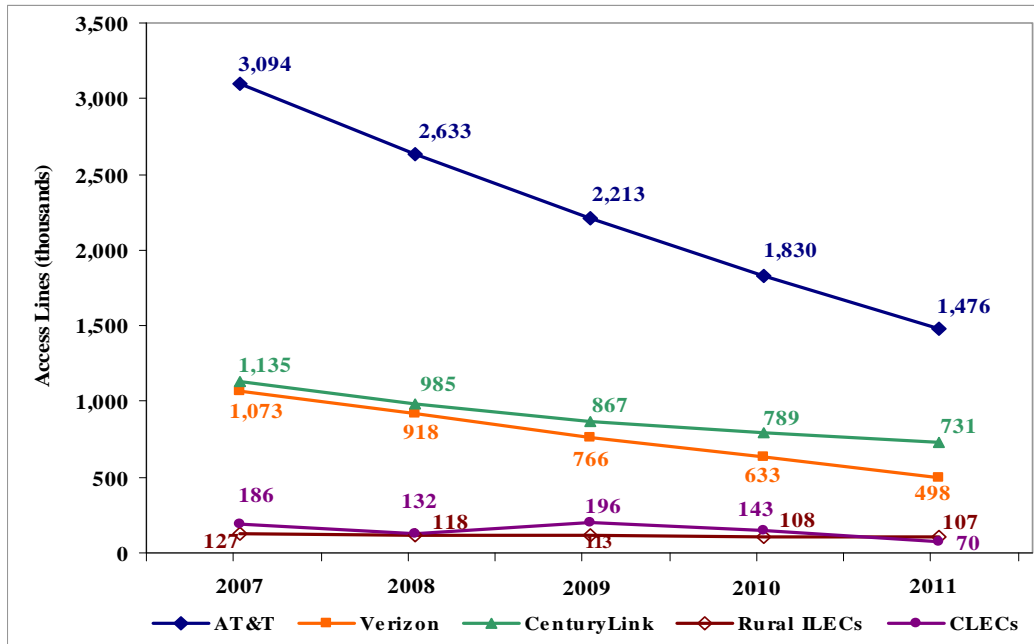
⁴³ Approximately 85 percent of the decline could be attributed to reporting errors on the part of two CLECs. Revised data for 2010 was not available.

C. Competitive Market Trends

1. Residential Access Line Trends

Figure 3-5 displays the residential access line trends separately for AT&T, Verizon, CenturyLink, the rural ILECs, and aggregate CLECs. Each individual ILEC and the CLECs in aggregate reported a decline in residential access lines from December 2010 to December 2011.

Figure 3-5. Florida Residential Line Trends by ILECs and CLECs



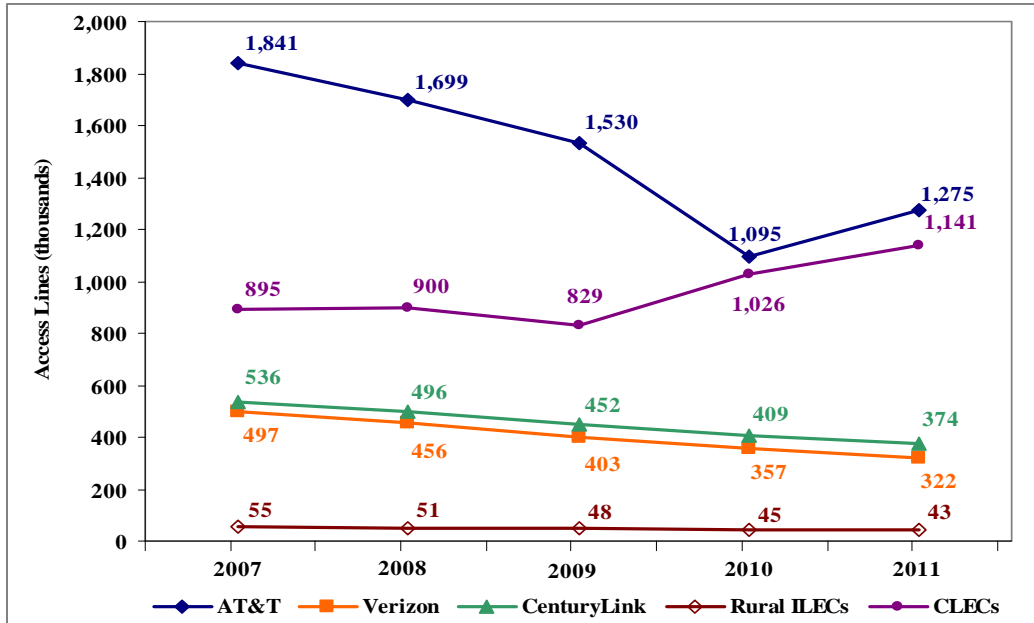
Source: Responses to FPSC data requests (2008-2012)

ILEC residential access lines declined for AT&T, Verizon, CenturyLink, and the rural ILECs at approximately the same rate in 2011 as in 2010. CLECs experienced a 51 percent decrease in residential access lines from December 2010 to December 2011, compared with a 27 percent loss from December 2009 to December 2010.

2. Business Access Line Trends

Figure 3-6 displays the business line trends for AT&T, Verizon, CenturyLink, the rural ILECs, and CLECs. ILEC business access lines have generally trended downward in the last five years with the exception of AT&T in the most recent reporting period. There is no readily apparent explanation for the increase experienced by AT&T and the company offered none. CLEC business access lines increased by 24 percent in 2010 and by 11 percent in 2011.

Figure 3-6. Florida Business Line Trends by ILECs and CLECs⁴⁴



Source: Responses to FPSC data requests (2008-2012)

D. Pay Telephones

The estimated number of pay telephones in Florida dropped to approximately 7,000 in August 2011.⁴⁵ A more recent estimate reported by the Florida Pay Telephone Association as of June 2012, estimates there are approximately 5,100.⁴⁶ This is a reduction of 3,200 from the 8,300 reported as of December 2010.

⁴⁴ An adjustment to reflect ILEC affiliated CLEC business access lines as ILEC lines was inadvertently omitted for 2010 data and the data has been adjusted for the current report.

⁴⁵ Gary White, "Pay Phone Use Declining," NYT Regional Media Group, August 2, 2011, <<http://www.newschief.com/article/20110802/NEWS/108025030?template=printart>>, accessed on June 5, 2012.

⁴⁶ Estimate provide to FPSC staff via e-mail, June, 15, 2012.

E. Competitive Market Analysis and Statutory Issues

The 2011 Florida Legislature amended Chapter 364, F.S., and the amended sections became effective July 1, 2011. Some of those changes directly affect the form of this report. Section 364.386, F.S., previously contained six issues the Commission was required to address in its annual report on telecommunications competition. The amended statutes have only four issues the report must address. The new issues emphasize analysis of the impact of competition and regulatory changes on the telecommunications market.

1. 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 total number of access lines in Florida decreased by 8 percent and CLEC lines increased 4 percent between December 2010 and December 2011. Total CLEC market share in Florida remained steady at 20 percent in 2011. In addition, Florida wireless subscribers increased in 2011, to 17.6 million (handsets in service)⁴⁷ and residential VoIP subscribership rose to nearly 2.4 million.⁴⁸ This data suggests that CLECs, VoIP, and wireless carriers are able to provide functionally equivalent services to residential and business customers at rates, terms and conditions acceptable to consumers. The number of CLECs offering a variety of services also indicates the availability of functionally equivalent services at comparable terms. Other services offered by the 117 CLECs that reported providing local service include:

- Bundles including services other than local voice (36 CLECs)
- VoIP (54 CLECs)
- Broadband Internet Access (22 CLECs)
- Fiber to end users (3 CLECs)⁴⁹
- Video Service (7 CLECs)

The majority of CLECs reported no barriers to competition in the comment portion of the survey. A few carriers noted concern over the deregulation of ILECs and the inability to charge rates that are competitive with ILEC rates, due to the cost of wholesale service.

Conclusion: The majority of CLECs did not report any significant barriers to competition. Subscribers to CLEC, VoIP, and wireless services continued to increase in 2011, reflecting the opportunity for customers to seek out services from providers other than traditional ILECs. Many CLECs reported offering a variety of services and packages comparable to those

⁴⁷ FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2012, Table 18, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed June 20, 2012.

⁴⁸ Responses to FPSC data requests 2011 and 2012.

⁴⁹ Carriers that resell fiber loops provided by other carriers were not included.

offered by ILECs. All of these factors contribute to the conclusion that competitive providers are able to offer functionally equivalent services to both business and residential customers.

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

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, which submit responses to the FPSC's annual data request. As of December 31, 2011, 117 CLECs reported providing local voice service in contrast to 121 CLECs as of December 31, 2010, continuing the gradual decline in the number of CLECs providing service. CLECs can offer service through resale of an ILEC's or a CLEC's wholesale services, by using its own facilities, by leasing portions of its network from an ILEC, or a combination of any of these methods. According to the FCC, 40 percent of the total Florida access lines are provided by companies other than ILECs.⁵⁰

ILEC business lines, as well as CLEC business lines increased marginally in 2011. This suggests that business customers have the ability to find reasonable pricing packages with both CLECs and ILECs and are taking advantage of the various options, which also include cable and in some cases, wireless providers. Residential ILEC lines decreased 16 percent in Florida in 2011, while nationally, wireless-only households continued to grow, reaching 34 percent through December 2011.⁵¹ As reported in Chapter IV of this report, there are approximately 2.4 million interconnected residential VoIP subscribers in Florida.⁵² These and other factors demonstrate that customers are able to find comparable services at reasonable prices through wireless, CLEC, and VoIP providers.

Conclusion: Both ILEC and CLEC business lines increased at comparable rates in 2011, indicating that business customers are finding comparably priced packages and functionally equivalent services with a variety of providers, including with CLECs, cable providers, and wireless providers. Residential lines have maintained a steady decline and wireless-only households continue to grow consistent with the trend over the past several years. Providers are coping with the changing market by modifying the way consumers pay for their services and bundling pricing among wireline, wireless, and television services, further increasing customers' ability to select the services, providers, and pricing plans they prefer.

⁵⁰ FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2011, Tables 12, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed on June 15, 2012. Note: The referenced access lines consist of switched access lines as well as VoIP subscriber lines.

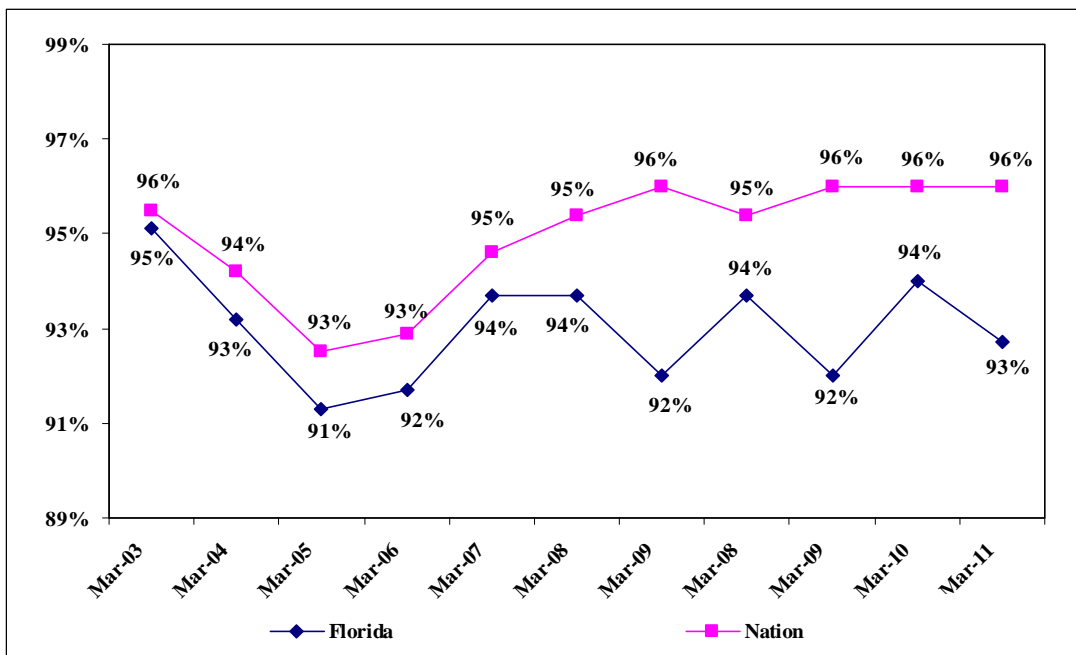
⁵¹ Stephen J. Blumberg, Julian V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July – December 2010," June 28, 2012, pp. 1-3, <<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>>, accessed on June 28, 2012, p. 1.

⁵² Responses to FPSC Local Competition Data Request for 2012.

3. The overall impact of competition on the maintenance of reasonably affordable and reliable high-quality telecommunications services.

The FCC reported that 93 percent of Florida households had telephone service as of July 2011, lower than the national penetration rate of 96 percent.⁵³ As shown in Figure 3-7, the Florida telephone penetration rate has consistently been below the national penetration rate, and the gap has varied from as little as one percent in 2003, to as much as four percent in 2009. The gap persists despite successful efforts in recent years by Florida carriers and the FPSC to make Lifeline and Link-Up benefits more accessible to eligible low-income consumers. The majority of Florida residents have a choice between several non-ILEC providers, with 85 percent of Florida zip codes having ten or more providers for telephone service. Only 1 percent of the Florida population has no access to a non-ILEC provider.⁵⁴

Figure 3-7. Telephone Service Penetration: Florida vs. Nation



Source: FCC, *Telephone Penetration by Income by State*

The CDC released a report on wireless substitution for the period July-December 2011 and found that 34 percent of adults live in wireless-only households.⁵⁵ While state specific data on wireless only households was not provided in the most recent CDC report, an April 2011

⁵³ FCC, “Telephone Subscriberhip in the United States as of July 2011,” December 2011, Table 3, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311523A1.pdf>, accessed on June 20, 2012.

⁵⁴ Ibid, Table 20.

⁵⁵ Stephen J. Blumberg, Julian V. Luke, “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2011,” June 28, 2012, <<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>>, accessed on June 29, 2012, p. 1.

report containing state level data noted that Orange County had the highest wireless-only penetration rate in Florida at 34 percent. The CDC report found 12 percent of Florida adults living in households with only a wireline phone and 1.8 percent of Florida adults living without any kind of telephone service.^{56,57} This data points to the conclusion that most Florida households are able to afford telephone service and have access to a variety of service providers, including ILECs, CLECs, VoIP, and wireless. This data also supports the fact that many consumers choose to subscribe to more than one type of telephone service.

Historically, regulatory reliability standards have applied to landline telecommunications service making it the most reliable of telecommunications services. Reliability in landline networks is no longer insured as many states, including Florida, have eliminated service quality standards. In a survey released by JD Power and Associates in May 2011, the cable companies Bright House Networks and Cox Communications ranked above traditional wireline carriers in customer satisfaction in the southern United States for the provision of residential telephone service.⁵⁸ The survey results add further credence to the idea that interconnected VoIP is viewed as a reliable alternative to traditional wireline service. Given the continued growth of interconnected VoIP and wireless-only households and the continued erosion of landline access lines, it appears that the reliability of these alternatives is acceptable to consumers. Moreover, mobility, pricing, and the demand for data-based services are consumer preference factors that may be changing how consumers view reliability.

Conclusion: Based on the continued growth of interconnected VoIP and wireless-only households and the ongoing erosion of landline access lines, network reliability of non-ILEC providers appears to be sufficient. The telephone penetration rate of 93 percent supports the conclusion that the overwhelming majority of Florida residents are able to afford telephone service. The number and variety of competitive choices among all types of service providers and recent high customer satisfaction rates for interconnected VoIP providers suggests that competition is having a positive impact on the telecommunications market in Florida.

4. A listing and short description of any carrier disputes filed under Section 364.16, F.S.

Conclusion: This information can be found in Appendix B. The number of docketed intercarrier complaints declined in 2011 and informal complaints increased and were attributable to a single CLEC.

⁵⁶ Stephen J. Blumberg, Julian V. Luke, "Wireless Substitution: State-Level Estimates from the National Health Interview Survey, January 2007-June 2010," April 20, 2011, pp. 7-11, <<http://www.cdc.gov/nchs/data/nhsr/nhsr039.pdf>>, accessed on May 31, 2010.

⁵⁷ Since the CDC began reporting wireless-only household data in 2003 there has been a discrepancy between the data used by the CDC and the Current Population Survey (CPS) data reported by the FCC as it relates to the number of households reported as not having any telephone service available. A 2007 Public Opinion Quarterly paper titled "Household Telephone Service and Usage Patterns in the United States in 2004: Implications for Telephone Samples," suggests that CPS data likely overstates the number of households without any telephone service.

⁵⁸ "Customer Service Support Initiatives Help to Drive Industry-Wide Satisfaction Gains Among Residential Telephone Customers," J.D. Power and Assoc. Press Release, September 15, 2010, <<http://businesscenter.jdpower.com/news/pressrelease.aspx?ID=2010184>>, accessed May 31, 2011.

Chapter IV. Wireless, VoIP, and Broadband

A. Wireless

Over the past several years, wireless devices have evolved from voice only applications to multi-functional devices primarily utilized for data and text capabilities. Wireless substitution has continued to increase, with the latest CDC figures reporting that 34 percent of all households were wireless-only in the first half of 2011, up from 31.6 percent for the first half of 2011.⁵⁹ The vast majority of consumers of mobile broadband, including tablet and Smartphone owners, also have a home broadband connection. In 2011 and early 2012 broadband adoption continued to level off despite wide-ranging government initiatives aimed at increasing consumer access to the Internet. Smartphone adoption and mobile data usage, however, have increased exponentially in the U.S. and are projected to continue to increase as more connected devices become available at lower prices and carriers begin offering pricing plans that allow usage from multiple devices. In addition, some demographic groups are catching up in adoption and use of the Internet.

