

# I. Meeting Packet



**State of Florida**  
**Public Service Commission**  
**INTERNAL AFFAIRS AGENDA**

Tuesday – July 28, 2020

9:30 am

Room 148 – Betty Easley Conference Center

- 
1. Draft Review of the 2020 Report on the Status of Competition in the Telecommunications Industry (Attachment 1)
  2. Briefing of Water and Wastewater items (Attachment 2)
  3. General Counsel's Report
  4. Executive Director's Report
  5. Other Matters

BB/aml

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

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

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

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**DATE:** July 14, 2020

**TO:** Braulio L. Baez, Executive Director

**FROM:** Cayce H. Hinton, Director, Office of Industry Development and Market Analysis  
Mark Long, Public Utilities Supervisor, Office of Industry Development & Market Analysis  
Thomas J. Bates, Research Associate, Office of Industry Development & Market Analysis  
Eric Wooten, Public Utility Analyst III, Office of Industry Development & Market Analysis  
Dale Eastmond, Public Utility Analyst II, Office of Industry Development & Market Analysis

**RE:** Draft of the Report on the Status of Competition in the Telecommunications Industry

**CRITICAL INFORMATION:** Please place on the July 28, 2020 Internal Affairs. FPSC approval of draft report is sought. Report is due to the Governor and Legislature by August 1, 2020.

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

Attachment

cc: Mark Futrell, Deputy Executive Director, Technical  
Apryl Lynn, Deputy Executive Director, Administrative  
Keith Hetrick, General Counsel



**DRAFT**

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



**AS OF DECEMBER 31, 2019**



Florida Public Service Commission

***DRAFT***

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## List of Acronyms

CDC	Centers for Disease Control and Prevention
CLEC	Competitive Local Exchange Company
FCC	Federal Communications Commission
FPSC	Florida Public Service Commission, the Commission
FTRI	Florida Telecommunications Relay, Inc.
F.S.	Florida Statutes
ILEC	Incumbent Local Exchange Company
IP	Internet Protocol
Kbps	Kilobits per second
Mbps	Megabits per second
PSTN	Public Switched Telephone Network
TASA	Telecommunications Access System Act of 1991
TDM	Time Division Multiplexing
USF	Universal Service Fund
USAC	Universal Service Administrative Company
VoIP	Voice over Internet Protocol



## Executive Summary

Section 364.386, Florida Statutes, requires the Florida Public Service Commission (FPSC or Commission) to submit a report on the status of competition in the telecommunications industry to the Legislature by August 1 of each year. As of December 31, 2019, there were 10 incumbent local exchange companies and 256 competitive local exchange companies certificated by the Commission to operate in Florida.

In 2019, the Florida wireline market continued to follow the national trend with AT&T, CenturyLink and Frontier all experiencing access line losses. The local and national markets continued to consolidate with several mergers and acquisitions. Several intrastate issues were resolved or initiated in 2019. Lifeline subscriptions in Florida fell to 604,693 in 2019, a 12.9% decrease.

Consumers in Florida continue to migrate from traditional wireline service to wireless and cable/Voice over Internet Protocol (VoIP) services. The data indicates that residential migration may be increasing slightly, while business customers continue to migrate away from traditional wireline to VoIP technology in large numbers. Carriers reported approximately 1.6 million total wireline access lines in Florida for 2019, about 15.7 percent fewer than the previous year.

For the ninth year in a row, total wireline business access lines exceeded total residential access lines. Residential and business wirelines again experienced significant drops in 2019. Total residential access lines declined 12.6 percent. The transition to VoIP and wireless-only services continues to be responsible for much of this decline. AT&T surpassed CenturyLink as Florida's largest wireline residential access line provider. CenturyLink experienced a 20.4 percent decline in residential lines during 2019 while AT&T only declined 4.6 percent. Frontier also experienced the biggest residential loss with a 23.6 percent decline in residential access lines during the same period.

Total business access lines declined 17.5 percent. The wireline competitors' business market share increased to 34.2 percent in 2019. More than half of AT&T and Frontier's wireline subscribers were business lines, while at the same time CenturyLink's business wireline subscribers made up less than half of their total access line amounts. More than 99 percent of competitors' access lines were business lines.

As reported for the past several years, intermodal competition from broadband, wireless, and VoIP services continued to drive the telecommunications markets in 2019. According to the most recent FCC data, there are an estimated 21.8 million wireless subscriptions in Florida, and greater than 4.7 million VoIP connections.

Analysis of the telecommunications data obtained by the Commission produced the following conclusions:

- Many competitive local exchange companies reported offering a variety of services and packages comparable to those offered by incumbents. Subscribers to wireless, cable, and business VoIP 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 traditional wireline market continues to decrease; however, the population and its uses for telecommunications services continue to expand. Wireless subscription growth and VoIP are meeting the increased demand for service. Consumers are choosing to obtain a majority of wireless and VoIP subscriptions from competitors. Given the decline in the traditional wireline market and competitors' substantial wireless and VoIP market shares, consumers are able to obtain functionally equivalent services at comparable rates, terms, and conditions.
- A competitive market requires comparable affordability and reliability of service. The vast majority of Florida households subscribe to telephone service. Consumers are willing and able to choose telecommunications service from competitors using a variety of technologies, so competitors have been maintaining significant market share over an extended period. Based on competitors' substantial market share and market pressures requiring comparable affordability and reliability, competition is having a positive effect on the maintenance of reasonably affordable, reliable telecommunications services.

## Chapter I. Introduction and Background

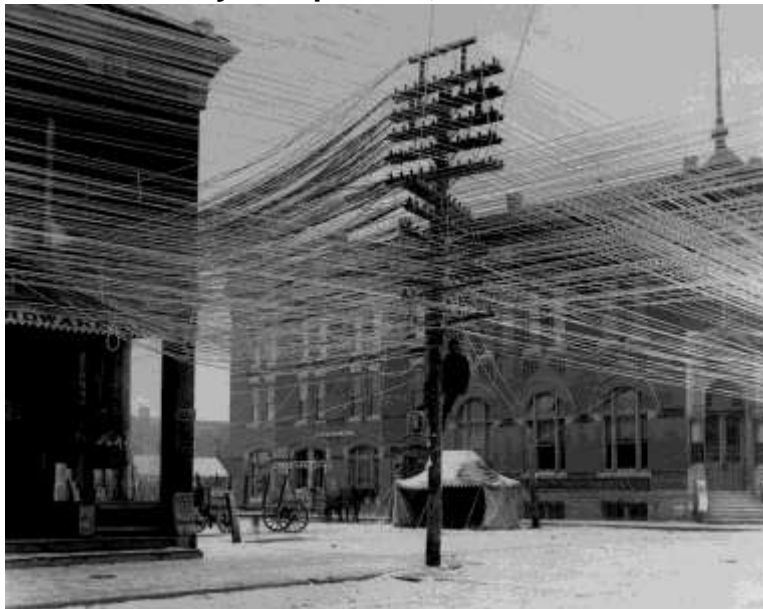
Telephone service has been regulated to some degree nearly since the moment it was patented by Alexander Graham Bell (Bell) in 1876.<sup>1</sup> This section summarizes the major historical regulatory events both at the federal and state levels. For the purposes of this report, the history of federal telecommunications regulation is useful because state regulation of these markets has always been intertwined with, and largely a derivative of, federal laws and rules.

### A. Federal Regulation

When Bell's patents expired in 1894, competitors were allowed to build their own facilities. This accelerated the development of the nationwide telephone network. In the 18 years Bell held the patents, the daily calling average per 1,000 people peaked at 37. In the first 15 years of competition, it increased tenfold.<sup>2</sup> Competitors gained over 50 percent market share by 1907.<sup>3</sup>

Early competition also had its drawbacks. Populated areas saw many lines crisscrossing the streets as competitors raced to build their independent networks. Figure 1-1 shows the lines in Pratt, Kansas circa 1900.

**Figure 1-1**  
**Early Competition, Circa 1900**



Source: America calling: a social history of the telephone to 1940

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<sup>1</sup> Diane Katz and Theodore Bolema, "Crossed Lines: Regulatory Missteps in Telecom Policy," Mackinac Center, December 3, 2003, <<https://www.mackinac.org/6033>>, accessed on June 24, 2020.

<sup>2</sup> Thierer, A., "Unnatural Monopoly: Critical Moments in the Development of the Bell System Monopoly," Washington, D.C.: *The Cato Journal*, Fall 1994, p. 270, <<https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/1994/11/cj14n2-6.pdf>>, accessed on June 24, 2020.

<sup>3</sup> Ibid.

Bell's American Telephone and Telegraph Company (AT&T) responded to this competition by acquiring its competitors' networks. Once it had acquired enough rivals to control a market it would refuse to interconnect with any independent providers.<sup>4</sup> AT&T even acquired a controlling interest in its chief rival, The Western Union Telegraph Company (Western Union). These actions eventually got the attention of federal antitrust lawyers and the Interstate Commerce Commission (ICC), which received authority to regulate telephone service in 1910.<sup>5</sup>

In 1913, AT&T reached a settlement with the Justice Department. AT&T agreed to divest its Western Union stock, interconnect with other companies, and not acquire any more independent companies without approval from the ICC.<sup>6</sup> This began a decades-long practice by AT&T where, after pressure from potential competitors, courts, or regulators, AT&T would enter into agreements with state and/or federal authorities in order to maintain its control of the national telephone market.<sup>7</sup>

By the 1920s, AT&T had sold the idea of telecommunications as a necessary "universal service" and a "natural monopoly" to state and federal regulators, who in turn discouraged or outright banned competitive telephone services.<sup>8</sup> During this period, AT&T repeatedly agreed to be subject to heavy, rate-restricted regulation in exchange for a guaranteed monopoly in a particular area.<sup>9</sup> AT&T's market share rebounded during this period until it controlled nearly 80 percent of the national market.<sup>10</sup>

Telephone regulation then looked a lot like today's electric regulation. The local telephone markets were considered monopolies and were rate-of-return regulated. Companies submitted cost information, regulators established their revenue requirement, or rate base, and the companies' rates were set to recover those costs. This became the de facto regulatory regime at both the federal and state levels.

By enacting the Communications Act of 1934 (1934 Act) as part of President Roosevelt's New Deal, Congress created a new agency, The Federal Communications Commission (FCC), and

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<sup>4</sup> Richard Gabel, "The Early Competitive Era in Telephone Communication, 1893-1920," 34 *Law and Contemporary Problems*, Spring 1969, p. 350, <<https://scholarship.law.duke.edu/lcp/vol34/iss2/8>>, accessed on June 24, 2020.

<sup>5</sup> Frank Dixon, "The Mann-Elkins Act, Amending the Act to Regulate Commerce," *The Quarterly Journal of Economics*, Oxford University Press, vol. 24, no. 4, August 1910, p. 596, <<https://www.jstor.org/stable/pdf/1883490.pdf>>, accessed on June 24, 2020.

<sup>6</sup> Milton Mueller, "Universal Service: Competition, Interconnection and Monopoly in the Making of the American Telephone System," 2013, Books, 18, pp. 127-128, <<https://surface.syr.edu/books/18>>, accessed on June 24, 2020.

<sup>7</sup> Matthew Lasar, "How AT&T Conquered the 20<sup>th</sup> Century," *Wired*, September 3, 2011, <<https://www.wired.com/2011/09/att-conquered-20th-century/>>, accessed on June 24, 2020.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

transferred to it the ICC's telecommunications jurisdiction.<sup>11</sup> The new law enabled the FCC to codify its rate base regulation of AT&T while also protecting AT&T's monopoly market position.<sup>12</sup> This regulatory scheme continued for several decades, allowing AT&T to grow into the largest corporation in the world. At its peak, AT&T became larger than most countries' economies, and larger than the five largest U.S. oil companies combined.<sup>13</sup>

Starting in the 1950s, cracks in the monopoly regime began to develop, and AT&T's ability to negotiate its way out of competition began to erode, first with the courts, and eventually with the FCC itself. Federal proceedings and lawsuits with nicknames such as "Hush-A-Phone," "Carterfone," and "Above 890" forced AT&T to interconnect with competitors' telephone equipment, wireless radio phones, and microwave networks.

Still, AT&T remained the largest corporation in the world when the federal government filed another antitrust suit in 1974. This action led AT&T to enter into one final agreement; this time to break itself up into smaller companies. The long distance and equipment markets had slowly become competitive and would soon be federally deregulated. AT&T offered to divest itself into eight major companies: seven regional Bell Operating Companies were established to continue the local monopolies, and AT&T, while barred from providing local service, remained as a competitor in the long distance and equipment markets.<sup>14</sup> This action, known simply as Divestiture, became final in 1984, and as a result AT&T's size dropped 70 percent.

Between 1984 and the 1990s technology continued to put pressure on the local and long distance telephone markets. Cable, cellular, and broadband services all showed promise as substitutes for traditional phone service. Divestiture had created the opportunity for Congress to rewrite the Communications Act to accommodate these technologies and open the local markets to competition.

Congress passed the Telecommunications Act of 1996 (1996 Act), rewriting the majority of the 1934 Act and setting up the ground rules for local competition.<sup>15</sup> The new law encouraged local competition nationwide, and required massive rulemakings from both the FCC and state PSCs to ensure wholesale prices, consumer protections, and universal service principles were fair and reasonable.<sup>16</sup> This effectively ended rate base regulation for the vast majority of local telephone services nationwide.

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<sup>11</sup> Communications Act of 1934, Pub. L. 73-416, <<https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/48/STATUTE-48-Pg1064a.pdf>>, accessed on June 24, 2020.

<sup>12</sup> Ibid.

<sup>13</sup> Ray Horak, *Webster's New World Telecom Dictionary*, Wiley Publishing, Indianapolis, Indiana, 2008, p. 42.

<sup>14</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1983).

<sup>15</sup> "Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996) .<<https://www.fcc.gov/general/telecommunications-act-1996>>, accessed June 24, 2020.

<sup>16</sup> Ibid.



Congress delegated to the FCC and the States the ability to write rules implementing the 1996 Act. Carriers were required to interconnect with one another, and the existing companies, called Incumbent Local Exchange Carriers (ILECs), were required to lease elements of their existing networks to the new competitors, called Competitive Local Exchange Carriers (CLECs). Wholesale rates for these Unbundled Network Elements (UNEs) had to be established at the state level using a specific and complicated cost methodology. Small, rural, independent ILECs could escape the voluminous interconnection rules if they could demonstrate to the state PSC that they could not implement the rules or if there was no demand by competitors in their area.<sup>17</sup>

Companies were encouraged to negotiate interconnection agreements including UNE prices established by the States, adopt another company's agreement, or resell a complete service. A process was also established for the regulator to step in should companies disagree and require arbitration. While the FCC was responsible for establishing the national framework for executing the 1996 Act, it was up to the States to complete the lion's share of the implementation. It took several years to complete the initial implementation of the 1996 Act by the FCC and States.

While Congress hoped that the 1996 Act would settle the endless litigation in the telecommunications market, the opposite proved true. Since its passage, lawsuits involving the FCC and some aspect of the 1996 Act have been nearly continuous to this day. The FCC's attempts to implement the interconnection and UNE access provisions were struck down, at least in part, no fewer than three times by federal courts. Finally, four tries and over eight years after the 1996 Act was passed, the FCC's "Triennial Review Remand Order" (TRRO) stuck.<sup>18</sup> The TRRO, following directives from the courts, limited CLEC access to several UNEs where competitive alternatives existed, as well as local loops combined with local switching, known as the UNE Platform (UNE-P). UNE-P was the primary method non-cable CLECs used to provide residential service. Once the courts struck down UNE-P access, CLECs essentially abandoned the residential market to cable and wireless companies.

## ***B. Florida Regulation***

While all this activity was occurring at the federal level, state actions were just as busy. The Florida Legislature (Legislature) added telephone and telegraph regulation to the Florida Railroad Commission's responsibilities in 1911.<sup>19</sup> The agency's name was changed to the Florida Public Service Commission (FPSC or Commission) in 1965.

As previously described, rate base regulation was the norm up through the 1980s in Florida. In 1990, the Florida Legislature recognized the emerging competitive markets for some telecom services provided by the local carriers and delegated to the FPSC the authority to, in some

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<sup>17</sup> 47 C.F.R. § 251(f), <<https://www.govinfo.gov/content/pkg/USCODE-2011-title47/html/USCODE-2011-title47-chap5-subchapII-partII-sec251.htm>>, accessed June 24, 2020.

<sup>18</sup> FCC 04-290, WC Docket No. 04-313, CC Docket No. 01-338, Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, released February 4, 2005.

<sup>19</sup> FPSC, "Facts and Figures," <[http://www.psc.state.fl.us/Files/PDF/Publications/Consumer/Brochure/Facts\\_Figures.pdf](http://www.psc.state.fl.us/Files/PDF/Publications/Consumer/Brochure/Facts_Figures.pdf)>, accessed June 24, 2020.

circumstances, allow price cap regulation for those services.<sup>20</sup> If the FPSC decided that effective competition existed for a particular service or market, it could allow market conditions to control prices and eliminate rate-of-return regulation for that service or market.<sup>21</sup>

Competition for more services developed and, by 1995, the emergence of cable companies made it obvious that competition for all local services was inevitable. In anticipation of a federal law becoming imminent, the Florida Legislature passed a sweeping revision to Chapter 364, F.S., finding that “the competitive provision of telecommunications services, including local exchange service, is in the public interest.”<sup>22</sup> Competitive entry into the local market was allowed, and competitors were able to enter subject to a lesser degree of regulatory oversight than the incumbents. Also, incumbents were allowed to elect price caps for all their services, eliminating them from rate-of-return regulation altogether.<sup>23</sup> The Legislature also required the FPSC to start issuing this report on the status of competition in Florida.

The Legislature followed up in 1998 by requiring the FPSC to issue a series of five reports on competition, including forward-looking cost estimates of local service, impacts to low-income assistance programs such as Lifeline, the relationships between costs and existing prices, what are fair and reasonable local rates, and impacts on multi-tenant environments.<sup>24</sup>

To further accommodate the growing competitive landscape, in 2003 the Legislature passed another major amendment to Chapter 364, F.S. The changes included lesser FPSC oversight of long distance companies, and incumbent local carriers were allowed to petition the FPSC for lesser regulatory oversight, similar to the regulation of their local competitors. It also expanded Lifeline eligibility for low-income Florida consumers, and exempted Voice-over-Internet-Protocol (VoIP) services, which at that time were largely utilized by cable companies to provide telephone service, from FPSC jurisdiction.<sup>25</sup>

In 2005, the Legislature amended Chapter 364, F.S., again, addressing local governments and broadband deployment, FPSC jurisdiction regarding advanced services, Lifeline awareness and participation, and storm damage recovery. It established rules that governmental entities, such as municipalities, must follow in order to provide communications services (cable, broadband, etc.) in competition with private providers. The 2005 revisions also clarified the FPSC’s jurisdiction, or more precisely the exemption from the FPSC’s jurisdiction, for advanced services, including wireless, broadband, and VoIP. The new law also further clarified and expanded Lifeline

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<sup>20</sup> Price caps are a regulatory scheme where, instead of regulators limiting a company’s percent return on investment, a company could elect to have its prices capped at a regulator-approved level, allowing the company to keep any profits generated by selling its services at or below the price caps.