1. Smartphones

Consumers are using their wireless phones more for online activities and downloading applications and less for having voice conversations. Data currently accounts for 37 percent of wireless revenue, amounting to \$62.7 billion industry-wide in 2011. The average length of a wireless phone call has dropped to less than two minutes, down from just over three minutes prior to the introduction of the most popular Smartphones. Monthly voice usage, which peaked at 826 minutes in 2007, declined to 681 minutes in 2011.⁶⁰ From 2010 to 2011 Smartphone users increased the amount of time they spent using applications from 43 to 94 minutes per day. The number of monthly Smartphone application downloads also grew in that time period, from 400,000 to 2.1 billion.⁶¹ As of December 2011, 47.6 percent of wireless consumers used applications and 47.5 percent used mobile browsers.⁶²

The number of adult Americans with a Smartphone rose from 35 percent in 2011 to 46 percent in February of 2012. Remarkably, only 41 percent of Americans have a cell phone that is not considered a Smartphone. More adults in the U.S. have a Smartphone than a regular feature phone. Among Smartphone owners, 23 percent do not have any other broadband connection. If Smartphone owners were included in overall broadband subscribership numbers,

⁵⁹ Stephen J. Blumberg, Julian V. Luke, "Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July – December 2010," June 28, 2012, pp. 1-3, <<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>>, accessed on June 29, 2012, p. 1.

⁶⁰ Greg Bensinger, "Talking Less, Paying More for Voice," *The Wall Street Journal*, June 5, 2012, <<http://allthingsd.com/20120606/talking-less-paying-more-for-voice/>>, accessed on June 10, 2012.

⁶¹ John B. Horrigan, "Broadband Adoption in 2012," March 20, 2012, <<http://www.technet.org/wp-content/uploads/2012/03/TechNet-NBP-Broadband-Report-3-20-2012-FINAL1.pdf>>, accessed on June 10, 2012.

⁶² Comscore, "2012 Mobile Future in Focus," February 2012, <http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus>, accessed on June 11, 2012.

the total number of American adults with broadband access would rise marginally, to 73 percent.⁶³

The demographic gap seen with home broadband adoption between whites and minorities is nonexistent or reversed when it comes to Smartphone adoption. Forty-nine percent of blacks and forty-nine percent of Hispanics own Smartphones, compared to forty-five percent of white, non-Hispanic adults.⁶⁴ The largest growth in Smartphone adoption occurred in larger households (six or more persons), but other demographic groups with notable jumps in Smartphone adoption included those with annual incomes of less than \$25,000, retirees, and people aged 55-64.⁶⁵

A recent Pew study on Smartphone owners noted that:

- All major demographic groups experienced an increase in Smartphone adoption over the last year, with many groups at or above 60 percent.
- Only 13 percent in the 65+ age group own a Smartphone.⁶⁶

By December of 2011, mobile devices such as tablets, Smartphones, and e-book readers represented 8 percent of total Internet traffic in the U.S. There were over 400 different varieties of Smartphones offered on the market at that time. The most important factor cited when choosing a mobile device was price, followed by network quality, and operating system. Analysts have forecast that by the end of 2012 more than half of the U.S. market will use Smartphones as their primary mobile device.⁶⁷

⁶³ John B. Horrigan, "Broadband Adoption in 2012," March 20, 2012, <<http://www.technet.org/wp-content/uploads/2012/03/TechNet-NBP-Broadband-Report-3-20-2012-FINAL1.pdf>>, accessed June 10, 2012.

⁶⁴ Aaron Smith, Kathryn Zickuhr, "Digital Differences," April 13, 2012, <<http://pewinternet.org/Reports/2012/Digital-differences.aspx>>, accessed June 10, 2012.

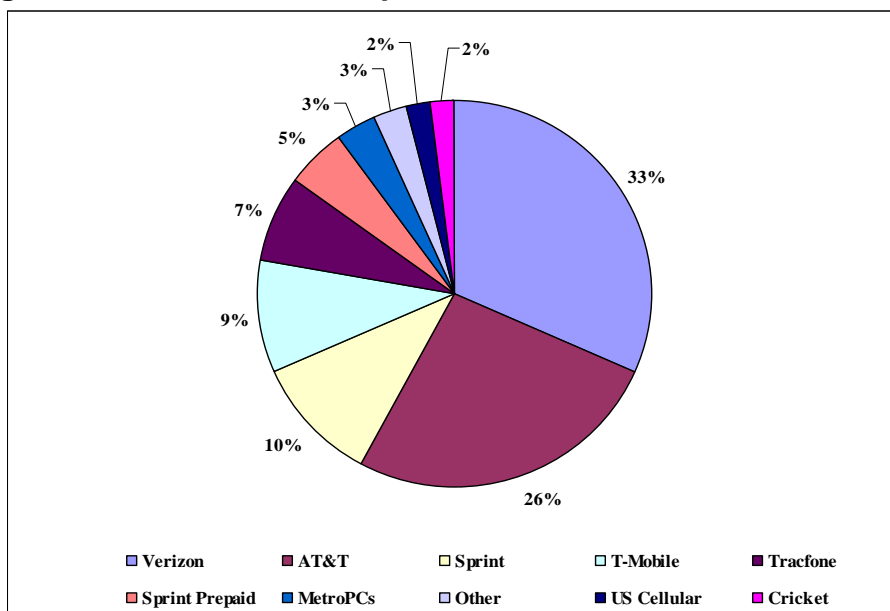
⁶⁵ Comscore, "2012 Mobile Future in Focus," February 2012, <http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus>, accessed June 11, 2012.

⁶⁶ Aaron Smith, "46% of American Adults are Smartphone Owners," March 1, 2012, <<http://pewinternet.org/~media/Files/Reports/2012/Smartphone%20ownership%202012.pdf>>, accessed June 11, 2012.

⁶⁷ Comscore, "2012 Mobile Future in Focus," February 2012, <http://www.comscore.com/Press_Events/Presentations_Whitepapers/2012/2012_Mobile_Future_in_Focus>, accessed June 11, 2012.

As seen in Figure 4-1, the majority of the U.S. wireless market (78 percent) is composed of the four main carriers, AT&T, Sprint, Verizon, and T-Mobile. Verizon leads the industry with 33 percent of subscribers, followed by AT&T with 26 percent, Sprint with 10 percent, and T-Mobile with 9 percent. However, AT&T accounts for the largest share of the Smartphone market, with 33 percent.⁶⁸

Figure 4-1. U.S. Network Operator Share of Total Mobile Market



Source: Comscore

2. Florida Trends

In Florida, the number of wireless handsets in service was two percentage points higher than the national average in the most recent FCC report and reached a total of 17.6 million, an increase of only 2 percent from December 2010.⁶⁹ Overall growth of wireless phone subscription in Florida has mirrored national trends as the market reaches saturation. Since the end of 2003, wireless handsets in service in Florida have exceeded wireline subscriptions.

B. Voice over Internet Protocol (VoIP)

As in prior years, the number of Florida residences and businesses subscribing to VoIP services has increased. The FCC's most recent data reports approximately 28.6 million interconnected residential VoIP subscribers and nearly 4.5 million business subscribers nationwide as of June

⁶⁸ Ibid.

⁶⁹ FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2012, Table 18, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed on June 20, 2012.

2011.⁷⁰ This represents a 16 percent increase of total interconnected VoIP subscribers nationwide from June 2010.⁷¹ Data collected by the FPSC shows an estimated 2.2 million residential interconnected VoIP service subscribers in Florida as of December 2011.⁷²

1. National Market Analysis

The VoIP market continues to be dominated by cable companies while traditional wireline carriers, such as AT&T and Verizon have made gains with their fiber-based offerings. Other ILECs and CLECs have also increased their VoIP service subscriptions. In addition, public Internet service providers, including Google and Skype are also providing VoIP services. Reliable information on subscribership is available for some carriers but less so for others.

a. Facilities-Based VoIP Providers

ILECs, CLECs, and cable companies provide interconnected VoIP services. Cable companies continue to dominate the facilities-based VoIP market with an estimated 25.4 million residential VoIP subscribers by June 2011 according to the FCC.⁷³ More recent data is available from publicly traded carriers. Comcast, the largest cable company nationally, had 9.3 million VoIP subscribers by the end of 2011. Time Warner Cable and Cablevision Systems had 4.7 million and 2.4 million VoIP subscribers respectively, over the same time period. All the large cable companies continue to experience growth in VoIP subscribers, but at a significantly slower rate. For example, from 2007 to 2008, these companies experienced VoIP growth rates that ranged between 15 to 30 percent. For 2011, that range fell to 4 to 8 percent.

Wireline telephone companies continue to deploy facilities-based VoIP services over fiber-based facilities. While AT&T and Verizon continue to show losses in traditional voice access lines, both companies have posted gains associated with their other service offerings. AT&T reported approximately 2.3 million U-verse voice subscribers at year-end 2011, up substantially from the 1.7 million connections in 2010.⁷⁴ Verizon reported 1.9 million FiOS Digital Voice subscribers at the end of 2011, more than double the 817,000 reported a year earlier.⁷⁵

⁷⁰ FCC, “Local Telephone Competition: Status as of June 2011,” Table 10 and Table 11, June 2012, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012db0614/DOC-314631A1.pdf>, accessed on June 15, 2012.

⁷¹ FCC, “Local Telephone Competition: Status as of June 2010,” Table 8, March 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf>, accessed June 4, 2012.

⁷² Responses to FPSC Local Competition Data Request 2012.

⁷³ FCC, “Local Telephone Competition: Status as of June 2011,” Table 10 and Table 11, June 2012, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012db0614/DOC-314631A1.pdf>, accessed on June 15, 2012.

⁷⁴ AT&T 2011 Annual Report, <http://www.att.com/Common/about_us/files/pdf/ar2011_annual_report.pdf> accessed on June 7, 2012.

⁷⁵ Verizon Communications’ Financial and Operating Information, Wireline – Selected Operating Statistics, <http://www22.verizon.com/idc/groups/public/documents/adacct/2012_q1_foi_xls.xls>, from <http://www22.verizon.com/investor/investor_home.htm>, accessed on June 7, 2012.

b. Over-the-Top VoIP Providers

Over-the-top VoIP providers offer low-priced stand alone interconnected VoIP service, but service reliability and call quality varies because calls are transmitted over the public Internet rather than private managed IP-based networks.⁷⁶ The price advantage over the bundled services offered by facilities-based VoIP providers has allowed over-the-top VoIP providers to attract customers. Vonage, 8x8, Inc., Skype, Google, and magicJack are some of the leading over-the-top VoIP providers. Some of these companies have also introduced mobile VoIP services that take advantage of consumers mobile broadband connections to offer service.⁷⁷

Reliable information on subscribership is not widely available for over-the-top providers. Some available data suggest that certain market segments are performing better than others. For example, Vonage, a publicly traded company, reports 2.4 million subscribers at year-end 2011, a decline of about 30 thousand customers since last year.⁷⁸ By comparison, 8x8, Inc., which is almost exclusively focusing on the business market, ended 2011 with 27,667 customers, a 19 percent increase from the previous year.⁷⁹

⁷⁶ The phrase “over-the-top VoIP” refers to a VoIP service that requires a consumer to obtain broadband access from another company.

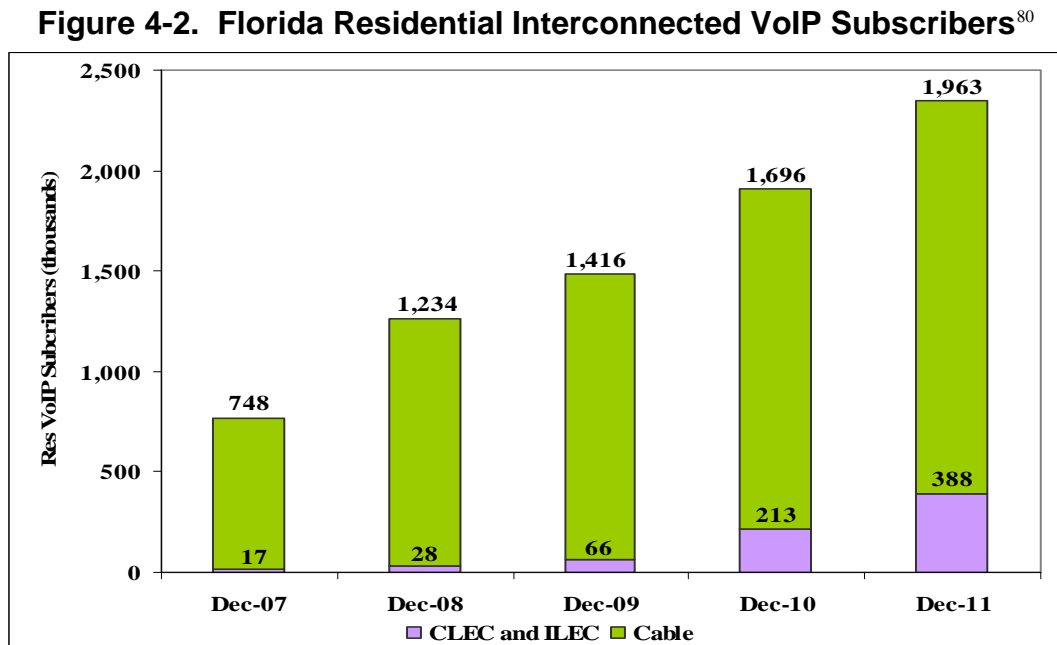
⁷⁷ Andrew Burger, “Report: Mobile VoIP Growing Exponentially, but Revenues Remain Small,” *Telecompetitor*, October, 20, 2011, <<http://www.telecompetitor.com/report-mobile-voip-growing-exponentially-but-revenues-remain-small/>>, accessed on June 8, 2012.

⁷⁸ Vonage Holdings Corp., Form 10-K, December 31, 2011, <<http://www.sec.gov/Archives/edgar/data/1272830/000127283012000022/vg10-k.htm>>, accessed on June 4, 2012. Note that approximately 94 percent of Vonage’s customers are U.S. subscribers.

⁷⁹ 8x8, Inc., Form 10-K, March 31, 2012, <<http://www.sec.gov/Archives/edgar/data/1023731/000113626112000328/body10k.htm>>, accessed on June 4, 2012.

2. Florida Market

Limitations exist in determining an accurate estimate of VoIP subscribers in Florida because the Commission does not have jurisdiction over VoIP service. However, the FCTA reported residential VoIP line data for its six largest member providers. A number of CLECs and ILECs voluntarily responded to the Commission's data request. Based on a review of available data, there are an estimated 2.4 million residential interconnected VoIP subscribers in Florida. Figure 4-2, shows the number of residential interconnected VoIP subscribers in Florida, by provider type, as of year-end 2011.



Source: Responses to FPSC data requests (2008-2011)

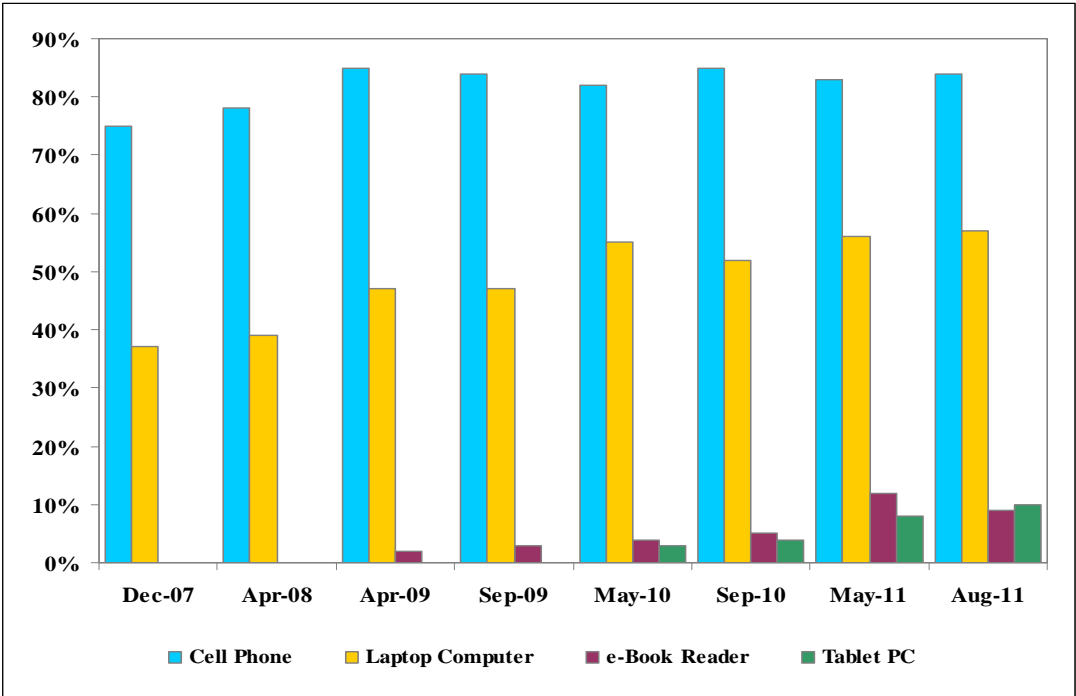
⁸⁰ The CLEC and ILEC totals for data years 2007 through 2011 have been corrected to remove double counting of one carrier previously reported in both the CLEC and ILEC and Cable categories.

C. Broadband

1. National Broadband Trends

According to the most recent report by the Pew Internet and American Life Project, 62 percent of adults currently subscribe to broadband service from their homes.⁸¹ Pew reports that the most interesting and potentially important development over the past year is the increase in people accessing the Internet wirelessly on multiple devices. Figure 4-3, illustrates the shift in mobile device ownership over time.

Figure 4-3. Adult Mobile Device Ownership Over Time



Source: Pew Internet and American Life Project

Demographic groups that traditionally were less likely to have a home broadband connection, such as minorities, those without a college education, and low income individuals, are more likely to use a Smartphone as their only source of the Internet, increasing, although marginally, the total number of Americans who are online.⁸² Notable differences in broadband adoption in 2011 included:

⁸¹ Aaron Smith, Kathryn Zickuhr, “Digital Differences,” April 13, 2012, <<http://pewinternet.org/Reports/2012/Digital-differences.aspx>>, accessed on June 10, 2012.

⁸² Ibid.