<sup>21</sup> See 1990 Fla. Laws ch. 90-244.

<sup>22</sup> See 1995 Fla. Laws ch. 95-403.

<sup>23</sup> Ibid.

<sup>24</sup> Ch. 364, F.S., 1998, < <http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=1998&Tab=statutes&Submenu=1> >, accessed June 24, 2020.

<sup>25</sup> FPSC, “Condensed Legislative Wrap-Up – 2003 Session, June 6, 2003, < <http://www.psc.state.fl.us/Files/PDF/Utilities/Liaison/StateLegislation/2003.pdf> >, accessed June 24, 2020.

eligibility and procedures. Finally, as a result of the storm season in 2004, it permitted the recovery of costs and expenses related to named tropical storms.<sup>26</sup>

In 2006, carrier of last resort obligations in multitenant environments were amended, and some previously enacted rate requirements were repealed. In 2008, changes included further rate reductions, rebalancing, and repeals. Also in 2008, an automated enrollment process for Lifeline was created, and the incumbents' overall carrier of last resort obligations were allowed to sunset.<sup>27</sup>

In 2009, the definition of basic service was narrowed and regulation for nonbasic services was decreased. Service quality oversight for nonbasic services was eliminated and company tariffs were no longer required. Lifeline eligibility was again expanded. The Florida Department of Management Service was the agency designated to oversee broadband deployment in Florida. In 2010, the rate-of-return sections in Chapter 364, F.S., were repealed.<sup>28</sup>

The most recent revision to Chapter 364, F.S., came in 2011. This amendment finalized the deregulation of all retail services by the incumbent local providers. This included the elimination of rate caps, the elimination of the consumer protection and assistance duties of the FPSC, and the elimination of all service quality oversight. It also repealed the previously-enacted storm damage recovery provisions.<sup>29</sup>

In the telecommunications area, the FPSC still retains authority to monitor intercarrier relations and resolve wholesale disputes, oversee the Lifeline and Florida relay programs, and issue certifications. The FPSC also has authority over numbering issues, including area code relief, numbering conservation, and local number portability. The FPSC also still resolves complaints relating to Lifeline, the relay service, and payphones.

### **C. Status of Competition Report**

As previously stated, 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., requires that the report address the following four elements:

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.

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<sup>26</sup> Ch. 364, F.S., 2005, < <http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2005&Tab=statutes&Submenu=1> >, accessed June 24, 2020.

<sup>27</sup> Ch. 364, F.S., 2006, < <http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2006&Tab=statutes&Submenu=1> >, accessed June 24, 2020.

<sup>28</sup> Ch. 364, F.S., 2009, < <http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2009&Tab=statutes&Submenu=1> >, accessed June 24, 2020.

<sup>29</sup> Ch. 364, F.S., 2011, < <http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2011&Tab=statutes&Submenu=1> >, accessed June 24, 2020.

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.

The Commission is required to make requests to local exchange telecommunications providers each year for the data required to complete the report. The data request was mailed on February 27, 2020, to 10 ILECs and 256 CLECs. Responses were due April 15, 2020. The data and analyses that follow accurately reflect the information provided by the ILECs and the reporting CLECs.

This report is divided into chapters that summarize key events and data that may have a short-term or long-term effect on the Florida telecommunications market. Chapter II presents data regarding wireline access line competition in Florida, including access line trends, residential/business access line mix, and market share. Chapter III discusses the continued development of the wireline market's principle forms of intermodal competition: broadband, wireless, and VoIP. Chapter IV primarily uses data outlined in the other chapters to address the four statutory issues delineated above. Chapter V provides a summary of state activities affecting local telecommunications competition in 2019, including intercarrier matters, Lifeline, and the Telecommunications Relay Service. Chapter VI details some of the major federal activities that may affect the Florida market.



## Chapter II. Wireline Competition Overview

For the past decade, the technologies used to deliver voice telephony have continued to evolve. Analog circuits using traditional Time Division Multiplexing (TDM) and copper wires are being replaced by wireless cell-based transmission and VoIP, which is provided via a digital broadband connection, either wireless or wired. Wireless, VoIP, and broadband are all exempt from FPSC jurisdiction. The FPSC is therefore limited in what data it can collect regarding these technologies. Trends in these technologies are summarized in Chapter III.

TDM-based wireline service is still used throughout the country and Florida and is the primary subject of this report. Also, the wireless and broadband networks utilize many of the traditional wireline facilities for interoffice and long distance transport.

This chapter discusses the incumbent carriers' corporate trends as disclosed in their federal financial reports. It then discusses the number, market mix, and market share of residential and business wirelines. Knowledge of the number of wirelines and the trends for market participants is essential to understanding the state of the market.

### A. Incumbent Carriers

One tool to gauge whether the Florida market is isolated or part of a national trend is to look at companies' annual federal filings. National trends are often reflected in the companies' respective annual reports filed with the Securities and Exchange Commission. There are 10 ILECs providing wireline services in Florida, the largest of which are AT&T, CenturyLink, and Frontier.<sup>30</sup> These companies' annual reports showed that, like in Florida, they continue to face access line losses nationally as customers disconnect traditional landline services and migrate to alternative services.

AT&T reported losses of approximately 1,515,000 switched access lines nationwide (15 percent) in 2019. In Florida, AT&T's total switched access lines declined by nearly 124,000 (17.4 percent) with residential access lines decreasing by over 12,000 (4.6 percent) and business lines by nearly 112,000 (25.1 percent). For 2019, AT&T reported a decrease in operating revenues in their communications segment of approximately \$1.4 billion nationwide, a decline of 0.9 percent.<sup>31</sup>

CenturyLink no longer uses access lines as a key operating metric, and the broadband subscription data they present does not lend itself to comparison with other companies' telephone subscriber gains or losses.<sup>32,33</sup> In Florida, CenturyLink's total switched access lines

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<sup>30</sup> Responses to local competition data request 2020.

<sup>31</sup> AT&T Inc., Form 10-K, December 31, 2019, <https://otp.tools.investis.com/clients/us/atnt2/sec/sec-outline.aspx?FilingId=13936660&Cik=0000732717&PaperOnly=0&HasOriginal=1> accessed on April 3, 2020; Responses to local competition data request 2020.

<sup>32</sup> CenturyLink Form 10-K, December 31, 2019, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0000018926/483bb1c4-31c8-4f51-abad-0cae29c19992.html>, accessed on April 1, 2020.

<sup>33</sup> Ibid. p. 55: 4.7 million broadband subscribers at year end 2019.

declined by over 73,000 (15.7 percent), with residential access lines decreasing more than 57,000 (20.4 percent), and business access lines decreasing nearly 16,000 (8.5 percent). For 2019, CenturyLink reported a decrease in operating revenues of approximately \$1.042 billion, a loss of 4.4 percent.<sup>34</sup> CenturyLink's capital expenditures for 2019 were over \$3.6 billion, slightly higher than previously estimated.<sup>35</sup>

Frontier experienced a nearly 7.9 percent loss in access lines nationwide compared to 2018, ending 2019 with approximately 4.1 million subscribers.<sup>36</sup> In Florida, Frontier's total switched access lines declined by over 35,000 (16.1 percent), with residential access lines decreasing nearly 19,000 (23.6 percent) and business lines by nearly 17,000 (12.0 percent). For 2019, Frontier, reported a decrease in revenue of over \$504 million nationwide, a loss of nearly 6 percent.<sup>37</sup> In 2019, Frontier's capital expenditures were over \$1.2 billion.<sup>38</sup> Frontier filed for Chapter 11 bankruptcy protection on April 15, 2020. Frontier filed its Chapter 11 Plan of Reorganization with the bankruptcy court on May 15, 2020. It expects to emerge from Chapter 11 in August 2020.<sup>39</sup>

The seven rural Florida ILECs experienced a more modest contraction in the number of switched access lines. In 2019, rural carriers in Florida saw their total access lines decline by over 400 (0.4 percent). While residential lines increased by over 300 (0.4 percent), business lines decreased by nearly 800 (2.3 percent).<sup>40</sup>

Windstream is the largest of the rural ILECs and operates in northeast Florida. For 2019, Windstream reported approximately 1.2 million subscribers nationwide, a decline of 9.9 percent over the previous year.<sup>41</sup> In Florida, Windstream experienced an increase in switched access lines of nearly 2,500 (3.9 percent), consisting of an increase of more than 2,400 (4.8 percent) residential lines and an increase of more than 40 business lines (0.4 percent).<sup>42</sup> The company attributes its growth to increased demand for its broadband product. According to Windstream's

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<sup>34</sup> Ibid. p. 51.

<sup>35</sup> Ibid. p. 52.

<sup>36</sup> Frontier Communications, Form 10-K, December 31, 2019, <https://www.snl.com/Cache/IRCache/cf7a4fd8b-de15-4d04-9c57-8d930c895593.html#>, p. 35, accessed on May 9, 2020.

<sup>37</sup> Ibid, p. 36.

<sup>38</sup> Ibid, p. 41.

<sup>39</sup> Fierce Telecom, "Frontier winds its way through state utility approvals as part of its Chapter 11 bankruptcy proceedings", Mike Robuck, June 11, 2020, <https://www.fiercetelecom.com/telecom/frontier-winds-its-way-through-state-utility-approvals-as-part-its-chapter-11-bankruptcy>, accessed on June 17, 2020.

<sup>40</sup> Responses to local competition data request 2020.

<sup>41</sup> Windstream Holdings, Inc., Form 10-K, December 31, 2019, <https://investor.windstream.com/financials/sec-filings/default.aspx>, accessed on June 17, 2020.

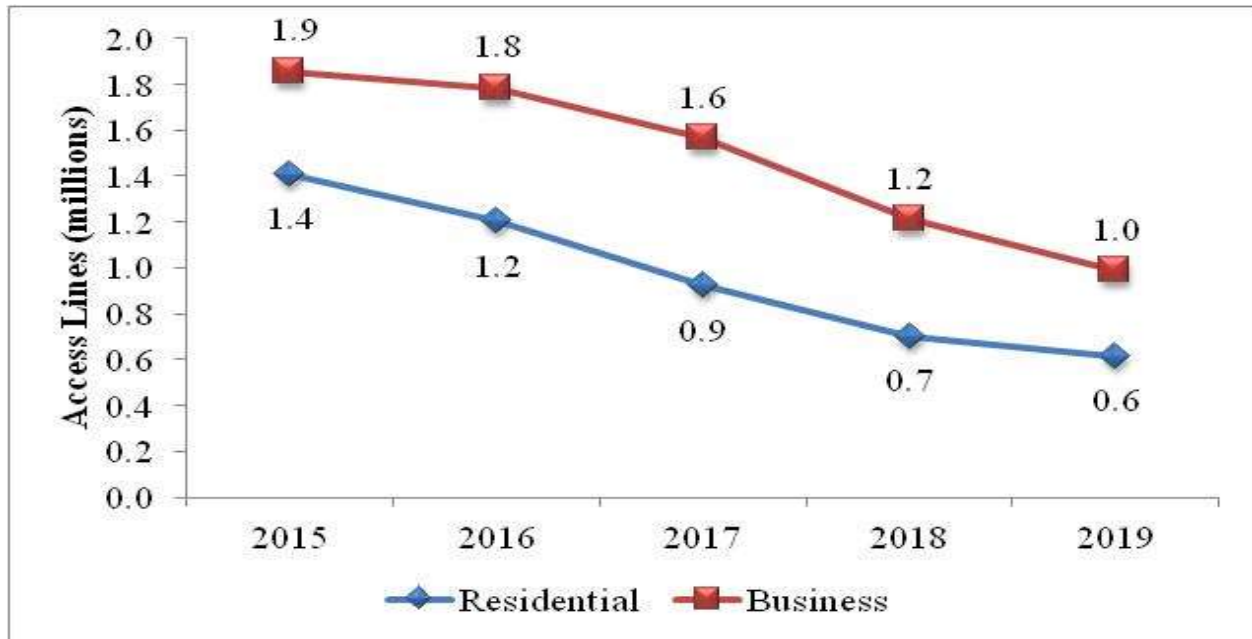
<sup>42</sup> Responses to local competition data request 2020.

reporting, the company incurred \$879 million in capital expenditures in 2019.<sup>43</sup> In February 2019, Windstream and its subsidiaries filed for reorganization under Chapter 11, and, subject to regulatory approvals, also expects to exit bankruptcy in August 2020.<sup>44</sup>

### B. Wireline Trends in Florida

Figure 2-1 illustrates the overall trend in Florida for both residential and business lines (not including VoIP connections). Based on current data, the rate of decline in residential and business lines moderated somewhat in 2019. Business access lines totaled approximately 1,000,000, representing a decrease of 17.6 percent from 2018 to 2019. Residential access lines totaled nearly 614,000 as of December 2019, representing a decline of 12.6 percent from the previous year. Total combined traditional wirelines for ILECs and CLECs declined 15.7 percent, from approximately 1.9 million in December 2018 to 1.6 million as of December 2019. From 2015 through 2019, the total number of traditional wirelines decreased by nearly 1.7 million, a decline of 51 percent.

**Figure 2-1**  
**Florida Wireline Access Line Trends**



Source: Responses to local competition data request (2016-2020)

<sup>43</sup> Windstream Holdings, Inc., Windstream Reports Fourth-Quarter, Full-Year 2019 Results, February 20, 2020, <https://investor.windstream.com/news/news-details/2020/Windstream-Reports-Fourth-Quarter-Full-Year-2019-Results/default.aspx>, accessed on April 7, 2020.

<sup>44</sup> Fierce Telecom, “Windstream Holdings targets late August for end of Chapter 11 bankruptcy”, Mike Robuck, May 11, 2020, accessed on June 17, 2020.



## C. Wireline Market Mix, Market Share, and Market Composition

### 1. Market Mix

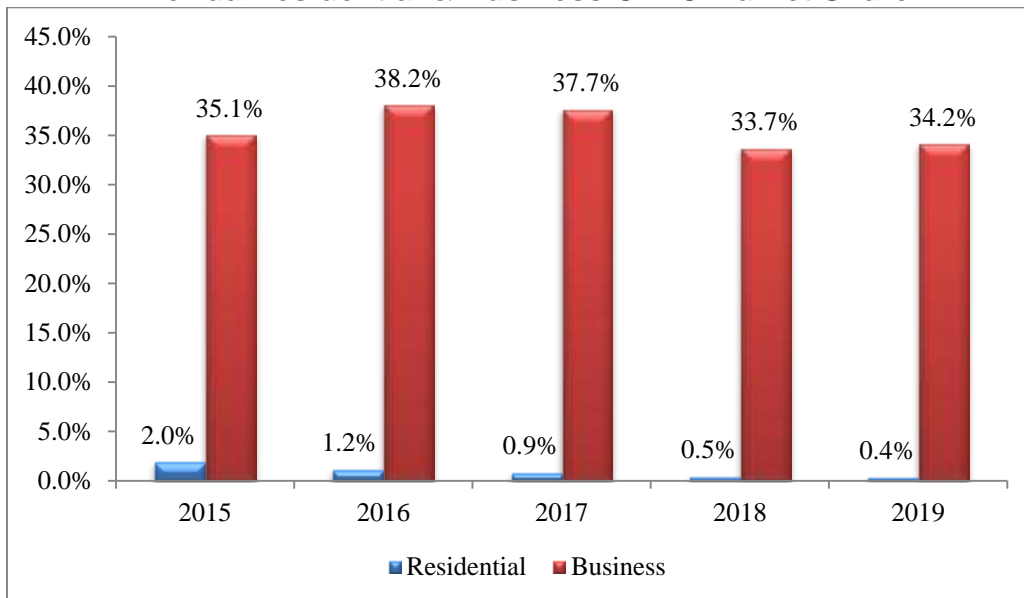
The business-to-residential ratio of customers served by ILECs and CLECs has shifted over time. In general, both ILECs and CLECs have seen an increased concentration of traditional wireline business customers as residential customers migrate to other options. The business-to-residential customer mix for ILECs was about 30 percent business and 70 percent residential in 2004. By 2017, the mix for ILECs had shifted so much that the percentage of business wirelines exceeded the percentage of residential wirelines for the first time. In 2019, the ILECs had nearly 52 percent business lines and 48 percent residential lines.

The shift in mix has been even more pronounced in the CLEC market. In 2004, the business-to-residential customer mix for CLECs was about 63 percent business and 37 percent residential. In 2020, the CLEC customer mix was over 99 percent business lines.

### 2. Market Share

CLECs have traditionally focused on business customers. Figure 2-2 illustrates FPSC data on CLEC market share by business and residential customer classes. The inverse of this percentage would be market share for the ILECs in Florida. According to FPSC data, the CLEC residential market share decreased from 0.5 percent in 2018 to 0.4 percent in 2019, while the CLEC business market share increased from 33.7 percent in 2018 to 34.2 percent in 2019.