- Black, non-Hispanic survey participants subscribed to broadband services at a rate of 49 percent, compared to Hispanics at 51 percent and whites at 66 percent.
- Households with annual household incomes of over \$75,000 subscribe to broadband at the rate of 59 percent, in contrast to only 41 percent for households with incomes of less than \$30,000, 66 percent in the \$30,000 to \$49,000 range, and 81 percent in the \$50,000 to \$74,000 range.
- Fifty-four percent of adults with a disability use the Internet.
- Of respondents with a college degree, 85 accessed broadband at home compared to 22 percent without a high school diploma.⁸³

The Pew survey also found that 22 percent of American adults are not using the Internet at all, nearly half of whom said they do not use the Internet because they are not interested or it is not relevant to their lives. Only 21 percent of non-Internet users cited price related reasons. The most frequent online activities listed by adults included shopping at 71 percent, use of social networking sites at 61 percent, and online banking 61 percent.⁸⁴

2. Florida Broadband Trends

In Florida, 42 percent of households have a fixed broadband connection with download speeds of at least 3 Mbps and 73 percent of households have fixed broadband connections of 200 kbps or greater, according to the most recent FCC report.⁸⁵ The FCC also reports that cable modem service accounts for 56 percent of non-mobile broadband connections in Florida with download speeds greater than 200 kbps.⁸⁶ Mobile broadband connections account for 54 percent of all Florida broadband connections with download speeds in excess of 200 kbps.⁸⁷

⁸³ Aaron Smith, Kathryn Zickuhr, "Digital Differences," April 13, 2012, <<http://pewinternet.org/Reports/2012/Digital-differences.aspx>>, accessed June 10, 2012.

⁸⁴ Ibid.

⁸⁵ FCC, "Internet Access Services: Status as of June 30, 2011," released June 2012, Table 15 and Table 16, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314630A1.pdf>, accessed June 16, 2012.

⁸⁶ Ibid, Table 18.

⁸⁷ Ibid.

Chapter V. State Activities

A. Intercarrier Matters

1. Verizon / Bright House Access Charge Complaint

In 2011, Bright House Networks, Florida, filed a complaint against Verizon Florida for failure to pay intrastate access charges on telecommunications traffic originating on Bright House's VoIP network.⁸⁸ Verizon contended because the traffic originated on a VoIP system, the traffic was inherently interstate in nature and not appropriate for intrastate access compensation. During the pendency of the complaint, the FCC issued a Notice of Proposed Rule Making, finding that it had not declared VoIP-originated traffic to be inherently interstate in nature. Subsequent to the FCC's notice, the parties filed for a voluntary dismissal of the complaint.

2. AT&T / Express Phone Dispute

The dispute relates to Express Phone's allegation that AT&T Florida failed to honor Express Phone's request to adopt the interconnection agreement (ICA) between AT&T and another CLEC.⁸⁹ Express Phone contends that the alleged failure would violate the federal Telecommunications Act of 1996.

On April 4, 2011, AT&T filed its response arguing that Express Phone had not honored its commitments under the ICA but instead, under the guise of a billing dispute, has stopped paying its bills contrary to ICA language which states that Express Phone must "make payment to AT&T for all services billed including disputed amounts." AT&T opposed Express Phone's request to adopt a different agreement alleging Express Phone had no right to switch from one ICA to another since the current ICA is in effect until November 2011. At its June 14, 2011 Commission Conference the FPSC found that Express Phone could not adopt a different ICA because it was in material breach of its existing ICA. Express Phone protested the order and an evidentiary hearing was held May 3, 2012. A FPSC decision is scheduled for July 17, 2012.

⁸⁸ Docket No. 110056-TP – Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC.

⁸⁹ Docket No. 110087-TP, In re: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Image Access, Inc. d/b/a NewPhone, Inc. by Express Phone Service, Inc.

3. AT&T / Halo Complaint and Petition for Relief⁹⁰

On July 25, 2011, AT&T Florida (AT&T) filed a Complaint and Petition for Relief (Complaint) against Halo Wireless, Inc. (Halo). In the Complaint, AT&T alleges that Halo has violated the terms of the parties' ICA by terminating traffic to AT&T which was not originated on a wireless network, in order to avoid the payment of access charges to AT&T. On August 8, 2011, Halo filed for Chapter 11 Bankruptcy Protection in the United States Bankruptcy Court for the Eastern District of Texas. Subsequent to the bankruptcy filing Halo filed a Notice of Removal with the District Court in Tallahassee, in which Halo sought to remove the pending (but stayed) Commission proceeding to the United States District Court for the Northern District of Florida. On December 9, 2011, the District Court issued its Order of Remand, whereby the District Court remanded this matter back to the Commission for further proceedings. The Commission hearing in the case is currently scheduled to be heard July 12-13, 2012.

4. Qwest Discrimination Complaint

Qwest Communications Company, LLC (Qwest), filed a complaint against a large number of CLECs on December 11, 2009, regarding rate discrimination in connection with the provision of intrastate switched access services.⁹¹ Qwest seeks relief from all parties for engaging in unlawful rate discrimination. Specifically, Qwest alleges that by extending contracts to other interexchange carriers' for switched access, advantages were withheld from Qwest. The complaint further alleges that all parties have failed to abide by their pricelists, and charged Qwest more for switched access than other similarly situated interexchange companies. The Commission has addressed several procedural filings in this docket and a hearing on the issues is scheduled for October 23-25, 2012.

5. STS complaint

The Commission ordered further proceedings on a request for injunctive relief filed by Saturn Telecommunication Services, Inc. (STS). STS initially filed its request in 2009⁹² to restrict AT&T from implementing a different ordering system – used by CLECs to provision network elements leased from AT&T – than was in use at the time the complaint was filed. The initial request was denied by the Commission, but audits of AT&T's system were ordered and the parties were directed to attempt to negotiate their differences. At issue through-out the pendency of the dispute has been the error rate some CLECs experience when attempting to order network elements from AT&T. The parties dispute the cause of the errors and at its

⁹⁰ Docket No. 110234-TP, Complaint and petition for relief against Halo Wireless, Inc. for breaching the terms of the wireless interconnection agreement, by BellSouth Telecommunications, LLC d/b/a AT&T Florida.

⁹¹ Docket No. 090538-TP, In re: Amended Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Broadwing Communications, LLC; Access Point, Inc.; Birch Communications, Inc.; Budget Prepay, Inc.; Bullseye Telecom, Inc.; DeltaCom, Inc.; Ernest Communications, Inc.; Flatel, Inc.; Navigator Telecommunications, LLC; PaeTec Communications, Inc.; STS Telecom, LLC; US LEC of Florida, LLC; Windstream NuVox, Inc.; and John Does 1 through 50, for unlawful discrimination.

⁹² Docket No. 090430-TP – Amended petition for verified emergency injunctive relief and request to restrict or prohibit AT&T from implementing its CLEC OSS-related releases, by Saturn Telecommunication Services, Inc. d/b/a Earthlink.

February 2, 2012 Commission Conference, the Commission directed its staff to pursue specific areas of inquiry aimed at resolving the dispute.

6. Wholesale Performance Measurement Plans

Wholesale performance measurement plans provide a standard against which the Commission can monitor 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 in August 2001, for CenturyLink in January 2003, and for Verizon in June 2003. Trending analysis is applied to monthly performance measurement data provided by each ILEC.

AT&T is the only ILEC that is required to make payments to CLECs when certain performance measures do not comply with established standards and benchmarks. AT&T's approved Performance Assessment Plan consists of 47 measurements, of which 24 measurements have remedies applied to them. For the calendar year 2011, AT&T paid approximately \$1,043,011 in remedies to CLECs, an increase of 35 percent from 2010.

CenturyLink's current Performance Measurement Plan contains 36 performance measures designed to ascertain if the ILEC is providing nondiscriminatory service to CLECs. For the 2011 calendar year, CenturyLink's monthly compliance with established standards has ranged from 88.5 percent to 96.0 percent.

Verizon's current Performance Measurement Plan contains more than 40 measures. For the calendar year 2011, Verizon's monthly compliance with approved standards ranged from 82.4 percent to 92.5 percent.

B. Telephone Relay Service

In January 2011, the Commission initiated a competitive bidding process for a three-year contract to provide telecommunications relay service for telecommunications customers who are deaf, hard of hearing, deaf and blind, or speech impaired,⁹³ to take effect June 1, 2012. Based on discussions between staff and potential bidders, a request for proposals (RFP) was developed and issued.

Bids were received from AT&T Corp., Sprint Communications Co., L.P. (the incumbent provider), and Hamilton Telecommunications Co. At a Commission Conference in September 2011, the Commission determined the initial RFP was flawed and could result in the awarding of the contract to a company which ultimately would not be the lowest bidder over the life of the contract. The Commission rejected all bids, directed staff to redraft the RFP and rebid the contract. In February 2012, the Commission awarded the contract to AT&T. As part of its proposal, AT&T committed to establish a Miami Relay Call Center creating an estimated 30 Florida jobs.

⁹³ Docket No. 110013-TP – Request for submission of proposals for relay service, beginning in June 2012, for the deaf, hard of hearing, deaf/blind, or speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

C. Florida Broadband Grant Projects

The Florida Department of Management Services received federal grant funding in January 2010 for \$2.5 million to develop a broadband map for Florida and broadband planning for the state. In September 2010, the Department was awarded an additional \$6.3 million to extend the mapping project through 2014 and initiate four additional broadband projects. The four projects are library technology assessments, E-rate assistance, broadband grants assistance, and regional broadband planning.

Broadband Mapping – Efforts to maintain the map are ongoing, focusing on building Florida’s database for household broadband availability and broadband use by anchor institutions. The most recently compiled data will be submitted for the national broadband map in October 2012.⁹⁴

Library Technology Assessment – This project to inventory and report on Florida’s 180 public libraries is on schedule to be completed by end of the 2nd quarter of 2012. The assessment will help to identify those libraries whose broadband needs are the greatest.

E-rate Assistance – In 2011, comparably populated states such as California, New York, and Texas received significantly more E-rate funding than Florida.⁹⁵ In an effort to improve Florida’s benefit from the program, the e-rate assistance team has provided technical training seminars throughout the state to assist potential applicants and served as a technical resource on multiple school and library e-rate applications, including follow-up assistance and application monitoring. The project is funded through 2014.

Grants Assistance – In Fiscal Year 2010, Florida ranked 48th in Federal program grant funds per capita.⁹⁶ The grants assistance team seeks out broadband related grant funding opportunities, matches them to prospective recipient anchor institutions, and provides technical assistance in grant writing applications. The group recently assisted a group of panhandle and south Georgia hospitals in their efforts to secure grant funding for a regional telehealth broadband network.

Regional Broadband Planning – This project will develop and provide Florida communities with broadband a planning process, tool kits, and training to local communities and regions who wish to develop broadband plans as part of their economic development efforts. This two-year project is approximately 50 percent complete and will soon enter into the pilot phase next in South Central and Southwest Florida, including Polk, Charlotte, Lee and Collier Counties.

⁹⁴ The Florida broadband map can be accessed online at <<http://www.connect-florida.org/>>.

⁹⁵ FCC, "Universal Service Monitoring Report, CC Docket 98-202, 2011 (data received through October 2011)," December 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf>, accessed on June 21, 2011.

⁹⁶ "Federal Aid to States for Fiscal Year 2010," U.S. Census Bureau, Economics and Statistics Administration, U.S. Department of Commerce, Figure 5, issued September 2011, <<http://www.census.gov/prod/2011pubs/fas-10.pdf>>, accessed on June 20, 2012.

Chapter VI. Federal Activities

A. Universal Service

Consumers in Florida pay significantly more into the federal Universal Service Fund (USF) than what is returned to eligible service providers in Florida.⁹⁷ 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 6.1 shows Florida's estimated contribution and receipts for 2010. For the second year in a row, Florida was a net recipient in the Low Income support programs (Lifeline and Link-up), which is one of four broad support categories that comprise the federal universal service program.

Table 6-1. 2010 Federal Universal Service Programs in Florida
(Annual Payments and Contributions in Thousands of Dollars)

	2008	2009	2010	2010	2010
	Estimated Net 2008	Estimated Net 2009	Payments to Service Providers	Estimated Consumers Contributions 2010	Estimated Net 2010
High-Cost	(\$219,566)	(\$215,511)	\$67,693	\$279,131	(\$211,439)
Low Income	(30,033)	6,431	88,201	86,055	2,146
Schools & Libraries	(40,365)	(49,183)	107,719	149,287	(41,568)
Rural Health Care	(3,009)	(3,189)	226	5,622	(5,395)
Total ⁹⁸	(\$304,268)	(\$273,936)	\$263,839	\$526,991	(\$263,152)

Source: FCC 2011, 2010, and 2009 Universal Service Monitoring Report, Table 1.12

1. Reform of Universal Service

On November 18, 2011, the FCC released its Report and Order and Further Notice of Proposed Rulemaking (Order and FNPRM) addressing reform for both the federal high-cost

⁹⁷ FCC, "Universal Service Monitoring Report," CC Docket No. 98-202, released December 2011, Table 1.12, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311775A1.pdf>, accessed on April 25, 2012.

⁹⁸ The total contribution in this table includes approximately \$105 million in administrative expenses for the Universal Service Administrative Company.

universal service programs and intercarrier compensation (ICC).⁹⁹ Many of the issues relating to reform of the high-cost fund have been under consideration for a number of years. This Order represents one of the most meaningful reforms of the program in the last decade and is over 700 pages in length. In general, the results of this Order will be to expand support beyond voice services to explicitly support the deployment of broadband networks. Comments of the FPSC were cited in a number of places in the Order.

a. Establishing the Connect America Fund

The FCC created the Connect America Fund (CAF), which will ultimately replace all existing high-cost support mechanisms. The goal of the CAF is to make broadband available in areas that do not, or would not otherwise, have broadband. This includes mobile voice and broadband networks. The FCC also created a Mobility Fund that will provide up to \$300 million in one-time support to accelerate deployment of networks for mobile voice and broadband services in unserved areas. Ongoing Mobility Fund support of up to \$500 million per year is planned in areas where services would be unavailable absent federal support.

Budget & Enforcement

The FCC established a budget for the high-cost programs. The annual funding target is set at no more than \$4.5 billion per year over the next six years. This represents the same funding level as the high-cost program for Fiscal Year 2011. The administrator of the fund is directed by the FCC to forecast total high-cost demand at “no less than \$1.125 billion” per quarter.¹⁰⁰ Excess contributions will be credited to a new Connect America Fund reserve account, as opposed to lowering consumers’ contribution factor in subsequent quarter. The FPSC has addressed similar issues in reply comments to the FCC urging the FCC to reduce the burden on consumers by lowering the assessment factor, even if the lower rate would only be temporary.¹⁰¹

If the budget is projected to be exceeded, an automatic review will be triggered. While the Order states that this budget will ensure that individual consumers will not pay more in contributions, the order does not impose a cap as was used with both the Schools and Library Program or the Rural Healthcare Program. The FCC states that this budgetary target will remain in place until changed by a vote of the FCC, and that it may adjust the appropriate size of each of the remaining high-cost programs within the budget as needed. In comments before the FCC, the FPSC has supported capping the size of the high-cost fund and conditioned support of expanding supported services to include broadband only if there was no additional growth to the size of the fund.¹⁰²

⁹⁹ FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, In the Matter of Connect America Fund, released November 18, 2011, ¶560, <<http://www.fcc.gov/document/fcc-releases-connect-america-fund-order-reforms-usficc-broadband>>, accessed on May 24, 2012.

¹⁰⁰ Ibid, ¶560.

¹⁰¹ Reply Comments, WC Docket No. 05-337, October 21, 2010.

¹⁰² Comments, WC Docket No. 05-337, April 14, 2011; Reply Comments, August 11, 2010; Ex Parte Comments, December 15, 2009; Reply Comments, December 2, 2008; Comments, March 24, 2008.

Identical Support Rule

The FCC eliminated the identical support rule that determines the amount of support for competitive Eligible Telecommunication Carriers (ETCs) today. The Order freezes identical support per study area as of year end 2011, and phases down existing support over a five-year period beginning on July 1, 2012. The gradual phase down it adopts, in conjunction with the new funding provided by the Mobility Fund, is intended to ensure that over \$900 million is provided to mobile carriers for each of the first four years of reform (through 2015). The FPSC supported the elimination of the identical support rule in numerous comments and reply comments before the FCC.¹⁰³

Broadband Performance Requirements

The FCC adopted an initial minimum broadband speed benchmark for Connect America Fund (CAF) recipients of 4 Mbps downstream and 1 Mbps upstream.¹⁰⁴ In reply comments to the FCC, the FPSC supported a broadband speed benchmark of 3 Mbps downstream and 768 kbps upstream to minimize the impact expanding supported services would have on the size of the high-cost fund.¹⁰⁵

Eliminating Support for Areas with an Unsubsidized Competitor

The FCC concluded that it would phase out all high-cost support received by incumbent rate-of-return carriers over three years in areas where an unsubsidized competitor(s) meets certain criteria. The unsubsidized carrier must offer voice and broadband service that meets its performance obligations and serve 100 percent of the residential and business locations in the incumbent's study area.

2. Reform of Lifeline and Link-Up¹⁰⁶

On June 21, 2011, the FCC released a Report and Order (Order) to address waste in the universal service Lifeline and Link-Up programs.¹⁰⁷ It specifically addressed duplicative program payments for multiple Lifeline-supported services to the same individual. These measures will ensure that Lifeline support is limited to the amount necessary to provide access to telecommunications service to qualifying low-income consumers. The low-income programs

¹⁰³ Comments, WC Docket No. 05-337, April 14, 2011; Reply Comments, December 2, 2008; Comments, March 24, 2008.

¹⁰⁴ Ibid, ¶93.

¹⁰⁵ Comments, WC Docket No. 05-337, April 14, 2011.

¹⁰⁶ The Lifeline and Link-Up programs under the Universal Service Fund provide support to qualifying low-income consumers to ensure access to telephone service.

¹⁰⁷ FCC, Report and Order, FCC 11-97, WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45, released June 21, 2011, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0621/FCC-11-97A1.pdf>, accessed on June 5, 2012 .

have doubled over the last decade to almost \$1 billion.¹⁰⁸ According to the Universal Service Administrative Company, competitive ETCs, including

wireless ETCs, now have more Lifeline subscribers than incumbent ETCs.¹⁰⁹

The FPSC filed comments in the proceeding supporting many of the reforms contained in this Order on April 6, 2011.¹¹⁰ The FCC Order clarified its rules to expressly bar more than one benefit per subscriber per household, and will notify consumers with multiple subsidies that they are only allowed to have one. The FCC's Order takes the following actions:

- The Universal Service Administrative Company (USAC) must notify consumers receiving multiple Lifeline benefits that they are allowed to have only one Lifeline-subsidized phone service.
- Consumers have 30 days to choose which subsidized phone service to keep (consistent with FPSC comments).
- The company or companies not chosen by the consumer must de-enroll the consumer from Lifeline within five days after notification by USAC of the consumer's choice.
- At the end of the process, consumers will have no more than one Lifeline phone service.
- The rules adopted do not address issues of disqualification based on non-usage (as recommended in FPSC comments), but will be addressed in a future reform order.

B. Intercarrier Compensation

As part of its comprehensive effort to reform both intercarrier compensation and federal high-cost support, the FCC moved to change the existing intercarrier compensation regime.¹¹¹ A key component of the reform is the decision to transition intrastate access charges to mirror interstate access charges. This transition will reduce intrastate access charge rate levels thereby reducing intrastate revenues for local exchange carriers. The FCC preempts states that have jurisdiction over intrastate access charges, and asserts that states should assume responsibility for continuing to assist in the negotiation of interconnection agreements. The FCC also suggests

¹⁰⁸ FCC, "2010 Universal Service Monitoring Report," released December 2010, Table 2.2, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-303886A4.pdf>, accessed June 5, 2012.

¹⁰⁹ In 2010, 54.65 percent of low-income program disbursements went to competitive ETCs, while incumbent ETCs received 45.35 percent of low-income disbursements. Universal Service Administrative Company, 2010 Annual Report, at 13 (2010), <http://usac.org/_res/documents/about/pdf/usac-annual-report-2010.pdf>, accessed on June 5, 2012.

¹¹⁰ The associated Notice of Proposed Rulemaking that was released by the FCC on March 4, 2011.

¹¹¹ Bill-and-keep is a pricing arrangement for the interconnection of two telecommunications carriers under which each network agrees to terminate calls from the other network at no charge.

that states should continue serving as arbiters for interconnection disputes. The FCC believes that revisions outlined in the Order will result in:

- Reduced rates and improved service quality for wireless and long distance customers.
- More innovative communications offerings.
- Improved fairness and efficiency of subsidies flowing into high-cost rural areas.
- The elimination of barriers to the transformation of today's telephone networks into all-IP broadband networks.

Some states have already appealed the FCC's legal authority over preemption of intrastate access ratemaking relative to access charges and the transition to bill-and-keep.¹¹² The FPSC does not have explicit legislative authority to address intrastate access charge reform. Section 364.163, Florida Statutes, had capped the intrastate access rates, however those caps sunset on July 1, 2010.

1. Access Stimulation

The FCC sought to address Access Stimulation in its Order. Access stimulation is a form of competitive distortion that occurs when a LEC with high switched access rates enters into an agreement with a provider of high call volumes. This results in inflated access minutes terminated to the LEC, and the LEC then agrees to share a portion of its increased access revenues with the subscriber. Access stimulation artificially inflates the cost of interstate calls and has cost long-distance carriers more than \$2.3 billion over the past five years.¹¹³ The Order establishes conditions which, if met, require a LEC to reduce its interstate switched access rates to parity with the rates of the price cap LEC in the state with the lowest rates.¹¹⁴

2. Phantom Traffic

The FCC's Order establishes new rules to combat phantom traffic. Phantom traffic is traffic that terminating networks receive that lacks identifying information that allows carriers to properly assess terminating access charges. Phantom traffic makes up anywhere from 3-20 percent of traffic on carriers' networks and has the potential to cost consumers hundreds of millions of dollars annually.¹¹⁵ Carriers also claim that they are forced to divert resources in order to investigate and pursue billing disputes. The Order modified federal rules to require originating providers to supply certain information, including calling party number, for all voice

¹¹² States that have filed appeals include Arizona, Kansas, Ohio, Pennsylvania, and Vermont.

¹¹³ FCC 11-161, Order, WC Docket No 10-90, released on November 18, 2011, p. 213.

¹¹⁴ The first condition that would have to be met is a complaint regarding a provider that has entered into a revenue sharing agreement. The second condition occurs when a LEC's traffic volume either has a three-to-one interstate terminating-to-originating ratio in a calendar month or has more than 100 percent growth in switched access minutes-of-use in a month.

¹¹⁵ FCC 11-161, Order, WC Docket No 10-90, released on November 18, 2011, p. 227.

traffic, regardless of jurisdiction. The FCC also prohibited interconnecting carriers from stripping or altering call signaling information.

C. National Broadband Plan

According to the FCC's progress report on the National Broadband Plan (NBP), the actions described in the plan are 87 percent completed, with some work remaining primarily on the public safety network and E-Rate program reform.¹¹⁶ The National Broadband Map designed in the NBP has successfully been updated twice and now contains data submitted from nearly 1,800 broadband providers. The map is also now accessible as a mobile site and is updated twice a year with a searchable database currently containing over 20 million records collected from providers in all 50 states.¹¹⁷

The FCC released application criteria and a timeline for implementation of the broadband adoption Lifeline Pilot Program (Pilot Program) that was discussed in the NBP. The Commission budgeted \$25 million for the Pilot Program which will be used to support subsidized broadband through a number of eligible ETCs over a 12-month period. The Wireline Competition Bureau has been tasked with selecting a "diverse array" of projects that include different demographic areas and technology types. The entire program will last 18 months, with 3 months initially for administrative work, 12 months of subsidized service, and 3 months for data analysis. Applicants will be selected in the fall of 2012 to participate.¹¹⁸

¹¹⁶ A complete list of FCC completed actions relating to the National Broadband Plan can be found at <<http://www.broadband.gov/plan/broadband-progress-report.html>>.

¹¹⁷ Joan Engebretson, "Upgraded National Broadband Map Draws on Broader Database," *telecompetitor*, March 5, 2012, <<http://www.telecompetitor.com/upgraded-national-broadband-map-draws-on-broader-database/>>, accessed on June 14, 2012.

¹¹⁸ FCC 12-683, Public Notice, released April 30, 2012, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0430/DA-12-683A1.pdf>, accessed on June 14, 2012.

Appendix A. List of Certificated CLECs as 12/31/11

**Indicates that the company did not respond to the Commission's data request.

360networks (USA) inc.	Birch Telecom of the South, Inc. d/b/a Birch Telecom d/b/a Birch d/b/a Birch Communications
365 Wireless, LLC	**Bright House Networks Information Services (Florida), LLC
AboveNet Communications, Inc.	Broadband Communities of Florida, Inc.
Absolute Home Phones, Inc.	Broadband Dynamics, L.L.C.
Access Communications, LLC.	BroadRiver Communication Corporation
Access Media 3, Inc.	**Broadstar, LLC d/b/a PrimeCast
Access One, Inc.	Broadview Networks, Inc.
Access Point, Inc.	Broadvox-CLEC, LLC
Access2go, Inc.	Broadwing Communications, LLC
ACN Communication Services, Inc.	Brydels Communications, LLC
Advanced Communications Southeast, Inc.	BT Communications Sales LLC
Aero Communications, LLC	Budget PrePay, Inc. d/b/a Budget Phone
Affordable Phone Services, Inc.	BudgeTel Systems, Inc.
Airespring, Inc.	BullsEye Telecom, Inc.
ALEC, Inc.	Business Telecom, Inc. d/b/a BTI
Alternative Phone, Inc.	Callis Communications, Inc.
**American Fiber Network, Inc.	Cbeyond Communications, LLC
American Telephone Company LLC	Centennial Florida Switch Corp.
Americatel Corporation	Century Tel Fiber Company II, LLC d/b/a LightCore, a CenturyLink limited liability company
ANEW Broadband, Inc.	Cincinnati Bell Any Distance Inc.
Assurance Home Phone Services, Inc.	City of Daytona Beach
Astro Tel, Inc.	City of Gainesville, a municipal corporation d/b/a GRUCom
AT&T Communications of the Southern States, LLC d/b/a AT&T	City of Lakeland
ATC Outdoor DAS, LLC	City of Ocala
Atlantic.Net Broadband, Inc.	City of Quincy d/b/a netquincy d/b/a netquincy.com d/b/a www.netquincy.com
ATN, Inc. d/b/a AMTEL NETWORK, INC.	Clear Rate Communications, Inc.
Backbone Communications Inc.	Cogent Communications of Florida LHC, Inc.
**Baldwin County Internet/DSSI Service, L.L.C.	Comcast Business Communications, LLC d/b/a Comcast Long Distance
Bandwidth.com CLEC, LLC	Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone d/b/a CIMCO, a Division of Comcast Business Services
BCN Telecom, Inc.	
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 Communications, Inc.	

Appendix A. List of Certificated CLECs as 12/31/11

Comtech21, LLC
Convergia, Inc.
CoreTel Florida, Inc. d/b/a CoreTel
Covista, Inc.
Cox Florida Telcom, L.P. d/b/a Cox
Communications d/b/a Cox Business
d/b/a Cox
Crexendo Business Solutions, Inc.
Custom Network Solutions, Inc.
Dedicated Fiber Systems, Inc.
DeltaCom, Inc.
Dialtone Telecom, LLC
DIECA Communications, Inc. d/b/a Covad
Communications Company
Digital Express, Inc.
DIGITALIPVOICE, INC.
DPI Teleconnect, L.L.C.
DRS Training & Control Systems, LLC.
DSCI Corporation
DSL Internet Corporation d/b/a DSLi
DSLnet Communications, LLC
DukeNet Communications, LLC
Easy Telephone Services Company
ElectroNet Intermedia Consulting, Inc.
Embarq Communications, Inc. d/b/a
CenturyLink Communications
ENA Services, LLC
Enhanced Communications Network, Inc.
d/b/a Asian American Association
Entelegent Solutions, Inc.
Ernest Communications, Inc.
EveryCall Communications, Inc.
Excelacom Light, LLC.
Express Phone Service, Inc.
ExteNet Systems, Inc.
FiberLight, LLC
First Choice Technology, Inc.
First Communications, LLC
FL CLEC LLC
FLATEL, Inc.
FlatPhone, Inc. d/b/a FlatPhone
Florida Hearing and Telephone Corporation
d/b/a Florida Hearing and Telephone
Florida Multi Media Services, Inc. d/b/a
Florida Multi Media
Florida Phone Systems, Inc.
Florida Telephone Services, LLC
Fort Pierce Utilities Authority d/b/a
GigaBand Communications
FPL FiberNet, LLC
France Telecom Corporate Solutions L.L.C.
Frontier Communications of America, Inc.
General Computer Services, Inc. d/b/a
BeCruising Telecom
Georgia Public Web, Inc.
Global Connection Inc. of America (of
Georgia)
Global Crossing Local Services, Inc.
Global Response Corporation
Gracias VRS, LLC.
Granite Telecommunications, LLC
Great America Networks, Inc.
GTC Communications, Inc.
Harbor Communications, LLC
Hayes E-Government Resources, Inc.
Home Town Telephone, LLC
Hotwire Communications, Ltd.
Hypercube Telecom, LLC
IBC Telecom Corp.
IDT America, Corp. d/b/a IDT
Image Access, Inc. d/b/a NewPhone, Inc.
inContact, Inc. d/b/a UCN
iNetworks Group, Inc.
Infotelecom, LLC
IntelePeer, Inc.
Intellicall Operator Services, Inc. d/b/a ILD
Intellifiber Networks, Inc.
Interactive Services Network, Inc. d/b/a ISN
Telcom
InterGlobe Communications, Inc.
International Integrated Solutions, LLC
d/b/a International Network Solutions,
LLC
Internet & Telephone, LLC
Intrado Communications Inc.
ITS Telecommunications Systems, Inc.

Appendix A. List of Certificated CLECs as 12/31/11

J C Telecommunication Co., LLC
Kenarl Inc. d/b/a Lake Wellington
Professional Centre
Kissimmee Utility Authority
Knology of Florida, Inc.
Latin American Nautilus, U.S.A., Inc.
**Legacy Global Telecom
Level 3 Communications, LLC
Liberty Bell Telecom, LLC d/b/a Dish
Network Phone & Internet
Lightspeed CLEC, Inc.
Lightyear Network Solutions, LLC
Likwid Communications, Inc.
Linkup Telecom, Inc.
Litestream Holdings, LLC
Madison River Communications, LLC d/b/a
CenturyLink
**Local Telecommunications Services-
Florida, LLC
Marco Island Cable, Inc.
Maryland TeleCommunication Systems, Inc.
MassComm, Inc. d/b/a Mass
Communications
Matrix Telecom, Inc. d/b/a Matrix Business
Technologies also d/b/a Trinsic
Communications also d/b/a Excel
Telecommunications also d/b/a VarTec
Telecom also d/b/a Clear Choice
Communications
MBC Telecom LLC
MCC Telephony of Florida, LLC
McGraw Communications, Inc
MCImetro Access Transmission Services
LLC d/b/a Verizon Access Transmission
Services
McLeodUSA Telecommunications Services,
LLC.
Metropolitan Telecommunications of
Florida, Inc. d/b/a MetTel
Miami-Dade Broadband Coalition, Inc.
Micro Comm, Inc.
Mitel NetSolutions, Inc.
Momentum Telecom, Inc.
MOSAIC NETWORKX, LLC
Mountain Communications, LLC
MULTIPHONE LATIN AMERICA, INC.
Navigator Telecommunications, LLC
**NET TALK.COM, INC.
Network Billing Systems, LLC
Network Operator Services, Inc.
Network Telephone Corporation d/b/a
Cavalier Telephone d/b/a Cavalier
Business Communications
Neutral Tandem Florida, LLC
New Edge Network, Inc. d/b/a New Edge
Networks
New Horizons Communications Corp.
New Talk, Inc.
NextG Networks of NY, Inc. d/b/a NextG
Networks East
Nexus Communications, Inc. d/b/a Nexus
Communications TSI, Inc.
North County Communications Corporation
Norstar Telecommunications, LL
North American Telecommunications
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.
One Voice Communications, Inc.
OneTone Telecom, Inc.
Opextel LLC d/b/a Alodiga
Optical Telecommunications, Inc. d/b/a
HControl Corporation d/b/a SH Services
LLC
Orlando Telephone Company, Inc. d/b/a
Summit Broadband
Pac West Telecomm, Inc.
PaeTec Communications, Inc.
Peerless Network of Florida, LLC
PeerTel Communication, LLC
Phone Club Corporation

Appendix A. List of Certificated CLECs as 12/31/11

PNG Telecommunications, Inc. d/b/a
PowerNet Global Communications d/b/a
CrossConnect d/b/a Thr!ve
Communications
Preferred Long Distance, Inc.
Primus Telecommunications, Inc.
Protection Plus of the Florida Keys, Inc.
d/b/a ENGAGE COMMUNICATIONS
Public Wireless, Inc.
QuantumShift Communications, Inc.
Qwest Communications Company, LLC
Reliance Globalcom Services, Inc.
ReTel Communications, Inc.
Rightlink USA, Inc.
Ring Connection, Inc.
RNK Inc. d/b/a RNK Communications Inc.
Rosebud Telephone, 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
Servi Express Caracol d/b/a Telefonica
Express
Shands Teaching Hospital and Clinics, Inc.
Sign Language Access, Inc. d/b/a callVRS
SIP Interchange Corporation
SKYNET360, LLC
Smart City Networks, Limited
Partnership
Smart City Solutions, LLC d/b/a Smart City
Communications
**SNC Communications, LLC
Southeastern Services, Inc.
Southern Light, LLC
Southern Telecom, Inc. d/b/a Southern
Telecom of America, Inc.
Spectrotel, Inc. d/b/a One Touch
Communications d/b/a Touch Base
Communications
Sprint Communications Company Limited
Partnership
STS Telecom, LLC
Sun Tel USA, Inc.
Sunesys, LLC
T3 Communications, Inc. 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
TCG South Florida
TelCentris Communications, LLC
Telco Experts, LLC
TelCove Operations, Inc.
Tele Circuit Network Corporation
Telecom Management, Inc. d/b/a Pioneer
Telephone
Teleconnect of California, LLC d/b/a
Teleconnect LLC
TeleDias Communications, Inc.
Telepak Networks, Inc.
TelOps International, Inc. d/b/a AmTel
Telovations Inc.
Telrite Corporation
Tennessee Telephone Service, LLC d/b/a
Freedom Communications USA, LLC
Terra Nova Telecom, Inc.
The Boeing Company
The Other Phone Company, Inc. d/b/a
Cavalier Telephone d/b/a Cavalier
Business Communications
The Ultimate Connection, L.C. d/b/a
DayStar Communications
Think 12 Corporation d/b/a Hello Depot
Touchtone Communications Inc. of
Delaware
TQC Communications, Corp.
Tristar Communications Corp.
tw telecom of florida l.p.
U.S. Metropolitan Telecom, LLC
US LEC of Florida, LLC d/b/a PAETEC
Business Services
US Signal Company, L.L.C.
US Telesis, Inc.

Appendix A. List of Certificated CLECs as 12/31/11

Utility Board of the City of Key West d/b/a
Keys Energy Services
Vanco US, LLC
VBNet, Incorporated
Velocity The Greatest Phone Company
Ever, Inc.
Verizon Florida LLC
Verizon Select Services Inc.
Vixxi Solutions Inc.
VoDa Networks, Inc.
Voxbeam Telecommunications Inc.
Wholesale Carrier Services, Inc.

Wide Voice, LLC
WiMac Tel, Inc.
Windstream KDL, Inc.
Windstream Norlight, Inc.
Windstream NTI, Inc.
Windstream NuVox, Inc.
WonderLink Communications, LLC
WTI Communications, Inc.
XO Communications Services, Inc.
XYN Communications of Florida, LLC
YMax Communications Corp.
Zone Telecom, Inc.