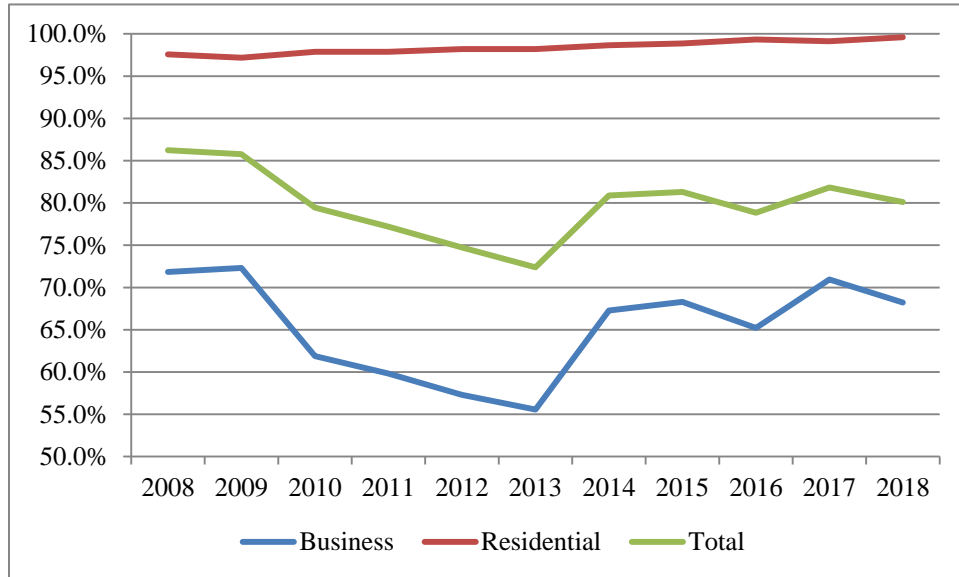
**Figure 2-2**  
**Florida Residential & Business CLEC Market Share**



Source: Responses to local competition data request (2015-2020)

As shown by FCC data in Figure 2-3, ILECs have held an average 79.9 percent share of the traditional wireline market over the last eleven years. This share has remained relatively stable, varying from 72.4 to 86.2 percent.<sup>45</sup>

**Figure 2-3  
Florida ILEC TDM Wireline Market Share**

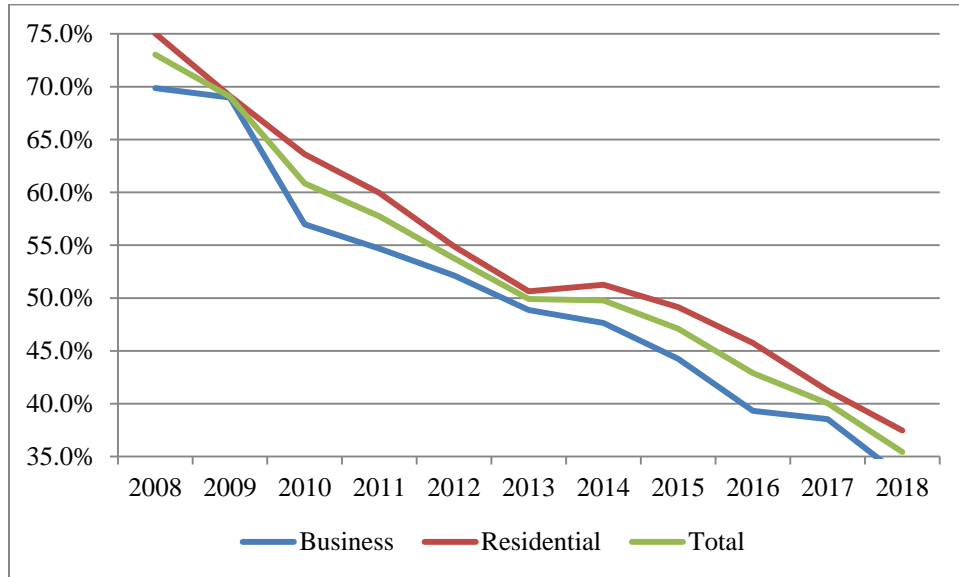


Source: FCC Voice Telephone Services Report

<sup>45</sup> FCC, Voice Telephone Services as of 12/31/18, Nationwide and State-Level Data for 2008-Present, released March 6, 2020, <https://www.fcc.gov/voice-telephone-services-report>, accessed on June 20, 2020.

When traditional TDM access lines are combined with VoIP lines, the combined wireline market reveals a continually declining ILEC market share as shown in Figure 2-4, with an average annual decrease of 3.8 percent.<sup>46</sup>

**Figure 2-4**  
**Florida ILEC TDM and VoIP Wireline Market Share**



Source: FCC Voice Telephone Services Report

<sup>46</sup> Ibid.

### 3. Market Composition

The market composition of access lines served by local exchange companies is illustrated in Table 2-1. In 2019, ILEC residential access lines decreased by 12.5 percent, while ILEC business lines decreased by 18.1 percent. The CLECs experienced a relatively small decline in the number of residential access lines, but given their small market presence, this yielded the largest percentage loss at 29.6 percent. CLEC business access lines decreased by 16.5 percent.

**Table 2-1  
Florida Wireline Access Line Comparison**

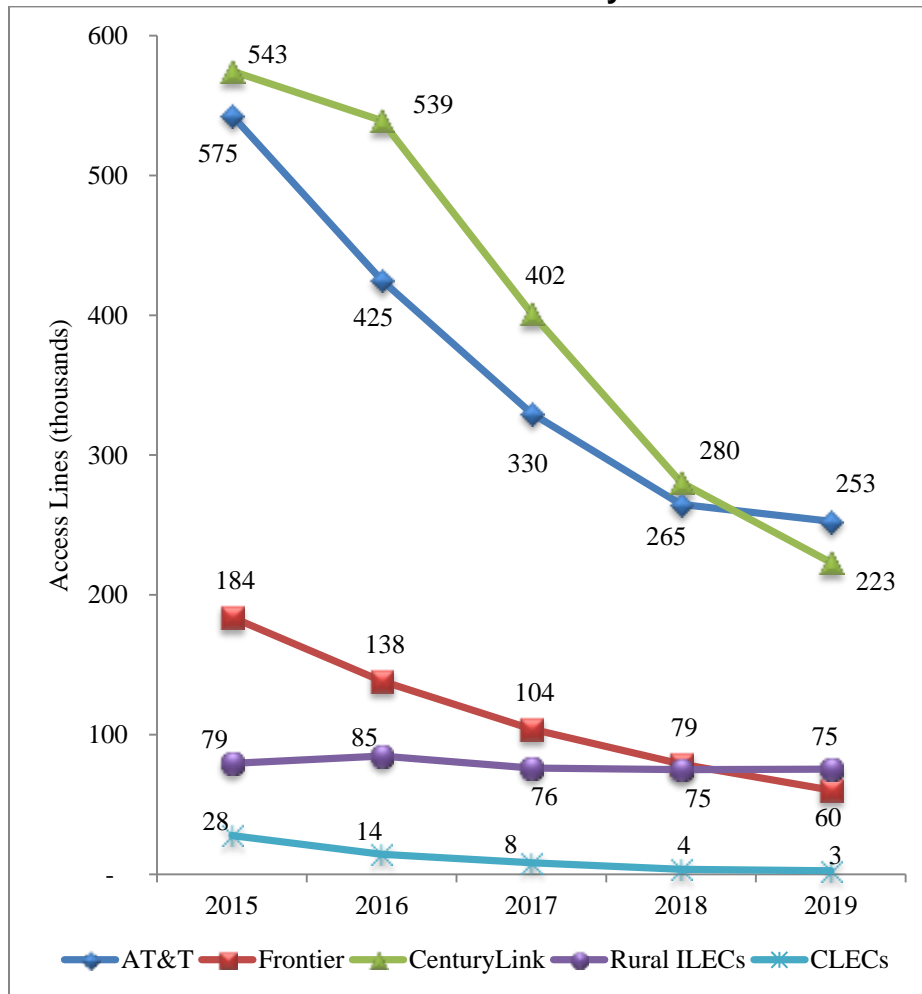
		ILECs	CLECs	Total
<b>2016</b>	Residential	1,187,615	14,415	1,202,030
	Business	1,104,197	681,398	1,785,595
	Total	2,291,812	695,813	2,987,625
<b>2017</b>	Residential	911,814	8,341	920,155
	Business	976,768	591,089	1,567,857
	Total	1,888,582	599,430	2,488,012
<b>2018</b>	Residential	698,975	3,695	702,670
	Business	803,240	409,122	1,212,362
	Total	1,502,215	412,817	1,915,032
<b>2019</b>	Residential	611,329	2,600	613,929
	Business	658,040	341,707	999,747
	Total	1,269,369	344,307	1,613,676
<b>Change 2018- 2019</b>	Residential	-12.5%	-29.6%	-12.6%
	Business	-18.1%	-16.5%	-17.6%
	Total	-15.5%	-16.6%	-15.7%

Source: Responses to local competition data request (2017-2020)

### 4. Residential Wireline Access Line Trends

Figure 2-5 displays the wireline residential access line trends separately for AT&T, Frontier, CenturyLink, aggregate rural ILECs, and aggregate CLECs. Over the past five years, AT&T and CenturyLink have both averaged losses of around 18 percent per year, while Frontier has experienced an average of about 23 percent decline per year in residential access lines. During that period, CLEC residential lines declined by an annual average of 29.4 percent, while rural ILEC access lines declined by an average of 3.2 percent.