Appendix B. Summary of Complaints Filed By LECs

Carrier		Date Opened	Complaint or Docket Number	Description	Date Closed	Resolution
AstroTel	Windstream	02/03/11	0993164T	Complaint regarding having difficulty getting customer's lines set up in a timely fashion/technical errors with installation.	03/29/11	The order was corrected and customer's account was properly set up.
AstroTel	Windstream	02/03/11	0993215T	Same as above.	03/29/11	Same as above
AstroTel	Verizon	02/03/11	099323T	Same as above.	02/28/11	Same as above
AstroTel	Windstream	02/11/11	0994518T	Same as above.	03/29/11	Same as above
AstroTel	Verizon	03/07/11	0997959T	Complaint about Verizon failing to properly expedite an order with an address issue.	04/13/11	The order was corrected and expedited.
Easy Telephone Services	Bellsouth	03/09/11	110065-TP	Dispute over cash back promotions.	06/02/11	Commission issued an order and complaint was closed.
Express Phone Service	Bellsouth	03/15/11	110071-TP	Complaint regarding interpretation of the interconnection agreement	02/03/12	Express Phone voluntarily dismissed the complaint without prejudice.
AstroTel	Verizon	10/14/11	1034468T	Complaint against Verizon for incorrectly setting up service to a consumer's home and then refusing to correct the issue, resulting in the customer going without service.	10/14/11	Loop provided/problem corrected same day the complaint was filed

Glossary

Access Line	The circuit or channel between the demarcation point at the customer's premises and the serving end or class 5 central office.
Backhaul	In wireless networks, the connection from an individual base station (tower) to the central network (backbone). Typical backhaul connections are wired high-speed data connections (T1 line, etc.), but they can be wireless as well (using point-to-point microwave or WiMax, etc.).
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.
Circuit	A fully operational two-way communications path.
CLEC	<i>Competitive Local Exchange Company</i> . Any company certificated by the Florida Public Service Commission to provide local exchange telecommunications service in Florida on or after July 1, 1995.
DSL	<i>Digital Subscriber Line</i> . A family of technologies (including variations such as asynchronous DSL, high bit-rate DSL, very high bit-rate DSL, etc.) that provides 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 non-wireless competition of cable modems.
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 premises. FiOS can currently provide Internet access with maximum download speed of 300 Mbps and upload speed of 65 Mbps.
ICA	<i>Interconnection Agreement</i> . An interconnection agreement is a contract that establishes the rates, terms and conditions that govern the business relationship between telecommunications companies.
ILEC	<i>Incumbent Local Exchange Company</i> . 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.

Glossary

Internet Protocol (IP)	The term refers to all the standards that keep the Internet functioning. It describes software that tracks the Internet address of nodes, routes outgoing messages, and recognizes incoming messages.
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.
Spectrum	In wireless, this refers to the radio portion of the electromagnetic spectrum. The radio spectrum spans a certain limited frequency range. The range of frequencies useful for cell phones is small. The FCC oversees the allocation of these frequencies in the U.S. Sections of spectrum are called "bands." Each of these bands are further subdivided into blocks, and these blocks are then licensed to individual wireless carriers.
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.
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.
U-verse	U-verse is the brand name of AT&T 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 rural, insular, high-cost areas, and public institutions.
VoIP	<i>Voice over Internet Protocol.</i> The technology used to transmit voice conversations over a data network using Internet Protocol.
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 9, 2012
TO: Braulio L. Baez, Executive Director
FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel
Benjamin J. Crawford, Government Analyst I, Office of Industry Development and
Market Analysis
RE: Federal Energy Regulatory Commission Orders No. 1000 and 1000-A Regarding
Transmission Planning and Cost Allocation by Transmission Owning and
Operating Public Utilities. Continuation of Briefing and Discussion of Options.

Critical Information: Please place on July 18, 2012, Internal Affairs. Guidance is sought regarding possible action.

At the June 19, 2012, Internal Affairs, the Commission discussed the Federal Energy Regulatory Commission (FERC) Orders Nos. 1000 and 1000-A regarding transmission planning and cost allocation by transmission owning and operating public utilities. Staff were directed to consult with additional people and provide information at this Internal Affairs. The June 19 Internal Affairs memorandum is attached for your convenience (Attachment A).

Consultations

Staff contacted the Office of the Attorney General and provided a briefing memorandum regarding the FERC Orders. At this point, the Office of the Attorney General has not indicated it will pursue an appeal.

A Notice of Appeal was filed by the Edison Electric Institute (EEI) on July 2, 2012. EEI is an association of shareholder-owned electric companies across the U.S. The National Rural Electric Cooperative Association filed a notice of appeal on July 3, 2012.

A number of state public service commissions, like the FPSC, filed requests for rehearing. These include Wisconsin, Vermont, North Carolina, Alabama, Georgia, South Carolina, New York, New Jersey, Kentucky, and Illinois. Also, the National Association for Regulatory Utility Commissioners filed. However, at this stage, we are only aware of the Alabama Commission's interest in taking additional legal action. Staff contacted the Alabama Commission; and it is our understanding they may be filing an appeal. The North Carolina Utilities Commission staff reported their Commission is still reviewing options, but they thought it was unlikely they would be taking further action. The deadline for appeal is July 16, and staff will have additional information about any notices of appeal at Internal Affairs.

Additional Information on Remaining Legal Options

Option 1. Intervene in another party's appeal. The FPSC could intervene in another party's appeal. The FPSC would be required to take the issues as that party has identified them. This should not create a concern if another state, like the Alabama Public Service Commission, appeals the Order. In reviewing the Alabama Commission's Request for Rehearing, it is clear their issues are aligned similarly with those of the FPSC. The intervener must file a motion for leave to intervene, but this should not create a concern. The timeframe for intervention is within 30 days of the filing of the last appeal. At this point, the Commission would have until August 2 to intervene.

Option 2. File as *amicus curiae*. This option would depend on the Court's granting *amicus curiae* status or all parties' consent in order for the FPSC to participate. The FPSC would not be considered a party but a "friend of the court." For example, an *amicus* may not file a reply brief or participate in oral argument without the court's permission. Also, an *amicus* may not appeal the Court's ruling.

Discussion of Various Factors

The practical implications of the Orders on state jurisdiction are not necessarily ominous in the near future. It may be the case that state commissions could wait until the "harm" occurs and challenge future orders.

The remaining concern is whether the principle of the Federal government being in the driver's seat on matters that have traditionally been reserved to state commissions is sufficient reason to take additional action. The statutes most directly affected are the Commission's "grid bill" authority and ratesetting authority. For example, Section 366.04(2)(c), F.S., provides the Commission with authority to require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes. Section 366.04(5), F.S., grants the Commission jurisdiction over the planning, development and maintenance of a coordinated electric power grid throughout Florida to assure an Adequate and reliable source of energy. Section 366.05(8), F.S., authorizes the Commission to hold proceedings if there is probable cause to believe that inadequacies exist with the grid. The Commission then may require installation or repair of necessary generation or transmission facilities. Under the Orders, transmission planning now would fall within the bailiwick of the FERC Order 1000 stakeholder process. Also, the cost allocations would be potentially shifting some costs from other regions to state retail ratepayers, which would impact the Commission's ratesetting authority.

Conclusion

The pros and cons of intervention and *amicus curiae* appear similar, as may be seen in the attached chart.

Amicus Curiae and Intervention Options

		Amicus	Intervention
1.	Must obtain leave of Court	Yes, unless all parties consent	Yes
2.	Filing Fees	0	0
3.	Standing to appeal	No	Yes
4.	Filing of Reply Brief	No, unless Court permission	Yes

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: June 11, 2012

TO: Braulio L. Baez, Executive Director

FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM*
Benjamin Crawford, Government Analyst, Regulatory Analysis Division *BC*
Mark Futrell, Public Utilities Supervisor, Regulatory Analysis Division *MF*

RE: Briefing on FERC Order No. 1000-A Regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities *RT*

Critical Information: Please place on June 19, 2012, Internal Affairs. Guidance is sought regarding possible action. The deadline for filing an appeal of the Orders is July 16, 2012.

On May 17, 2012, the Federal Energy Regulatory Commission (FERC) issued FERC Order No. 1000-A, which denied rehearing requests made regarding FERC Order No. 1000 and clarified a few areas of concern. FERC Order No. 1000, issued on July 21, 2011, had adopted new regional and interregional processes nationwide for transmission planning and cost allocation. The Florida Public Service Commission (FPSC) had been among dozens of states, utilities, and other stakeholders requesting that FERC rehear and clarify its Order. In its request for rehearing and clarification of FERC Order No. 1000, the FPSC raised three issues:

- (1) FERC infringed on state jurisdiction in the transmission planning sections;
- (2) FERC infringed on state jurisdiction in the cost allocation sections; and
- (3) FERC should address the lack of clarity in FERC Order No. 1000, should define "benefits," and clarify that benefits must be quantifiable pursuant to existing state and federal law.

In the 593-page Order No. 1000-A, FERC denied rehearing and chose not to clarify the ambiguities. FERC argued that, regardless of the effects of its cost allocation order, it did not infringe on state jurisdiction because the states still retained jurisdiction over retail rates. Additionally, FERC elected not to clarify the definition of benefits or to require benefits to be based on existing state or federal law. Instead, FERC stated that each region should define benefits based on whatever parameters it deems appropriate.

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Commission guidance is sought as to whether the FPSC wishes to take further action. If the Commission wishes to take additional action, the options include: (1) appeal the Order Nos. 1000 and 1000-A, (2) intervene in another party's appeal, or (3) move to file as *amicus curiae*.¹

The FERC-state jurisdictional divide is addressed in these Orders. The FERC continues to set itself up as a national arbiter of what have historically been, at least in part, state jurisdictional matters. The Orders also will entail more active state commission involvement in FERC compliance proceedings.

Thus far, there have been three appeals of these two Orders. The Coalition for Fair Transmission Policy (which includes Southern)², the South Carolina Public Service Authority (not a state commission), and the Sacramento Municipal Utilities Department have filed appeals. It is early in the process for most state commissions as the deadline is not until July 16, 2012.

Order No. 1000 itself was a major order addressing transmission planning and cost allocation by transmission owning and operating public utilities. Both Orders establish a new paradigm for addressing regional transmission. Transmission stakeholders are placed in the role of developing plans to comply with FERC's new requirements. Then, FERC would approve, modify, or reject the compliance plans. State commissions are allowed to participate in the process only as stakeholders, and the compliance plans ultimately go to FERC for review.

The filing of an appeal does not toll the time for utilities to comply with the Orders. Utilities must meet the October 11, 2012, compliance filing date. Thus, the utilities are moving forward in discussions with stakeholders to create regional transmission plans and regional cost allocation filings.

The FPSC's Request for Rehearing

As enumerated above, the FPSC request for rehearing of the first Order raised three issues. First, the FERC is infringing on state jurisdiction in the transmission planning sections for regional and interregional scenarios. Florida law provides the FPSC with authority over transmission planning, siting, and cost recovery. FERC Order 1000 relegates State Commissions to mere stakeholders. This is contrary to the role set out by Florida law.

Second, the FPSC sought rehearing because FERC is infringing on state jurisdiction in the cost allocations sections for regional and interregional scenarios. Florida law provides the FPSC with authority to allocate costs of transmission additions. Florida remains a state with vertically integrated utilities, and no part of the state is a member of a Regional Transmission Organization. Florida law provides the FPSC with authority to allocate costs of transmission additions in proportion to benefits received. The concern is that the Federal government will determine cost allocations that may affect Florida retail ratepayers.

¹ Another option would be sending a letter to Florida's Congressional delegation. The FPSC has already stated its position in two sets of comments to FERC and in a request for rehearing, but has not sent a letter to the delegation.

² Progress Energy was part of the coalition at the comment stage, but is not a part of the appeal.

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Third, the FPSC raised the issue that FERC did not clearly define “benefits” in the Order so that states and stakeholders may know the impact of the Order. The FPSC opined that this ambiguity violates the Due Process Clause’s “fair notice” requirement, which mandates that a Federal agency has to make clear to the affected parties the scope of their legal obligations. Also, the FERC should clarify that “benefits” must be quantifiable and based on the public policy requirements of applicable state and Federal law.

FERC Rehearing Order No. 1000-A

Order No. 1000-A affirms FERC’s determinations in Order No. 1000 that each public utility transmission provider must participate in a regional transmission planning process that produces a regional transmission plan.³ The local and regional planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations. There must be improved coordination between neighboring transmission planning regions for new interregional facilities.

The Order affirms that each public utility transmission provider is required to participate in a regional transmission planning process that has a regional cost allocation method for new transmission facilities selected in a regional plan for cost allocation, and an interregional cost allocation method for costs for transmission facilities located in two neighboring regions.

In general, much of FERC Order No. 1000-A seems designed to ease concerns regarding FERC Order No. 1000. FERC asserts that regions cannot unilaterally assign costs to other regions. It also allows the current reliability regions to form the basis for regions under the new transmission planning process. Regions will be allowed to define benefits how they see fit, subject to FERC review. Every region will have considerable flexibility regarding how it operates. FERC also assures stakeholders that if they believe current processes meet the requirements of FERC Order No. 1000, those transmission planners can submit those plans to FERC.

The Order No. 1000-A also, however, raises several concerns. FERC retains authority to review and reject a transmission plan or cost allocation plan. State regulatory authorities only have a role in the planning process if the transmission stakeholders agree. While FERC will not allow regions to unilaterally assign costs, its overriding role over interregional planning, as well as its refusal to use a common definition of benefits, still allows for the possibility that project costs from one region will be assigned to another region if FERC sides with the assigning region’s definition of “benefits.”

Paragraph 66 of FERC Order No. 1000-A states:

We also disagree with Southern Companies and others that assert that there is not an issue to be remedied in their respective regions. As we note above, if public utility transmission providers believe that they already satisfy the

³ Staff has prepared a detailed summary of Order No. 1000-A, which is available upon request.

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minimum requirements in Order No. 1000, they may seek to demonstrate this in their compliance filings.

This paragraph highlights the contradictions about states retaining jurisdiction. FERC's overall arbiter/review role undercuts many of the assurances in Order No. 1000-A regarding autonomy.

The FERC says it is critical for it to act now because there is a need for significant new investment in new transmission facilities in order to meet reliability needs and integrate new sources of generation. It will not wait for systemic problems to undermine transmission planning before action is taken. FERC disagreed with assertions that it relied on unsubstantiated allegations of discriminatory conduct. The FERC cites extensive case law for its belief that it has legal authority to take these actions.

On cost allocation, the FERC cites case law to support its view and also points numerous times to the paradigm in which the stakeholders initially work out the cost allocation and then FERC reviews it. FERC seems to believe that this approach cures any policy, practical, or legal issues.

On interregional issues, FERC states that it will use the record of the proceedings from both regions to reach a decision. Thus, the FERC could find in favor of the assignment of costs to a region. On the one hand, FERC provides assurances that each region can define the benefits of transmission additions, and that one region cannot unilaterally assign costs to another. However, the FERC retains the role to assign costs to a region when a dispute arises.

The FERC dismisses state utility commission concerns that the new process will undermine state statutory requirements and the general role of state public utility commissions. The FERC acknowledges that state commissions are not regular stakeholders. It continues to offer that participation in the stakeholder process is the way for state commissions to influence the outcome. Also, FERC elaborates that state commissions are welcomed to form committees of state commissions to review regional issues. Lastly, FERC notes that state commissions may participate at the FERC in compliance proceedings.

FERC appears to give the transmission stakeholders the ability to define the state commission role, rather than state law. This process may increase the staff resources needed to actively participate in the stakeholder proceedings to help ensure the state commission statutory role is honored.

The legal concerns, as filed in the FPSC's request for rehearing of Order No. 1000, remain the same. The ramifications could be that, if the Orders are not overturned, the FERC will be playing an expanded role. In both Orders, the harm may not appear to be extensive, because many determinations are left for a later time. However, it could be the case that future orders – perhaps under a different FERC – could lead the FPSC to be in less of a position to implement state statutory provisions in Chapters 366 and 403, Florida Statutes. A future FERC may be less inclined to defer to state commissions.

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June 11, 2012
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Options

Commission guidance is sought as to whether the FPSC wishes to take further action, if any, concerning Order Nos. 1000 and 1000-A. If the Commission wishes to take additional action, options include:

Option 1. Appeal the orders. The FPSC could file an appeal in the Eleventh Circuit Court of Appeals or the D.C. Circuit Court of Appeals. Other state commissions may be filing appeals. If other state commissions file appeals, the FPSC may join in on a brief with them. Historically, the FPSC has participated in this way in challenges to FERC and Federal Communications Commission orders. There will be some costs associated with the appeal, such as filing fees. It may involve travel for oral argument. The Order was issued May 17, 2012. Thus, an appeal must be filed within 60 days, or by July 16, 2012.

Option 2. Intervene in another party's appeal. The FPSC could intervene in another party's appeal. However, the FPSC would be required to take the issues as that party has identified them.

Option 3. File as amicus curiae. This option would depend on the Court's granting *amicus curiae* status in order for the FPSC to participate. The FPSC would not be considered a party but a "friend of the court." For example, an *amicus* may not file a reply brief or participate in oral argument without the court's permission.

STATE OF FLORIDA

RONALD A. BRISÉ
CHAIRMAN



Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
(850) 413-6046

Public Service Commission

June 21, 2012

Ms. Regina McCarthy
Assistant Administrator for Air and Radiation
U.S. Environmental Protection Agency Headquarters
Ariel Rios Building, Mail Code 6101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, EPA-HQ-OAR-2011-0660 – **Request for Extension of Time to File Comments**

Dear Ms. McCarthy:

On April 13, 2012, the Environmental Protection Agency (EPA) published in the Federal Register the above Notice of Rulemaking. The deadline for filing comments was listed as June 12, 2012. We understand that the EPA has extended this comment period until June 25, 2012.

Although the Florida Public Service Commission (FPSC) acknowledges that the EPA has extended the comment period by 13 days, the FPSC seeks a 30-day extension to file comments in the above rulemaking. The complexity of the rulemaking and associated technical documents, along with the potential impact on Florida's utilities and consumers will entail additional time for review. The next scheduled meeting at which the FPSC can consider comments is July 18, 2012.

It is clear that the regulation of greenhouse gases from power plants will have a major impact on Florida's electric ratepayers. The FPSC is statutorily authorized pursuant to Chapter 366, Florida Statutes, to provide cost recovery to the investor-owned electric utilities for prudent environmental compliance expenditures through a cost recovery clause. Thus, the rulemaking is of direct interest to the FPSC, Florida's electric utilities and their ratepayers. State Commissions consider a number of issues in reviewing the proposed rules, including the impact on reliability, the impact on all classes of consumers, and the impact on a state's fuel mix and fuel costs. This analysis certainly calls for a lengthy comment period.

Ms. Regina McCarthy

June 21, 2012

Page 2

In the alternative, the FPSC requests that the EPA give full consideration to its late-filed comments to be filed in July 2012. The FPSC plans to submit detailed Florida-specific information that should prove useful to the EPA in its deliberations on this rulemaking.

We appreciate your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald A. Brisé", with a large, stylized flourish extending to the right.

Ronald A. Brisé
Chairman

RAB/css

cc: Mr. Christian Fellner
Dr. Nick Hutson

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

NOTE: The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials for Internal Affairs

NOTE: The following material pertains to
Attachment 4 of this document.

From the Desk of

Greg Shafer

July 18, 2012

TO: Braulio Baez, Executive Director

FROM: Greg Shafer *GS*

RE: Corrections to the Draft 2012 Report on the Status of the Telecommunicaions Industry

Attached are additional changes to the competition report that came to my attention last evening. There are five affected pages in track change format.

cc: Curt Kiser
Charles Hill

Parties Staff Handout
Internal Affairs/Agenda
on 7/18/12
Item No. 2

CLEC Market Share

- CLECs' market share of all wireline access lines (residential and business) in Florida ~~remained steady at~~ increased to 20 percent as of December 2011 from 18 percent in 2010.²
- CLEC residential market share decreased to 2 percent in 2011, from 4 percent in 2010.
- CLEC business market share decreased to 36 percent in 2011, from 39 percent in 2010.

CLEC Access Lines

- Total CLEC access lines increased by 4 percent from December 31, 2010, to December 31, 2011.
 - CLEC residential access lines decreased by 51 percent.³
 - CLEC business access lines increased by 11 percent.
- CLEC business access lines were 94 percent of total CLEC access lines served in 2011, compared to 64 percent in 2010.

ILEC Access Lines

- Total ILEC access lines decreased by 8 percent from December 31, 2010, to December 31, 2011.
 - ILEC residential lines decreased by 16 percent.
 - ILEC business lines increased by 8 percent.
- ILEC residential lines accounted for 58 percent of total ILEC access lines in 2011.
- ILEC business access lines were 42 percent of total ILEC lines served in 2011, compared to 28 percent in 2010.

² 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 CenturyLink are reported as competitive lines only when those access lines are outside of the parent company's footprint. The 2011 report failed to make this adjustment and the 2010 data has been corrected to reflect the adjustment for the current report.

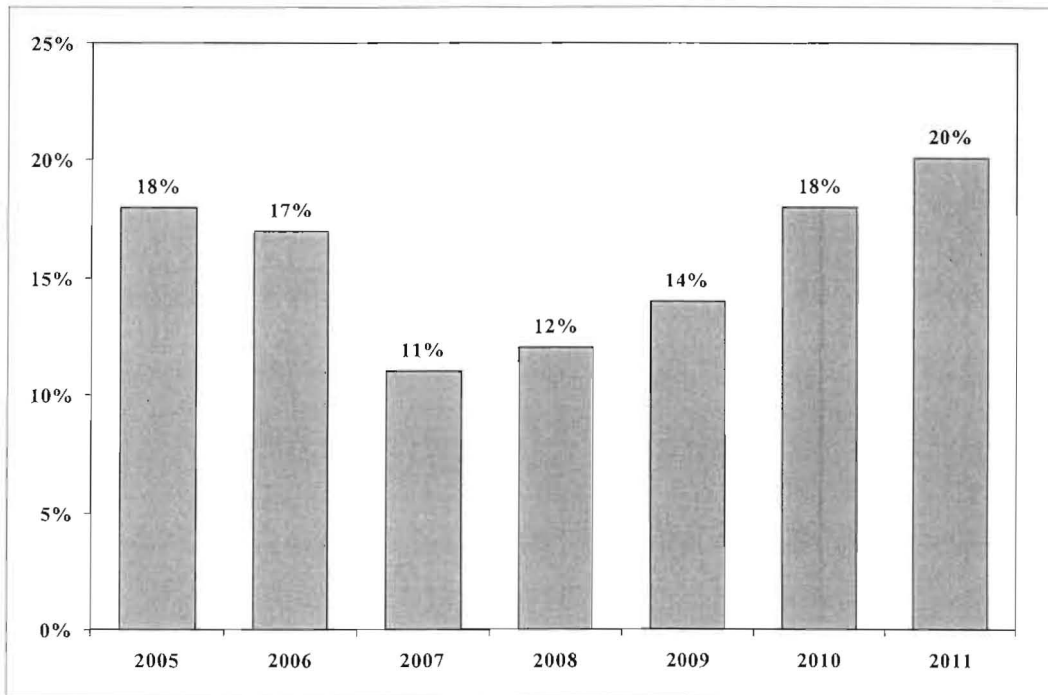
³ Approximately 85 percent of the decline was associated with two particular CLECs that admitted to reporting errors for the year ending December 2010; revised data for that period was not provided.

1. CLEC Market Share

a. Florida

Calculations based on responses to the Commission's data request indicated the overall CLEC wireline market share was 20 percent as of December 2011, ~~the same percent as an~~ increase from 18 percent in 2010. Figure 3-1 provides the CLEC wireline market share percentages for total access lines (combined residential and business lines) from 2005 through 2011.

Figure 3-1. Florida CLEC Market Share



Source: Responses to FPSC data requests (2006-2012)

E. Competitive Market Analysis and Statutory Issues

The 2011 Florida Legislature amended Chapter 364, F.S., and the amended sections became effective July 1, 2011. Some of those changes directly affect the form of this report. Section 364.386, F.S., previously contained six issues the Commission was required to address in its annual report on telecommunications competition. The amended statutes have only four issues the report must address. The new issues emphasize analysis of the impact of competition and regulatory changes on the telecommunications market.

1. 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 total number of access lines in Florida decreased by 8 percent, and CLEC lines increased 4 percent between December 2010 and December 2011, and total CLEC market share in Florida ~~remained steady at~~ increased to 20 percent in 2011 from 18 percent in 2010. In addition, Florida wireless subscribers increased in 2011, to 17.6 million (handsets in service)⁴⁷ and residential VoIP subscribership rose to nearly 2.4 million.⁴⁸ This data suggests that CLECs, VoIP, and wireless carriers are able to provide functionally equivalent services to residential and business customers at rates, terms and conditions acceptable to consumers. The number of CLECs offering a variety of services also indicates the availability of functionally equivalent services at comparable terms. Other services offered by the 117 CLECs that reported providing local service include:

- Bundles including services other than local voice (36 CLECs)
- VoIP (54 CLECs)
- Broadband Internet ~~A~~ access (22 CLECs)
- Fiber to end users (3 CLECs)⁴⁹
- Video ~~S~~ service (7 CLECs)

The majority of CLECs reported no barriers to competition in the comment portion of the survey. A few carriers noted concern over the deregulation of ILECs and the inability to charge rates that are competitive with ILEC rates, due to the cost of wholesale service.

Conclusion: The majority of CLECs did not report any significant barriers to competition. Subscribers to CLEC, VoIP, and wireless services continued to increase in 2011, reflecting the opportunity for customers to seek out services from providers other than traditional ILECs. Many CLECs reported offering a variety of services and packages comparable to those

⁴⁷ FCC, "Local Telephone Competition: Status as of June 30, 2011," June 2012, Table 18, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0614/DOC-314631A1.pdf>, accessed June 20, 2012.

⁴⁸ Responses to FPSC data requests 2011 and 2012.

⁴⁹ Carriers that resell fiber loops provided by other carriers were not included.

2011.⁷⁰ This represents a 16 percent increase of total interconnected VoIP subscribers nationwide from June 2010.⁷¹ Data collected by the FPSC shows an estimated 2.42 million residential interconnected VoIP service subscribers in Florida as of December 2011.⁷²

1. National Market Analysis

The VoIP market continues to be dominated by cable companies while traditional wireline carriers, such as AT&T and Verizon have made gains with their fiber-based offerings. Other ILECs and CLECs have also increased their VoIP service subscriptions. In addition, public Internet service providers, including Google and Skype are also providing VoIP services. Reliable information on subscribership is not available for all some carriers but less so for others.

a. Facilities-Based VoIP Providers

ILECs, CLECs, and cable companies provide interconnected VoIP services. Cable companies continue to dominate the facilities-based VoIP market with an estimated 25.4 million residential VoIP subscribers by as of June 2011 according to the FCC.⁷³ More recent data is available from publicly traded carriers. Comcast, the largest cable company nationally, had 9.3 million VoIP subscribers by at the end of 2011. Time Warner Cable and Cablevision Systems had 4.7 million and 2.4 million VoIP subscribers respectively; over the same time period. All the large cable companies continue to experience growth in VoIP subscribers, but at a significantly slower rate. For example, from 2007 to 2008, these companies experienced VoIP growth rates that ranged between 15 to 30 percent. For 2011, that range fell to 4 to 8 percent.

Wireline telephone companies continue to deploy facilities-based VoIP services over fiber-based facilities. While AT&T and Verizon continue to show losses in traditional voice access lines, both companies have posted gains associated with their other service offerings. AT&T reported approximately 2.3 million U-verse voice subscribers at year-end 2011, up substantially from the 1.7 million connections in 2010.⁷⁴ Verizon reported 1.9 million FiOS Digital Voice subscribers at the end of 2011, more than double the 817,000 reported a year earlier.⁷⁵

⁷⁰ FCC, "Local Telephone Competition: Status as of June 2011," Table 10 and Table 11, June 2012, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012db0614/DOC-314631A1.pdf>, accessed on June 15, 2012.

⁷¹ FCC, "Local Telephone Competition: Status as of June 2010," Table 8, March 2011, <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305297A1.pdf>, accessed June 4, 2012.

⁷² Responses to FPSC Local Competition Data Request 2012.

⁷³ FCC, "Local Telephone Competition: Status as of June 2011," Table 10 and Table 11, June 2012, <http://transition.fcc.gov/Daily_Releases/Daily_Business/2012db0614/DOC-314631A1.pdf>, accessed on June 15, 2012.

⁷⁴ AT&T 2011 Annual Report, <http://www.att.com/Common/about_us/files/pdf/ar2011_annual_report.pdf> accessed on June 7, 2012.

⁷⁵ Verizon Communications' Financial and Operating Information, Wireline – Selected Operating Statistics, <http://www22.verizon.com/idc/groups/public/documents/adacct/2012_q1_foi_xls.xls>, from <http://www22.verizon.com/investor/investor_home.htm>, accessed on June 7, 2012.

Chapter V. State Activities

A. Intercarrier Matters

1. Verizon / Bright House Access Charge Complaint

In 2011, Bright House Networks, Florida, filed a complaint against Verizon Florida for failure to pay intrastate access charges on telecommunications traffic originating on Bright House's VoIP network.⁸⁸ Verizon contended because the traffic originated on a VoIP system, the traffic was inherently interstate in nature and not appropriate for intrastate access compensation. During the pendency of the complaint, the FCC issued a Notice of Proposed Rule Making, finding that it had not declared VoIP-originated traffic to be inherently interstate in nature. Subsequent to the FCC's notice, the parties filed for a voluntary dismissal of the complaint.

2. AT&T / Express Phone Dispute

The dispute relates to Express Phone's allegation that AT&T Florida failed to honor Express Phone's request to adopt the interconnection agreement (ICA) between AT&T and another CLEC.⁸⁹ Express Phone contends that the alleged failure would violate the federal Telecommunications Act of 1996.

On April 4, 2011, AT&T filed its response arguing that Express Phone had not honored its commitments under the ICA but instead, under the guise of a billing dispute, has stopped paying its bills contrary to ICA language which states that Express Phone must "make payment to AT&T for all services billed including disputed amounts." AT&T opposed Express Phone's request to adopt a different agreement alleging Express Phone had no right to switch from one ICA to another since the current ICA is in effect until November 2011. At its June 14, 2011 Commission Conference the FPSC found that Express Phone could not adopt a different ICA because it was in material breach of its existing ICA. Express Phone protested the order and an evidentiary hearing was held May 3, 2012. A FPSC decision is scheduled for July 17, 2012. On July 17, 2012, the Commission adopted the staff's recommendation that Express Phone could not adopt an alternative ICA when it failed to materially comply with its existing ICA.

⁸⁸ Docket No. 110056-TP – Complaint against Verizon Florida, LLC and MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges for the origination and termination of intrastate interexchange telecommunications service, by Bright House Networks Information Services (Florida), LLC.

⁸⁹ Docket No. 110087-TP, In re: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Image Access, Inc. d/b/a NewPhone, Inc. by Express Phone Service, Inc.

IV. Transcript

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STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

Internal Affairs Meeting
Wednesday, July 18, 2012
Betty Easley Conference Center, Room 140

1 P R O C E E D I N G S

2 CHAIRMAN BRISÉ: Good morning. We'll call
3 this Internal Affairs to order. It is Wednesday,
4 July 18th, and it is 9:30 a.m. We are in the proper
5 position or posture to receive a motion -- to accept a
6 motion.

7 COMMISSIONER BALBIS: For the minutes?

8 CHAIRMAN BRISÉ: For the minutes.

9 COMMISSIONER BALBIS: Chairman.

10 CHAIRMAN BRISÉ: Yes.

11 COMMISSIONER BALBIS: I have one change that I
12 would like to request for us to consider.

13 CHAIRMAN BRISÉ: Sure.

14 COMMISSIONER BALBIS: In other matters,
15 although it would be great that we (inaudible) vote to
16 extend the comments, we actually voted to request that
17 EPA extend the deadline. We need to revise the minutes
18 to reflect that.

19 CHAIRMAN BRISÉ: Okay.

20 COMMISSIONER GRAHAM: The minutes are
21 approved.

22 COMMISSIONER EDGAR: I would just, would just
23 suggest in that last statement then it could be just
24 added, Commissioners unanimously voted to request EPA to
25 extend the deadline.

1 **CHAIRMAN BRISÉ:** All right. So we have a
2 motion, cleaned up by Commissioner Edgar. Do we have a
3 second?

4 **COMMISSIONER BROWN:** Second.

5 **CHAIRMAN BRISÉ:** All right. All in favor, say
6 aye.

7 (Vote taken.)

8 Okay. Now back on the minutes, do we have a
9 motion for that?

10 **COMMISSIONER GRAHAM:** Move to approve the
11 minutes as amended.

12 **COMMISSIONER EDGAR:** Second.

13 **CHAIRMAN BRISÉ:** There's a second. All in
14 favor.

15 (Vote taken.)

16 Thank you very much. Moving on to the first
17 item -- the second item on our agenda, and that is the
18 draft report on the status of competition in the
19 telecommunications industry.

20 **MR. SHAFER:** Thank you, Mr. Chairman. Good
21 morning, Commissioners.

22 As you know, we've been doing this report for
23 quite a while, and this year the story hasn't really
24 changed very much from recent history. Wireline access
25 lines continue to decline for both ILECs and CLECs,

1 particularly in the residential market.

2 For the first time since we've been doing the
3 report, wireline business access lines actually exceeded
4 wireline residential access lines, and I think that's
5 primarily because the residential market is saturated
6 with wireless users and VoIP primarily through the cable
7 providers. It's also making -- or has -- continues to
8 make major inroads.

9 The CDC reported just very recently that as of
10 June of 2011 there were 34%, 34% of U.S. households were
11 wireless only, compared to 2003 that number was 3%. And
12 if you look at a graphic representation of how that's
13 progressed, it's been remarkably consistent.

14 So one -- some of the trade press seems to
15 think that that market or that wireless only household
16 is going to level out, but so far there's no indication
17 that that's going to -- that that's happened.

18 In addition, there was an increase of
19 approximately 500,000 residential access lines served by
20 VoIP in the state. Primarily, again, that's cable, but
21 not exclusively. And the FCC's most recent report
22 reflects that 73% of Florida households have broadband
23 access at speeds -- or internet access at speeds greater
24 than 200 kilobits per second. So, again, that's a
25 growing number, although it has slowed in recent years.

1 I apologize. We did have some corrections
2 that came to light last evening and you got, each of you
3 got a handout on that. If you like, I can go through
4 those. One of the -- the one number or the one
5 correction affected three different pages. We had to
6 recast some numbers from 2010 because the, an adjustment
7 to reflect how ILEC affiliated CLEC lines are treated
8 was not made in last year's data, we found that, and
9 that affected the market share, the total market share
10 number, and that was the correction that we did not flow
11 through. And that -- last year's market share should
12 have been 18% rather than 20, and that flowed through on
13 three different pages of the report, page 2, page 15,
14 including the graph, and page 22.

15 The other change was in the -- it appears on
16 page 30 in the second line was the number of, estimated
17 number of residential interconnected VoIP consumers.
18 That should be 2.4 rather than 2.2. I just missed it.
19 And then the last page of the handout was the report,
20 page 35, is just an update on the Express Phone write-up
21 to reflect yesterday's decision by the Commission at
22 Agenda.

23 I'd be happy to answer any questions.

24 **CHAIRMAN BRISÉ:** Thank you very much.

25 Commissioners, are there any questions?

1 Okay. All right. Do we have a motion to
2 accept or to approve the report?

3 **COMMISSIONER EDGAR:** So move.

4 **CHAIRMAN BRISÉ:** Second?

5 **COMMISSIONER BALBIS:** Second.

6 **CHAIRMAN BRISÉ:** All right. Moved and
7 properly secondly. All in favor, say aye.

8 (Vote taken.)

9 All right. Thank you very much. Moving on to
10 item number 3, which is dealing with the FERC Order 1000
11 and 1000-A. We have some new information since the last
12 time we met.