**Figure 2-5  
Florida Residential Wireline Trends by ILECs and CLECs**



Source: Responses to local competition data request (2016-2020)

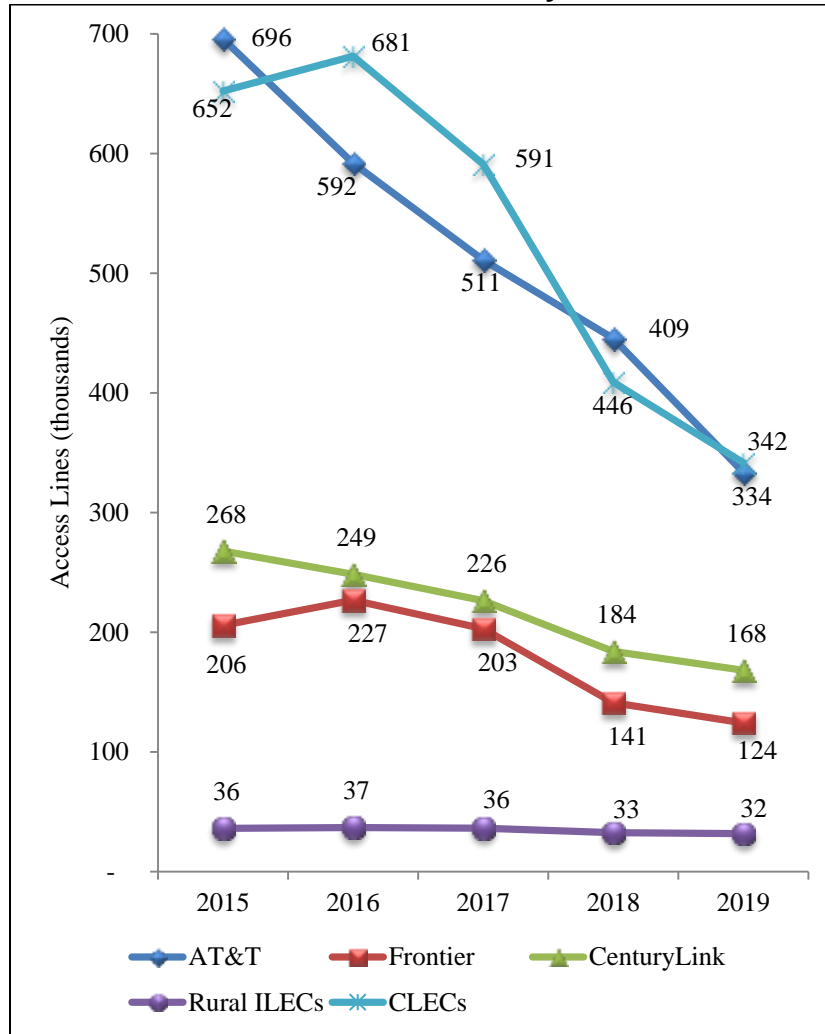
AT&T experienced residential wireline losses of 19.8 percent in 2018 and 4.6 percent in 2019. Frontier lost 24.1 percent of its residential wirelines in 2018 and 23.6 percent in 2019, while CenturyLink lost 30.2 percent of its residential lines in 2018 and 20.4 percent in 2019. The rural ILECs reported line losses of 1.6 percent in 2018 and gains of 0.4 percent in 2019, and the CLECs reported residential wireline declines of 55.7 percent in 2018 and 29.6 percent in 2019. The ILECs and CLECs experienced a moderation in the rate of line losses, while the rural ILECs experienced a slight gain in residential lines.

## 5. Business Wireline Access Line Trends

Figure 2-6 displays the wireline business access line levels separately for AT&T, Frontier, CenturyLink, aggregate rural ILECs, and aggregate CLECs. Over the past five years, AT&T has experienced an average decline of around 16 percent per year, while Frontier and CenturyLink have experienced average annual declines of around 10 percent, respectively. The average annual

decline in rural ILEC business access lines over the past five years is four percent, while CLEC business access lines declined by 16 percent annually over the same period.

**Figure 2-6**  
**Florida Business Wireline Trends by ILECs and CLECs**



Source: Responses to local competition data request (2016-2020)

AT&T experienced business wireline losses of 12.8 percent in 2018 and 25.1 percent in 2019. Frontier lost 30.5 percent of its business wirelines in 2018 and 12.0 percent in 2019, while CenturyLink lost 18.7 percent of its business lines in 2018 and 8.5 percent in 2019. The rural ILECs reported line losses of 10.4 percent in 2018 and 2.3 percent in 2019, and the CLECs reported business wireline declines of 30.8 percent in 2018 and 16.5 percent in 2019. AT&T's rate of business line losses accelerated, while the rates for all others moderated.



## Chapter III. Intermodal Competition Overview

Total wireline access lines in Florida peaked 20 years ago at approximately 12 million.<sup>47</sup> Florida's population has increased over 40 percent since then, and communications services have continued to expand, yet as previously shown in Table 2-1, wirelines were down to 1.6 million by the end of 2019. So where did 87 percent of the access lines in 2000 go?

While the ILECs have continued to dominate the traditional wireline markets as discussed in the previous chapter, competition has exploded in other modes of communication, namely broadband, wireless, and VoIP services. At their core, these other modes are just a technologically different way to communicate over distance, so they can act as a substitute for voice service. However, the additional capabilities available with these technologies have led residential consumers and businesses to make the transition to these modes in droves. This chapter summarizes what is currently going on with these technologies.

### A. Broadband

Broadband service equates to high-speed Internet access and data services; this makes it the least similar to traditional voice service, and thus not a direct substitute for it. However, broadband service is the backbone of wireless and VoIP services and its availability is imperative to making those other two platforms attractive. There are many ways broadband can be delivered: through traditional copper wires as Digital Subscriber Line service (DSL), coaxial or fiber optic cable, or wirelessly via satellite, cellular service, etc.

Broadband deployment has become so popular that it is now integrally incorporated into several state and federal agencies' infrastructure programs. Many of these projects have the end goal of expanding broadband to rural Americans who currently lack it. Broadband access also allows expanded communications abilities to be realized, such as telehealth, telework, distance learning, and video communications.

The latest report published by the FCC indicated that nationwide nearly 99 million households had fixed internet connections by the end of 2017, averaging download speeds of 60 megabits per second (Mbps). Of those, 86 million had connection speeds of at least 10 Mbps.<sup>48</sup>

The FCC also reported a 71 percent subscription rate of 25Mbps or greater fixed broadband connections in Florida in 2017. Cable modem services accounted for roughly five million of non-mobile broadband connections in Florida, while mobile broadband connections accounted for almost 20 million Florida connections.<sup>49</sup>

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<sup>47</sup> Florida Public Service Commission, "Competition in Telecommunications Markets in Florida," Tallahassee, FL, December 2000, p. 46.

<sup>48</sup> FCC, Internet Access Services: Status as of December 31, 2017, released August 2019, <<https://www.fcc.gov/internet-access-services-reports>>, Figures 6 &7, accessed on March 31, 2020.

<sup>49</sup> Ibid, tables 3 and 4.



In order to help the expansion of broadband infrastructure, states have taken the initiative to create broadband deployment programs to better identify target areas that lack the FCC's minimum 25 Mbps download speed for funding. The National Telecommunications and Information Administration (NTIA) administers grants that are focused on the deployment and use of broadband throughout the country. They oversee two programs: the Broadband Technology Opportunities Program (BTOP) and the State Broadband Initiative (SBI).<sup>50</sup> Previously, in 364.0135, F.S., The Florida Department of Management Services (DMS) was the primary agency to apply for grants and lead broadband development efforts. However, the Florida Legislature passed SB 1166, which renamed the Florida Department of Economic Opportunity (DEO) as the primary agency to house the new Office of Broadband.<sup>51</sup>

## **B. Wireless**

Past reports have consistently shown that adoption of wireless services in the United States, and Florida specifically, far surpasses the adoption of other modes of communications. In the early 1990s, wireless service was still new, signal strength and network availability were limited, and the services were marketed primarily to enterprise and other business users. The general population of consumers could not afford the cost of the cellular phone, and the limited availability of network access meant that mass adoption of the platform would take time. Few analysts envisioned wireless services and the devices they would spawn would become the primary form of interpersonal communication.

### **1. Market Share**

According to Statista.com and as shown in Figure 3-1, US market share among the top five wireless companies was split between AT&T with 39.9%, followed by Verizon at 29.2%, T-Mobile at 16.4%, Sprint at 13.3%, and US Cellular at 1.2%.<sup>52</sup>

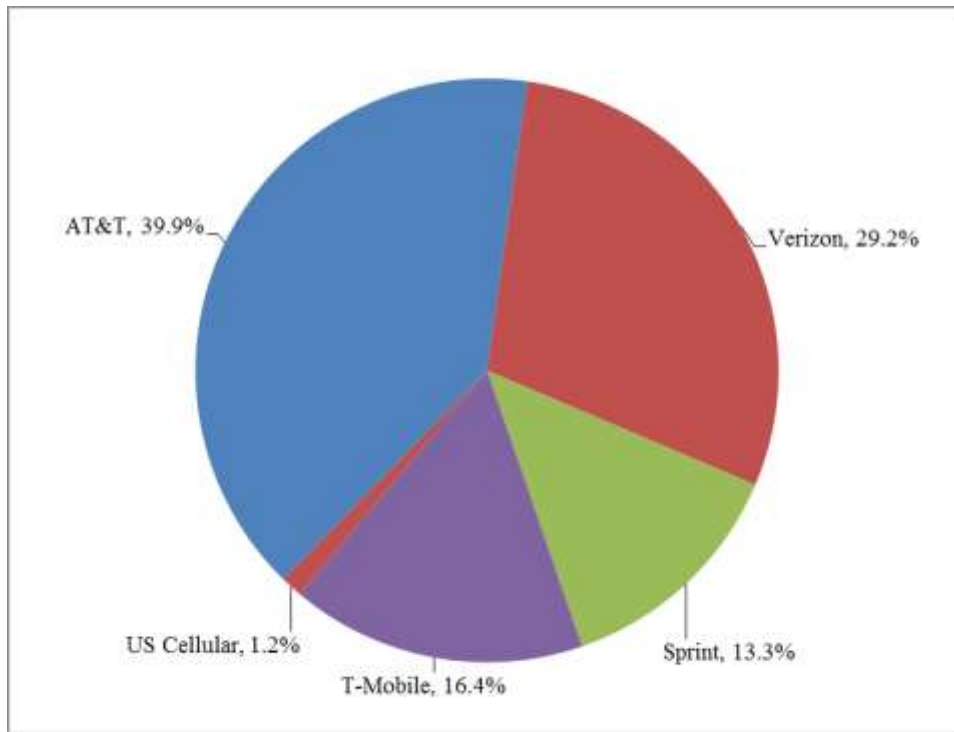
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<sup>50</sup> National Telecommunications and Information Administration, "Grants", <[https://www.ntia.doc.gov/category/grants?type=All&field\\_month\\_list\\_value=All&field\\_press\\_release\\_date\\_value%5Bvalue%5D%5Byear%5D=2010](https://www.ntia.doc.gov/category/grants?type=All&field_month_list_value=All&field_press_release_date_value%5Bvalue%5D%5Byear%5D=2010)>, accessed July 7, 2020.

<sup>51</sup> <<https://www.flsenate.gov/Session/Bill/2020/1166>>

<sup>52</sup> Statista, Wireless subscriptions market share by carrier in the U.S. from 1st quarter 2011 to 3rd quarter 2019, December 2019, <<https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/>>, accessed on April 8, 2020.

**Figure 3-1**  
**U.S. Wireless Market Share as of 3<sup>rd</sup> Quarter 2019**



Source: Statista

## 2. Wireless Substitution

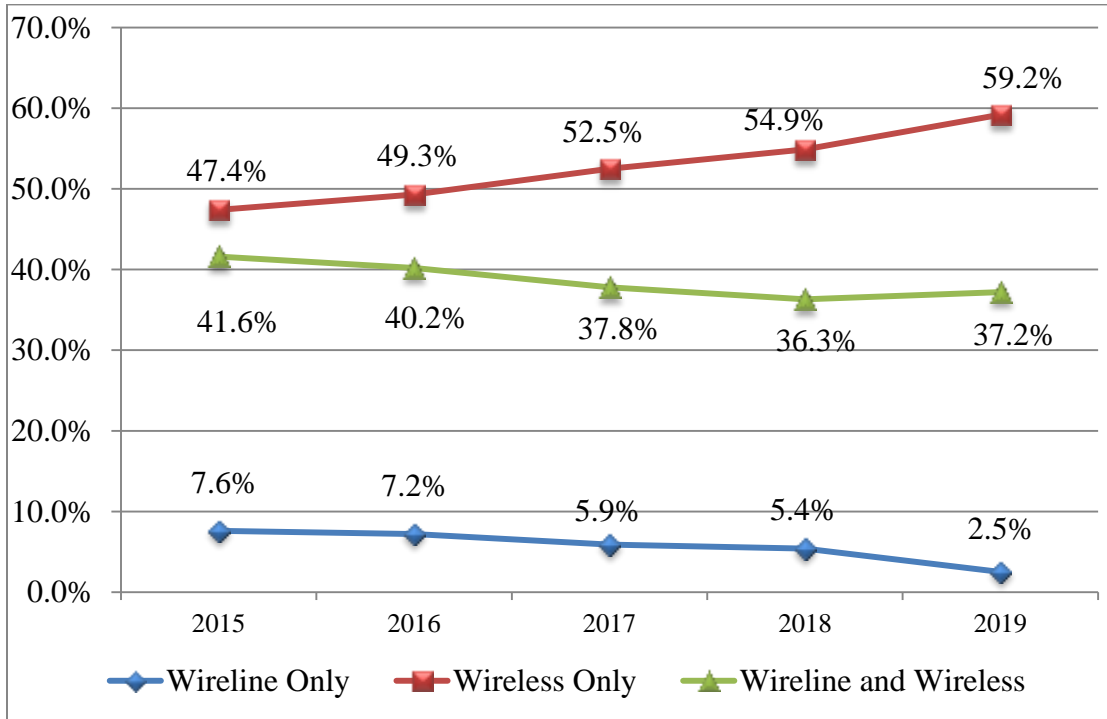
According to the most recent data from carriers' financial reports, the four largest wireless service providers in the United States – AT&T, Sprint, T-Mobile, and Verizon Wireless – accounted for over 400 million connections at the end of the third quarter of 2019.<sup>53</sup> The number of connections in the United States is enough for every US citizen to have a wireless device, and still have over 25 million remaining.

Over the last five years, the number of households with both wireline and wireless service has trended downward, but in 2019 increased slightly. Less than 38 percent of U.S. households subscribe to both wireline and wireless service. As shown in Figure 3-2, wireless-only households in the United States rose from 54.9 percent in June 2018 to 59.2 percent one year later.<sup>54</sup>

<sup>53</sup> Companies' 2020 Annual 10-K filings with the SEC.

<sup>54</sup> Blumberg SJ, Luke JV. "Wireless substitution: Early release of estimates from the National Health Interview Survey, January-June 2019." National Center for Health Statistics, May 2020, <<https://www.cdc.gov/nchs/nhis/erwirelessubs.htm>>, accessed on April 8, 2020.

**Figure 3-2  
U.S. Wireless Substitution Rates**



Source: CDC/NCHS, National Health Interview Survey

### 3. Florida Trends

Florida’s wireless trends, generally, track closely with national trends. The most recent data available from the FCC, from December 2018, estimated Florida’s wireless subscriptions to be 21,884,000. This is an increase of approximately 1 percent from 2017 (21,208,000).<sup>55</sup>

Florida’s wireless-only households increased to 60.9 percent in 2018, ahead of the national average of 56.7 percent. Nearly 73 percent of Florida’s children live in wireless-only households.<sup>56</sup> This percentage is higher than the national average of 67.5 percent for the same period.<sup>57</sup> Though Florida’s rate of substitution continues to maintain a level similar to the national average, it appears to be increasing.

<sup>55</sup> FCC, Voice Telephone Services Report, State-Level Subscriptions, released March 6, 2020, [https://www.fcc.gov/sites/default/files/vts\\_state\\_table\\_1.xlsx](https://www.fcc.gov/sites/default/files/vts_state_table_1.xlsx), accessed on April 10, 2020.

<sup>56</sup> National Center for Health Statistics, Centers for Disease Control and Prevention, “Wireless Substitution State-Level Estimates from the National Health Interview Survey,” released December 2019, <https://www.cdc.gov/nchs/nhis/erwirelessubs.htm>, accessed on April 8, 2020.

<sup>57</sup> Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July–December 2018. National Center for Health Statistics. June 2019, <<https://www.cdc.gov/nchs/nhis.htm>>, accessed on April 8, 2020.

#### 4. New Technology

The demand for wireless broadband service continues to grow with each new evolution of technology. The fifth generation of wireless connectivity, known as “5G,” will bring a more robust broadband experience to wireless services. The newest generation of devices will benefit from increased spectrum, a reduction in latency, and improved signal quality. Technological advances notwithstanding, the switched access network is still necessary. Wireline facilities are the backbone of the new generation of wireless tools available to consumers, and will continue to be instrumentally critical to current wireless technology and its future evolutions. Consumers use their devices wirelessly, but once their signal reaches a cell tower/receiver, the voice and data signals are transported primarily through landline facilities to the termination point. The wireline network will continue to be vital to the development of current 5G services as well as those yet to come.

Verizon launched 5G Ultra-Wideband Network in 31 markets in 2019 and hopes to expand that footprint to 60 cities in 2020.<sup>58</sup> In Florida, Verizon’s 5G service is available in Miami and Panama City.<sup>59</sup>

AT&T began offering 5G services to consumers in 20 communities in December 2019, and plans to have mobile 5G service nationwide to more than 200 million people by the second quarter 2020.<sup>60</sup> In January 2020, AT&T announced its 5G network was available in parts of Miami and Miami Gardens, Florida,<sup>61</sup> and in April the company announced the addition of Bradenton, Dixie County, Fort Pierce, Hamilton County, Hardee County, Ocala, Pensacola, Sarasota, and Tampa.<sup>62</sup>

In April 2020, T-Mobile and Sprint (T-Mobile US) completed their merger. In its annual report, T-Mobile noted that by the end of 2019, its 5G network covered more than 200 million people and 5,000 communities.

#### C. Voice over Internet Protocol (VoIP)

VoIP technology utilizes digital computer protocols in order to complete telephony voice calls over the Internet. Interconnected VoIP allows users to make and receive calls between their VoIP

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<sup>58</sup> Fortune.com, “Verizon to double the number of cities with its 5G mobile service this year”, by Arron Pressman, February 13, 2020, <<https://fortune.com/2020/02/13/verizon-5g-mobile-network-double-number-of-cities/>>, accessed on May 2, 2020.

<sup>59</sup> Verizon News, “Verizon 5G Ultra Wideband service available in more cities” January 30, 2020, <<https://www.verizon.com/about/news/verizon-5g-ultra-wideband-service-available-more-cities>>, accessed on May 2, 2020.

<sup>60</sup> AT&T Annual 10-K, <<https://otp.tools.investis.com/clients/us/atnt2/sec/sec-outline.aspx?FilingId=13936660&Cik=0000732717&PaperOnly=0&HasOriginal=1>>, pg. 7, accessed on May 2, 2020.