13 **MS. MILLER:** Yes. Thank you. Cindy Miller
14 with the Office of General Counsel. We me is Ben
15 Crawford of the Office of Industry Development and
16 Market Analysis.

17 At the last Internal Affairs staff was
18 directed to consult with various entities and see
19 whether there are legal actions planned against the
20 Federal Energy Regulatory Commission Orders Number 1000
21 and 1000-A on transmission planning and cost allocation.

22 We've consulted with the Office of the
23 Attorney General and various state commission staffs.
24 The Attorney General has not indicated an interest in
25 challenging the order. While there were 11 state

1 commissions and NARUC that filed a request for rehearing
2 of the FERC Order 1000, only the Alabama Commission has
3 filed an appeal.

4 There were 15 appeals filed in total by other
5 entities, and this included Southern Company, the
6 Coalition for Fair Transmission Pricing, the Edison
7 Electric Institute, the Large Public Power Council, the
8 National Rural Electric Cooperative Association. We
9 seek Commission guidance as to whether the Commission
10 wishes to take additional legal steps regarding these
11 orders.

12 **CHAIRMAN BRISÉ:** Commissioners?

13 **COMMISSIONER BROWN:** Cindy, where do all of
14 the, all of the IOUs stand with respect to the order?
15 Because I know there's some differing interests. Could
16 you walk us through where each item stands?

17 **MS. MILLER:** Well, my understanding is of
18 course that Southern and Gulf have great concerns with
19 the order, as you heard at the last IA. Other than
20 that, I'm not quite sure on this. Edison Electric
21 represents like 90% of the utilities nationwide, so I'm
22 not quite sure how that fits together. But from our
23 last Internal Affairs, my understanding is that our
24 peninsular Florida investor-owned utilities do not plan
25 to take any action against the order.

1 **COMMISSIONER BROWN:** Okay. I know we're, you
2 know, charged with representing all of the interests of
3 the IOUs in Florida as well as ratepayers. So I'm just
4 curious if we do agree to intervene in the Alabama
5 appeal, how that will affect the other IOUs' interests.

6 **MR. TRAPP:** If I could interject just briefly
7 on a somewhat related side note.

8 **COMMISSIONER BROWN:** Please sit down.

9 **MR. TRAPP:** I'm sorry. I really didn't mean
10 to come up, but this is (inaudible).

11 (Simultaneous conversation.)

12 (Laughter.)

13 Under, under the new organization I have to
14 represent the engineers, so I'm going to tell you some
15 engineering, if I could, briefly.

16 The engineering staff is monitoring the
17 compliance discussions that are taking place at the
18 FRCC. And the investor-owned utilities within
19 peninsular Florida have put out a compliance draft, if
20 you would, and there is some input from other parties on
21 that draft. So there's some discussions going on at the
22 FRCC level about the compliance filing, and the staff
23 has been a party to that through phone interconnection
24 to the meetings. We're very jealously guarding the
25 Commission's jurisdiction and the state jurisdiction

1 aspects, and of course very interested in any
2 discussions with respect to the cost allocation impacts
3 that were identified in the Orders 1000 and 1000-A.

4 So in that regard, it's separate, but we are
5 following to make sure that if any technical
6 complications come up, that you're aware of them and act
7 with respect to compliance with the order. That, of
8 course, is totally separate from the legal decision of
9 whether you want to go to court. I just thought you
10 needed to know that.

11 **COMMISSIONER BROWN:** Thank you.

12 Cindy, do you want to follow up with my
13 question?

14 **MS. MILLER:** Well, I think Bob said it well,
15 that our investor-owned utilities in peninsular Florida
16 are proceeding with the compliance process. And so I
17 think there's, you know, an acknowledgment that the
18 orders are there and there will be compliance.

19 In talking with other states, I know that the
20 New York commission is trying to not challenge the
21 orders, but their staff said that they are looking at
22 trying to carve out their role in the stakeholder
23 process. So I know that some states, you know, are
24 trying to approach it that way. The orders, the orders
25 are what they are in terms of the two issues, telling

1 states to participate as stakeholders and --

2 **CHAIRMAN BRISÉ:** Commissioner Brown, I think
3 there may be some representatives here (inaudible). I
4 think Mr. Lewis may want to be heard as well.

5 **MR. LEWIS:** Yeah. I'm -- thank you,
6 Commissioner. Paul Lewis with Progress.

7 I was just going to say that our company
8 certainly doesn't have any issues with the Commission
9 moving forward with an appeal or participating in
10 whatever fashion. But the fact of the matter is we
11 appreciate the role that the Commission has taken thus
12 far with respect to protecting the jurisdiction of the
13 state. We think that's really important.

14 Our company has not intervened for a number of
15 reasons, particularly the issues that we currently have
16 before FERC. We thought it would be appropriate for us
17 to stand down at the moment. So there may be
18 (inaudible) to continue to go down that route
19 (inaudible) jurisdiction (inaudible).

20 **CHAIRMAN BRISÉ:** Are there any other
21 representatives from any other utilities that would like
22 to speak on this issue? Okay. Seeing none.

23 All right. Commissioner Balbis.

24 **COMMISSIONER BALBIS:** Thank you. And thank
25 you, staff, for bringing this to our attention and

1 following up. And although it's stated in the, the
2 memo, July 9th memo, but could you just go over Option
3 1 in Alabama's appeal? You mentioned in the memo
4 (inaudible) in detail.

5 **MS. MILLER:** Yes. We pulled their rehearing
6 request to see if it was similar to what we have filed,
7 and, and it was very similar. They urged in their
8 rehearing request that the FERC was overstepping into
9 state jurisdiction in the areas of planning and in the
10 areas of cost allocation and affecting their statutes on
11 rate making and on regional planning.

12 So they basically said that Order Number 1000
13 infringes upon the jurisdiction of Alabama over
14 integrated resource planning, and they said it infringes
15 upon the jurisdiction of Alabama over its state public
16 policies, and they said it infringes on the jurisdiction
17 of Alabama over its authority to establish just and
18 reasonable rates.

19 So they raised the same issues pretty much as
20 we have raised in our rehearing request. So now that
21 they have filed an appeal, at least there's a comfort
22 level that we wouldn't be supporting positions that
23 didn't dovetail with the positions that you've taken.
24 If they had not appealed, there were some other appeals
25 that overlapped in many areas like the Coalition for

1 Fair Transmission Pricing, but they weren't that closely
2 aligned.

3 So intervention would be -- at least there's
4 issues that are out there, you have to take the issues
5 as they're given, and so those issues are out there.

6 The, the intervention gives you a little more
7 words in your briefs and allows you to do reply briefs.
8 The -- it allows you standing if you want to appeal
9 whatever the D.C. Circuit does. But amicus is also a
10 great option and allows for perhaps a little more
11 discussion of policy concerns from a practical, you
12 know, how this impacts a state.

13 **COMMISSIONER BALBIS:** Well, going back to the
14 Option 1, intervening in the Alabama appeal, are there
15 other filing fees associated with that?

16 **MS. MILLER:** No, there's no filing fees. And
17 I should mention that all 15 appeals will be smushed
18 together under the D.C. Circuit Court under one case.
19 But we could intervene with their header, their, the
20 Alabama PSC versus FERC header, but they will all be
21 consolidated. And there's no filing fees for the amicus
22 or the intervention.

23 **COMMISSIONER BALBIS:** Okay. Well, speaking
24 for myself and the fact that Alabama's appeal is closely
25 following what we filed for a rehearing, you know, I

1 would certainly lean towards that option. I think that
2 it gives us the most flexibility and there aren't filing
3 fees associated with it, and it's something that I think
4 we could continue to represent Florida's interests.

5 **CHAIRMAN BRISÉ:** Okay. Any further comments
6 from Commissioners?

7 **SPEAKER:** (Inaudible.)

8 **CHAIRMAN BRISÉ:** All right. Seeing no further
9 comments, I think we're in the posture for a motion.

10 **COMMISSIONER BALBIS:** Okay. And then I move
11 that we direct staff to move forward with Option 1,
12 which is to intervene in Alabama's appeal of the FERC
13 order.

14 **COMMISSIONER EDGAR:** (Inaudible).

15 **COMMISSIONER BALBIS:** I'm sorry. On the memo
16 I have it as Option 1, intervene in the appeal.

17 **CHAIRMAN BRISÉ:** You're right.

18 **COMMISSIONER EDGAR:** (Inaudible).

19 (Laughter.)

20 **COMMISSIONER BALBIS:** All right. July 9th
21 memo, Option 1, intervening in another party's appeal,
22 the Alabama appeal.

23 **COMMISSIONER GRAHAM:** Second.

24 **CHAIRMAN BRISÉ:** It's been moved and seconded.
25 Any further discussion? All right. Seeing none, all in

1 favor, say aye.

2 (Vote taken.)

3 All right. Thank you very much. We look
4 forward to you keeping us abreast of the progress.

5 **MS. MILLER:** Thank you.

6 **CHAIRMAN BRISÉ:** All right. Moving on to item
7 3 -- item 4.

8 (Simultaneous conversation.)

9 Update on U.S. EPA proposal on greenhouse gas
10 emissions for new electric generating units.

11 **MR. FUTRELL:** Thank you, Mr. Chair. Thank
12 you, Mr. Chairman. I'm Mark Futrell, and Judy Harlow of
13 the staff.

14 I wanted to follow up with you on, on the last
15 discussion at Internal Affairs, an update on some things
16 that have happened. The Commission did file a request
17 for an extension to file comments on the greenhouse gas
18 emissions proposed rule. Two other parties have also
19 requested additional time, the Texas Commission on
20 Environmental Quality and the National Mining
21 Association, and as of this morning, EPA has not made
22 any ruling on this request.

23 There's also been a couple of additional
24 events that have happened. The June 26th D.C. Circuit
25 has rejected challenges to the EPA's greenhouse gas

1 regulation efforts. They have -- probably a critical
2 decision in that, in that process was that they upheld
3 the endangerment finding whereby greenhouse gases were
4 determined to be harmful and subject to regulation under
5 the Clean Air Act.

6 We've also had comments that were filed by the
7 Department of Environmental Protection and the, in
8 NARUC, and those were filed at the deadline. And
9 generally their comments raise some similar concerns,
10 particularly regarding the fact that the proposed
11 standard is directed at a natural gas-fired generation
12 resource, even though the proposed rule would affect
13 solid fuel as well, which is a, as we're understanding
14 it, a fairly unprecedented move on EPA's part where they
15 have separate standards for different fuel types.

16 And so both DEP and NARUC raised that as a
17 concern, as well as how that would impact the option of,
18 of using coal in the future. It would effectively take
19 coal off the table because the standard can be met by
20 gas-fired generation, and that would most likely be the
21 most likely resource that would be sought.

22 They do cite in the proposed rule the option
23 of carbon capture sequestration as an option of meeting
24 the standard. However, as we know at this point, that's
25 still a technology that's being studied and evaluated

1 and is not in a ready state to be implemented.

2 And so also, NARUC raises concerns about how
3 this rule would continue to add uncertainty regarding
4 coal development, particularly the fact that they
5 acknowledge that there could be legal challenges to the
6 fact that EPA has confined the rule to just existing
7 sources. NARUC cites that there could be challenges to
8 expand the rule to existing sources as well, and so they
9 raise concerns about that.

10 So we provide that update and any other
11 questions you might have.

12 **CHAIRMAN BRISÉ:** Okay. Any questions?
13 Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mark, for
15 this information and update.

16 Going back, you mentioned that the Court
17 recently upheld the decision to have this considered a
18 greenhouse gas subject to regulation. Did they rule on
19 the leap between carbon emissions from vehicles, which
20 in a recent Supreme Court decision that seemed to be
21 where it was focused on, and that leap to (inaudible)
22 associated with utilities.

23 **MR. FUTRELL:** That's my understanding is they
24 did. Is that your understanding as well?

25 **MS. HARLOW:** Part of their decision did

1 involve greenhouse gases for power plants because they
2 ruled that the tailoring rule was appropriate. The
3 tailoring rule is the rule that says when permitting is
4 done, that it is over a certain amount of greenhouse
5 gases per year.

6 Had EPA not put that tailoring rule into
7 place, then many more sources would have been covered by
8 regulations.

9 MR. FUTRELL: But that's where they made the
10 leap between motor vehicle emissions of greenhouse gases
11 to fixed sources.

12 MS. HARLOW: Yes.

13 MR. FUTRELL: Effectively power plants, and so
14 that wasn't held by the Court.

15 COMMISSIONER BALBIS: Okay. So both NARUC and
16 the Florida Department of Environmental Protection were
17 able to submit their comments before the deadline?

18 MR. FUTRELL: Yes.

19 COMMISSIONER BALBIS: Okay.

20 MR. FUTRELL: And that deadline had been --
21 that was an extended deadline.

22 COMMISSIONER BALBIS: And do we have any idea
23 if and when the EPA will respond to our request to
24 extend?

25 MR. FUTRELL: I'm not aware that they're under

1 any time frame on responding. We have been monitoring
2 it daily to see if they have issued any, any notice of
3 an extension, and they've not.

4 **MS. HARLOW:** We've spoken several times to the
5 primary contact on the rule at EPA, and his response was
6 that were he in the Commission's shoes, he would act as
7 though the deadline would not be extended. He also
8 discussed what the role would be with reviewing comments
9 that were filed after the deadline; they would be
10 entered into the docket file so they would be part of
11 the public record. They're not part of the legal record
12 unless EPA decides to make them so. So they're under no
13 obligation to review those comments after the deadline.
14 And he said the agency would be in a balancing act to
15 decide whether to review them or not, because if they
16 review one, they have to review all.

17 And what staff has been doing is monitoring
18 that docket file every couple of days, and what we're
19 seeing is they are receiving 100 to 300 comments a day
20 filed after the deadline. We've seen 2,500, perhaps
21 3,000 comments filed past the June 25th deadline. Most
22 of those comments are form letters that are sent in on
23 behalf of the advocacy groups.

24 **COMMISSIONER BALBIS:** Okay. Well, I'm glad to
25 see that at least one state agency, the Florida

1 Department of Environmental Protection, was able to
2 submit comments before the deadline. And reading their
3 comments, you know, I personally agree with at least the
4 administration's stance on the rules. It's just
5 surprising that they took more of a financial look at it
6 when that's really not their role, that's kind of our
7 role. So I'm glad to see that at least someone in this
8 state has submitted comments.

9 What -- I'm sorry. You're telling me that we
10 can submit comments and (inaudible), so we basically
11 have no options legally at this point.

12 **MR. FUTRELL:** One option could be, while -- as
13 far as having impact, a direct impact in participating
14 in the rulemaking, but that's, as Judy said, that's kind
15 of where things stand with comments.

16 One option could be also to file a letter with
17 the EPA administrator in support. If you choose to
18 support DEP's comments or NARUC's or another party's,
19 express support for the positions that those parties
20 have taken or specific positions and identify those and,
21 and draft a letter of support in that way.

22 And then there's always an option of doing a
23 congressional letter, which the Commission has done
24 before, expressing concerns about certain rulemaking
25 proceedings at EPA. So those are two options that you

1 could take that were, that we felt had --

2 **COMMISSIONER BALBIS:** Okay. Well, I mean,
3 again, speaking for myself, I think we should take an
4 additional step regardless of, you know, how much legal
5 impact it may have. I mean, at the very least notifying
6 our congressional delegation that, you know, we request
7 an extension, then you include DEP's comments so that at
8 least they're aware of it. And the impact, especially
9 as Mr. Futrell indicated, is essentially taking coal off
10 the table and that's fuel diversity, something that
11 we're (inaudible). So I yield for any other discussion
12 on the options.

13 **CHAIRMAN BRISÉ:** Any further comments or
14 comments on what options may be?

15 **MR. KISER:** Mr. Chairman.

16 **CHAIRMAN BRISÉ:** Yes.

17 **MR. KISER:** I just want to comment that I
18 think this is a really significant rule. I mean, I
19 think the impact is going to be felt for a long time to
20 come, and it -- I just think we're beginning to see the
21 tip of the iceberg of what's potentially going to be
22 coming out of Washington (inaudible) grant of authority
23 (inaudible). And we just -- I think we really have to
24 stay on top of it.

25 I can just -- it's one of those things I just

1 fear four or five years from now we'll look back and
2 say, well, that's when it really started. This is -- I
3 just think Florida is going to have to, and the other
4 states are going to have to really be very careful and
5 very watchful of just how this is administered
6 (inaudible).

7 **CHAIRMAN BRISÉ:** All right. I think we're in
8 the posture for a motion.

9 Commissioner Balbis, are you interested in
10 making a motion?

11 **COMMISSIONER BALBIS:** Sure. Yeah. So, I
12 mean, I move that we authorize the Chairman to draft a
13 letter to the congressional delegation similar to what
14 you did for the, the other EPA rules, and indicating our
15 support of DEP and NARUC's comments, and include copies
16 of both of those comments that were submitted to EPA.
17 And, and I don't know if it's a separate letter or not,
18 but I would like, even though they're not going to read
19 them, at least submit something to the EPA, whether it's
20 just support of, again, DEP and NARUC's comments. So I
21 don't know if it could be the same letter or not, but --
22 so my motion just turned into discussion again.

23 (Laughter.)

24 **CHAIRMAN BRISÉ:** All right. So I guess we'll
25 go back into discussion mode, try to move in on a more

1 concise motion.

2 **COMMISSIONER GRAHAM:** I was going to say, we
3 can, if you want, break this up into two motions.

4 **COMMISSIONER BALBIS:** Yeah. That might be --
5 so my first motion will be authorizing the Chairman to
6 draft a letter to the congressional delegation
7 indicating our support of NARUC and DEP's position and
8 our concern with its impact on fuel diversity.

9 **COMMISSIONER GRAHAM:** Second.

10 **CHAIRMAN BRISÉ:** So that's been moved and
11 seconded. Discussion on the motion.

12 **COMMISSIONER EDGAR:** Question. What, what is
13 our purpose? What are we -- what is it that we are
14 trying to accomplish? I know that the EPA has received
15 on this particular proposal over 2 million comments that
16 they're sifting through now. I know that it's something
17 that is very active, a lot of discussion at the
18 congressional level. So what is it that we want?

19 Always when we send a letter I want to know
20 are we asking for something, are we -- what, what do we
21 want to accomplish?

22 **COMMISSIONER BALBIS:** Well, I think what we
23 want to accomplish is -- you know, our delegation, I'm
24 sure, recognizes our role of utility regulation, looking
25 after the best interest of Floridians, is to notify them

1 specifically on this issue which we have responsibility
2 for. I don't think we should point out that we missed
3 the deadline. But, you know, for informational
4 purposes, you're dealing with a number of issues, and
5 this is specific to what we regulate and showing them
6 that this is what our position is, that -- and just to
7 make them aware for information purposes. But I don't
8 think we're asking for anything; similar to the previous
9 letter we sent, we didn't ask for anything. But this
10 rule came out. It's a \$6.7 billion impact according to
11 our investor-owned utilities, and just putting them on
12 notice for informational purposes.

13 **CHAIRMAN BRISÉ:** Okay. Any further comments
14 or questions on the motion? All right. It's been moved
15 and seconded. All in favor, say aye.

16 (Vote taken.)

17 Any opposed? All right. Seeing none. So the
18 directive is to draft a letter for the delegation
19 reflecting Florida's interest and our concerns and so
20 forth, and reflecting that the Department of
21 Environmental Protection has chimed in on this issue,
22 and we want to make them aware that we have considerable
23 concern with the order.

24 **COMMISSIONER GRAHAM:** And that we agree with
25 DEP?

1 **CHAIRMAN BRISÉ:** And that we agree with DEP.

2 **MR. BAEZ:** Would it, would it be your pleasure
3 to attach DEP's comments, you know, sort of an
4 informational package?

5 **COMMISSIONER BROWN:** That's what he just said,
6 yes.

7 **MR. BAEZ:** Okay. That was part of the motion.

8 **SPEAKER:** That was part of the motion.

9 **CHAIRMAN BRISÉ:** I believe there's a second
10 motion that, that is coming.

11 **COMMISSIONER BALBIS:** Yeah. And it may be a
12 question for, for Mark as far as, you know, although
13 they may not read the comments, just to get comments
14 into EPA, what would you recommend (inaudible)? Would
15 it be a similar letter just saying we, we do support the
16 position of NARUC and DEP?

17 **MR. FUTRELL:** I think, similar to kind of the
18 discussion on the first motion, is we could work into
19 that support of DEP and NARUC, work in some concerns
20 you've identified, fuel diversity, impact of potentially
21 taking coal off the table, any other concerns you want
22 us to kind of weave into that, to kind of incorporate
23 some of those concerns into the letter, but yet it be
24 our primary purpose is to just express support. Within
25 that weave some of these concerns you've got.

1 **COMMISSIONER BALBIS:** Okay. Then I would
2 authorize staff to draft comments for, since there's no
3 deadline, our review, I guess, at the next Internal
4 Affairs.

5 **CHAIRMAN BRISÉ:** All right. There's a motion.
6 Is there a second?

7 **COMMISSIONER BROWN:** Second.

8 **CHAIRMAN BRISÉ:** All right. It's been moved
9 and seconded. Any discussion or questions on the
10 motion?

11 **COMMISSIONER GRAHAM:** I think Mark had a
12 question.

13 **MR. FUTRELL:** Yeah. Just to clarify, excuse
14 me, I heard you say on your motion to -- for comments.
15 So would you like a formal document that has comments,
16 or are you looking for a letter to the EPA
17 administrator? Because we can do both. We just want
18 to, we just want to, you know, meet your expectations.
19 When you say comments, usually that entails a broader
20 document, a little more detail --

21 **COMMISSIONER BALBIS:** Yeah. I --

22 **MR. FUTRELL:** -- supporting background and
23 supporting information. And we can -- we're prepared to
24 do that, if that's what you'd like.

25 **COMMISSIONER BALBIS:** In my motion, I was

1 requesting that staff prepare, you know, a cover letter
2 weaving in those comments and then indicating our
3 support of both NARUC and DEP's comments in (inaudible.)
4 I think that'll be the quicker process.

5 **MR. FUTRELL:** Very good. Thank you.

6 **CHAIRMAN BRISÉ:** Any comments or questions on
7 the motion?

8 **COMMISSIONER GRAHAM:** This is just a draft
9 that we're going to look at next time.

10 **SPEAKER:** Yes.

11 **CHAIRMAN BRISÉ:** So my understanding of the
12 motion is that we're asking staff to draft a letter of
13 support, in essence, to the comments that have been put
14 in by DEP and NARUC, and that will be brought back to us
15 here at the Commission at the next IA so that we can
16 take a look at that and make sure that it reflects our
17 desire. And within the letter will be weaved in the
18 comments that we will send out, or mirror the comments
19 that will be sent to the congressional delegation.
20 Okay? Now that we have clarity on the motion, are there
21 any questions on the motion or additional comments?

22 **COMMISSIONER EDGAR:** In -- I believe in past
23 letters on similar related issues we have also indicated
24 our recognition and, I think, support generally for the
25 intent of improving public health aspects. And I would

1 ask that you kind of look at how we have phrased that in
2 the past and consider something similar as a part of
3 the -- for us to review, of course. That's it.

4 **CHAIRMAN BRISÉ:** All right. Any further
5 comments or questions on the motion? Okay.

6 (Laughter.)

7 I tried. It's been moved and seconded. All
8 in favor, say aye.

9 (Vote taken.)

10 All right. Thank you.

11 Executive Director's report.

12 **MR. BAEZ:** Three or four items briefly,
13 Commissioners, on, on the reorg. The reorg
14 documentation packet was provided to DMS and we received
15 approval with a July 1 effective date. So that's what's
16 happened since we last, since we last met. We're now
17 well into the progress of sorting out the, the
18 responsibilities on the technical side, whatever changes
19 might have been required because of the, the change in
20 organization. So that's moving along.

21 You may at some point, if you haven't already,
22 received, you know, information kind of directing you --
23 the names shouldn't change too much, so I wouldn't, I
24 wouldn't worry too, too much about it, but you'll be
25 receiving that information as it, as it becomes more

1 finalized as part of the process.

2 The next item is the FEECA study, a brief
3 update on that, and I've actually got good news. As you
4 remember, I had mentioned previously that we had
5 internally determined that the academic institutions
6 were the most appropriate to, to reach out for many
7 reasons, but to reach out to in order to perform this
8 work as consultant on the study, and, and we did so. If
9 you recall, I mentioned we had reached out to
10 approximately 19, approximately -- no, I believe the
11 number is exact, 19 potential academic contractors all
12 over the country.

13 We consulted with the Department of
14 Agriculture and Consumer Services, the Energy Office
15 there, the contact at the Governor's Office for some
16 input, as well as Senate and House staff in order to put
17 together not just the scope of work that was, that was
18 circulated to the potential contractors, but also to
19 discuss the evaluation process as well. So we've kept
20 them kind of in the loop as this has been going on.

21 We received responses from two groups. One of
22 them, a combined group from Florida State University and
23 University of South Florida, and the second group was
24 one formed between the University of Florida and NRRI.
25 After consideration, we determined that the University

1 of Florida/NRRI proposal was the most adequate to, to
2 meet the state's needs for certainly our requirement for
3 the, for the report.

4 We are, I think as of yesterday -- I don't
5 know if Charlie is in the room -- but I executed the
6 contract on behalf of the agency, and I believe the
7 university, the contractor has executed the contract as
8 well. So we are officially in contract and the clock is
9 ticking towards the middle of the report for
10 January 31st. So that's where we stand on, on FEECA.

11 I don't know if you all have any questions
12 about that before I move on.

13 **COMMISSIONER BALBIS:** Just one clarification.

14 **MR. BAEZ:** Yes.

15 **COMMISSIONER BALBIS:** So you indicated that
16 the University of Florida had the best proposal and is
17 the best institution? I wanted to make sure we're
18 clear.

19 (Laughter.)

20 **MR. BAEZ:** I would be glad to say it even
21 louder than my normal mode. Yes, it was determined that
22 the university -- that the proposal led by the
23 University of Florida and NRRI was the best proposal.

24 **COMMISSIONER BALBIS:** Thank you. That's all I
25 had.

1 (Laughter.)

2 MR. BAEZ: Moving on. We have -- we've got
3 two workshops that -- as you well know. The first one
4 I'll update you on is the electric vehicle charging
5 station. That study, that study was also part of the,
6 of the legislation that established the FEECA study as
7 well. It should show on all of the calendars that
8 there's a workshop set for September 5th. It's a, it's
9 a staff workshop. And the purpose of it is to gather
10 information from, from subject matter experts and
11 interested parties. I think there's also public comment
12 expected at that workshop.

13 We're also gathering information through other
14 means, independent research and such, and that report is
15 due December 31st, due to the Legislature on
16 December 31st.

17 The next, the next workshop -- or the next
18 item is the smart meters issue. As you recall, I
19 believe it was May 9th you all directed the staff to, to
20 begin the process to gather whatever additional
21 information we could on the smart meter issue and
22 address -- in order to address the consumers' concerns.
23 We've established -- that, that process of gathering
24 information obviously has been ongoing since then. We
25 were able to fix a date of September 20th for a staff

1 workshop, again, in order to let the subject matter
2 experts and -- to come on in and, and provide us more
3 information and make comments. There's also room for
4 public comment at that, at that workshop. Again, that
5 date is September 20th.

6 And after we're done with that process, we'll
7 sort of compile the information, and we would expect, as
8 you have, as you have indicated, to have some kind of
9 proposal formulated for you all to consider and discuss
10 further, if that's your pleasure.

11 So eventually we're going to get, we're going
12 to get something before you. Yes, sir.

13 **CHAIRMAN BRISÉ:** Commissioner Graham.

14 **MR. BAEZ:** Yes, sir.

15 **COMMISSIONER GRAHAM:** The date that you said,
16 September 20 --

17 **MR. BAEZ:** Yes.

18 **COMMISSIONER GRAHAM:** -- and you said there's
19 going to be an opportunity for public comment then?

20 **MR. BAEZ:** Yes, sir.

21 **COMMISSIONER GRAHAM:** So when we're at our
22 next round of service hearings, that date, that initial
23 date we should be sharing with them?

24 **MR. BAEZ:** Well, a date -- the date clearly is
25 public. So, by all means, as it comes up or as you

1 feel the need as appropriate to share.

2 **COMMISSIONER GRAHAM:** Oh, it's coming up.

3 (Laughter.)

4 **MR. BAEZ:** It's not a secret date. By all
5 means, we count on you to share it.

6 **CHAIRMAN BRISÉ:** So that's the date we have
7 been sharing.

8 **MR. BAEZ:** Well, the, the, the date's been
9 public for some time. It's been on the calendar. So, I
10 mean, I can't speak for who, who all knows about it, but
11 certainly we've done everything possible to, to
12 disseminate the information, so. And we count on you to
13 do it as well.

14 **SPEAKER:** Sure.

15 **COMMISSIONER BROWN:** Braulio, have you
16 contemplated having a Commissioner attended workshop in
17 addition to the staff workshop?

18 **MR. BAEZ:** Yes. Although -- and that's sort
19 of the after process that, that we're considering. I
20 think once, once we're able to compile and take in all
21 the information ultimately through that September 20th
22 workshop, we're going to be able to better -- we're
23 going to get a better handle on whether a Commissioner
24 workshop is available or if we have -- you know, if
25 that's going to be of benefit to you all or if

1 ultimately we can just get a package, put together a
2 package or proposal for you all to actually address as
3 part of a more formal process.

4 I mean, it's a timing and, and, and really
5 what the effectiveness of more process and more
6 workshops is going to be, eventually you reach a, you
7 know, marginal return on things like that. But that's
8 really to be determined, Commissioner, obviously with
9 your preferences. It's not -- I'm not going to force
10 you to have a workshop. We're certainly -- we can
11 recommend it, if it's appropriate.

12 **COMMISSIONER BROWN:** I was just curious
13 (inaudible.)

14 **MR. BAEZ:** They're, they're, they're all open.
15 So, yeah.

16 Commissioners, that's all I have.

17 **CHAIRMAN BRISÉ:** All right. Thank you very
18 much. Any questions, any additional questions for the
19 Executive Director?

20 Okay. Seeing none, anything on other matters?

21 Okay. I have one. I think some of you -- all
22 of you should be aware that we have sent a letter to
23 Duke Energy and have requested the presence of
24 Mr. Rogers and some members of his executive team on the
25 13th of August. We're looking at either 1:00 or 1:30.

1 I can't -- the time slips me right now. At 1:00? Okay.
2 At 1:00.

3 **MR. BAEZ:** I think it says, it says 1:30. I'm
4 sorry, Mr. Chairman.

5 It's going to change? Okay. 1:00.

6 **CHAIRMAN BRISÉ:** At 1:00 so that we can have a
7 conversation with Mr. Rogers and his executive team
8 dealing with whatever matters we feel are appropriate as
9 Commissioners.

10 The, the communication will be between the
11 Commissioners and the executive team, and then after
12 that I think we will have a status conference as
13 scheduled for 3:30 or so. So that's what I had on other
14 matters as issues that I think are important to, to
15 Florida consumers, as we recognize that in the exchange
16 we always want to know how the change is going to affect
17 our consumers.

18 All right. Are there any other things for
19 other matters?

20 **MR. KISER:** Mr. Chairman, in, in light of that
21 meeting and conversation, obviously one of the things
22 we're going to have to watch is that we don't get into
23 any matters that are inappropriate. So between now and
24 then as you're thinking about what kind of questions you
25 want to ask, if you have any doubt, we're more than

1 happy to sit down and walk through those with you so you
2 know which side of the line to stay on and what side to
3 stay away from. We want it obviously to be a productive
4 meeting and the right atmosphere, et cetera, but we do,
5 do need to be cognizant of our role as a regulator. And
6 I just wanted to mention that and let you know that we'd
7 be more than happy to give you assistance and guidance
8 on that if you have particular questions you want to go
9 into.

10 **CHAIRMAN BRISÉ:** Thank you very much. I think
11 that that's extremely important because there are many
12 things that are --

13 **SPEAKER:** Open dockets.

14 **CHAIRMAN BRISÉ:** -- open dockets and interplay
15 and so forth. So we thank you for the guidance and we
16 thank you for, for the, in advance for the assistance
17 that our legal staff can provide, our legal and
18 technical staff can provide for us.

19 Commissioner Graham.

20 **COMMISSIONER GRAHAM:** I guess I'm just trying
21 to understand the legal side of all this. If this is a
22 noticed meeting and we say we're going to talk to Duke
23 Energy about anything that may affect what's going on
24 with Progress, then how is there any sort of ex parte
25 communication, because everybody has been invited?

1 **MR. KISER:** I think the main thing you have to
2 worry about is if, when you have the matters that are,
3 you know, docketed matters before us, we have certain
4 elements of due process that have to be followed. If
5 documents are going to be, you know, submitted and
6 people are going to be asked to comment on it and that
7 sort of thing, the other side usually has, should have
8 an opportunity to go and do it. We want to avoid those
9 sort of situations.

10 I think obviously questions about how they see
11 their role, how they see the merger taking place, what
12 role might be possibly changed by virtue of a change in
13 the leadership at the top, all those are very
14 appropriate. But trying to get into any specific issues
15 relative to CR3, for example, that's where we're going
16 to be a little nervous.

17 I think some general questions and those
18 things can be talked out, but we just need to be careful
19 we don't get in a situation where somebody throws a
20 referee's flag and says foul. You shouldn't go there.
21 We want to, we want to avoid that.

22 **COMMISSIONER GRAHAM:** All right. I think we
23 probably need to have a conversation because CR3 is one
24 of those things a lot of us are all thinking about.

25 **MR. KISER:** Yes.

1 **COMMISSIONER GRAHAM:** And one of those things
2 that we want to have questions answered for. I mean, so
3 someone needs to give us a playbook so we know how far
4 we can go, because we can't avoid CR3.

5 **MR. KISER:** Right.

6 **COMMISSIONER GRAHAM:** And that's one of the
7 primary reasons why we're bringing them here.

8 **MR. KISER:** Well, you know, obviously,
9 Commissioner, one of tenets of why the change was made
10 dealt with issues around CR3, and I can see where the
11 Commission would definitely want to understand what were
12 those issues and how they come about and how do you see
13 those. If we need to work around that, then hopefully
14 again get to a situation where those questions can be
15 asked and hopefully answers given that are, that will be
16 helpful to the Commission as you move forward in the new
17 partnership with, with the new company. We just want to
18 avoid getting into any technicalities where another
19 party (inaudible) question the witness, get involved, we
20 want to avoid those sort of things.

21 **COMMISSIONER GRAHAM:** Well, and maybe I'm
22 going down the wrong path. It's just the stipulation
23 that we have in front of us dealing with the, the rate
24 increase that they have (inaudible) CR3, there's a lot
25 of open-ended statements and questions that are out

1 there. And, you know, we, we want to know the general
2 view of the company as viewed now.

3 **CHAIRMAN BRISÉ:** Can I interject here?

4 **COMMISSIONER GRAHAM:** Somebody, please.

5 (Laughter.) (Simultaneous conversation.)

6 **CHAIRMAN BRISÉ:** The concept for, for us
7 moving forward in this direction was something that sort
8 of started in my office, and that I believe the purpose
9 is for us to bring the company in to see what their
10 understanding is, to make sure that their understanding
11 is similar to ours, and whatever questions that we may
12 have, and each office can work individually with the
13 legal staff so that we can frame our questions
14 accordingly so that we don't go out of the bounds that
15 could cause trouble for eventually our customers. And I
16 think that that, that is what we're concerned about:
17 Ensuring that our customers are in a good position, that
18 we have a similar understanding of the framework that
19 we're in, and each office can work with our legal staff
20 to get to that point. And I think that is probably the
21 best place to put it for today's conversation. Okay?

22 Seeing, seeing no further comments on, on, on
23 this issue or any other issue, I move -- Commissioner
24 Graham moves that we rise.

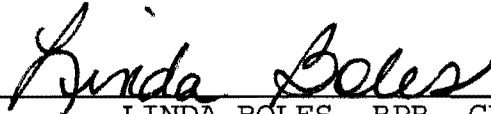
25 (Internal Affairs concluded.)

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