<sup>61</sup> AT&T Technology Blog, “New Year, New Way for AT&T Customers to Connect” by Scott Mair, January 3, 2020, <[https://about.att.com/innovationblog/2020/01/2019\\_5g\\_recap.html](https://about.att.com/innovationblog/2020/01/2019_5g_recap.html)>, accessed on May 2, 2020.

<sup>62</sup> AT&T News, “AT&T 5G Now Covers More Than 120 Million People in the U.S.”, <[https://about.att.com/newsroom/2020/5g\\_announcements.html](https://about.att.com/newsroom/2020/5g_announcements.html)>, accessed on May 2, 2020.

networks and the public switched telephone network (PSTN).<sup>63</sup> These calls can be provided via separate interconnected digital channels, privately managed, or “over the top” of existing Internet traffic. Interconnected VoIP is a substitute for traditional TDM-based service, and so is included in this report to the extent information is available. Non-interconnected VoIP services lack the capability of interconnecting with the PSTN, and therefore are not a substitute for TDM.<sup>64</sup> Non-interconnected VoIP is not discussed in this report.

VoIP providers include cable companies, ILECs, CLECs, and Over the Top (OTT) providers. Customers usually subscribe to a broadband service and lease/purchase telephone equipment from the VoIP provider. Calls are sent through the broadband connection.

OTT companies include Magic Jack, Vonage and Skype. OTT calls can be viewed as interconnected VoIP services because of their ability to connect to internet infrastructure and route calls through the PSTN. These companies require the customer to have a broadband internet connection. Some use plugin converters between the consumer’s existing phone and their standard phone jack. Calls are made through an existing internet connection.

FCC data from June 2014 through the end of 2018 shows a continued growth rate for VoIP of four percent per year, while subscribership to traditional wireline services decreased by 12 percent.<sup>65</sup> The FCC also reported that there were approximately 67 million VoIP subscribers in the U.S.<sup>66</sup> Table 3-1 shows U.S. VoIP subscribership by customer type as of December 2018. Data collected by the FPSC also shows nearly 2.5 million residential VoIP subscribers in Florida as of December 2019.<sup>67</sup>

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<sup>63</sup> 47 C.F.R. § 9.3.

<sup>64</sup> 47 USC § 153(36). An example of a non-interconnected VoIP network is a video game console service such as Xbox Live.

<sup>65</sup> FCC, Voice Telephone Services: Status as of December 31, 2018, released March 6, 2020, <<https://www.fcc.gov/voice-telephone-services-report>>, accessed on March 23, 2020.

<sup>66</sup> Ibid, Table 1, accessed on March 23, 2020.

<sup>67</sup> Responses to local competition data request 2020.

**Table 3-1**  
**U.S. Interconnected VoIP Subscriberhip by Customer Type**  
**(In Thousands)**

<b>Total</b>	<b>Over-the-Top</b>	<b>All Other VoIP</b>	<b>Total</b>
ILEC	69	13,132	13,201
Non-ILEC	10,082	43,644	53,726
<b>Total</b>	<b>10,152</b>	<b>56,776</b>	<b>66,927</b>
<b>Residential</b>			
ILEC	2	9,034	9,036
Non-ILEC	2,325	27,246	29,571
<b>Total</b>	<b>2,327</b>	<b>36,280</b>	<b>38,607</b>
<b>Business</b>			
ILEC	67	4,098	4,165
Non-ILEC	7,757	16,3997	24,155
<b>Total</b>	<b>7,825</b>	<b>20,495</b>	<b>28,320</b>

Source: FCC Voice Telephone Services Report, December 2018

### 1. National Market

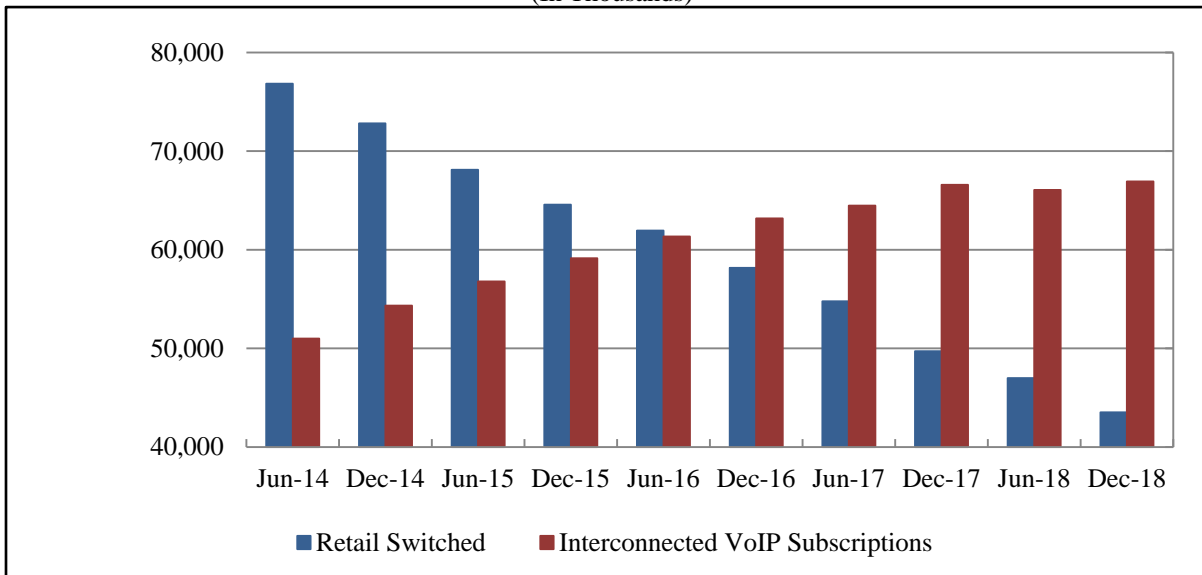
VoIP subscriptions have enjoyed steady increases for the past several years, both nationally and in Florida, while traditional switched lines have decreased. However, recent data indicates that customer migration to VoIP, particularly for residential customers, may have plateaued. As shown in Figure 3-3, the FCC reported approximately 67 million VoIP subscriptions and 43.5 million retail switched lines by year end 2018. These figures total up to approximately 110 million wireline voice retail connections.<sup>68</sup> Of those 110 million connections, 51 percent were residential and 49 percent were business.<sup>69</sup>

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<sup>68</sup> Ibid, p. 2.

<sup>69</sup> Ibid, Figure 1.

**Figure 3-3**  
**U.S. Retail Voice Telephone Subscriptions**  
(In Thousands)



Source: FCC Voice Telephone Services Report, December 2018

### a. Facilities-Based VoIP Providers

According to the FCC, non-ILEC companies accounted for nearly 29.5 million residential VoIP subscribers as of December 2018, compared to 9 million ILEC VoIP subscribers. This represents over a 75 percent market share for the non-ILECs in this market.<sup>70</sup> Comcast, the country’s largest cable provider, reported a decrease of nearly three percent from 2018 (10.2 million) to 2019 (9.9 million).<sup>71</sup> The second largest cable provider, Charter Communications, reported a total of approximately 9.4 million residential VoIP subscribers at year-end 2019, a decrease of nearly seven percent from 2018.<sup>72</sup> AT&T reported approximately 3.8 million U-verse consumer VoIP subscribers at year-end 2019, nearly a 17.4 percent decrease from the previous year.<sup>73</sup>

Each of these top three facilities-based providers reported that improvements in wireless carriers’ broadband infrastructure is a factor in consumers’ decisions to leave wireline broadband and VoIP services. These providers have developed wireless and video services and bundle them in an attempt to retain customers.

<sup>70</sup> Ibid Table 1.

<sup>71</sup> Comcast Corporation, Comcast 2019 Annual Report on Form 10-K, released January 01, 2019, <https://www.cmcsa.com/financials/annual-reports>, accessed on April 22, 2019.

<sup>72</sup> “Charter Investors: Results, SEC Filings & Tax Information,” Charter Communications, Inc. News Release, released February 2, 2019, <https://ir.charter.com/financial-information/annual-reports>, accessed on March 24, 2020.

<sup>73</sup> AT&T Inc. 2019 Annual Report 10-K, <https://otp.tools.investis.com/clients/us/atnt/SEC/sec-filing.aspx?comingfrom=secshow>, accessed on March 24, 2020.

## **b. Over the Top VoIP Providers**

Routing voice calls over a customer's existing Internet connection allows over-the-top providers to have a much lower cost of service than wireline and wireless competition. According to the FCC, there were 10 million OTT VoIP subscribers in the U.S. as of December 2018. This total included nearly 2.3 million residential subscribers and approximately 7.8 million business subscribers nationwide. The FCC's figures showed an increase of approximately 13.5 percent in residential subscribers, and nearly a six percent increase in business subscribers from June to December in 2018.<sup>12</sup>

### **2. Florida Market**

The FPSC does not have jurisdiction over VoIP services, which limits the agency's ability to determine an accurate estimate of the total number of VoIP subscribers in Florida. However, several ILECs and CLECs in Florida voluntarily responded to the Commission's data request and provided information on the number of residential VoIP subscribers. The Florida Internet and Television Association reported nearly 1.9 million residential VoIP subscribers for the five largest member providers, but it has not historically provided business line data. The FCC reported non-ILECs in Florida served approximately 1.6 million business interconnected VoIP subscribers by December 2018, an increase of nearly 11 percent from 2017.<sup>13</sup>

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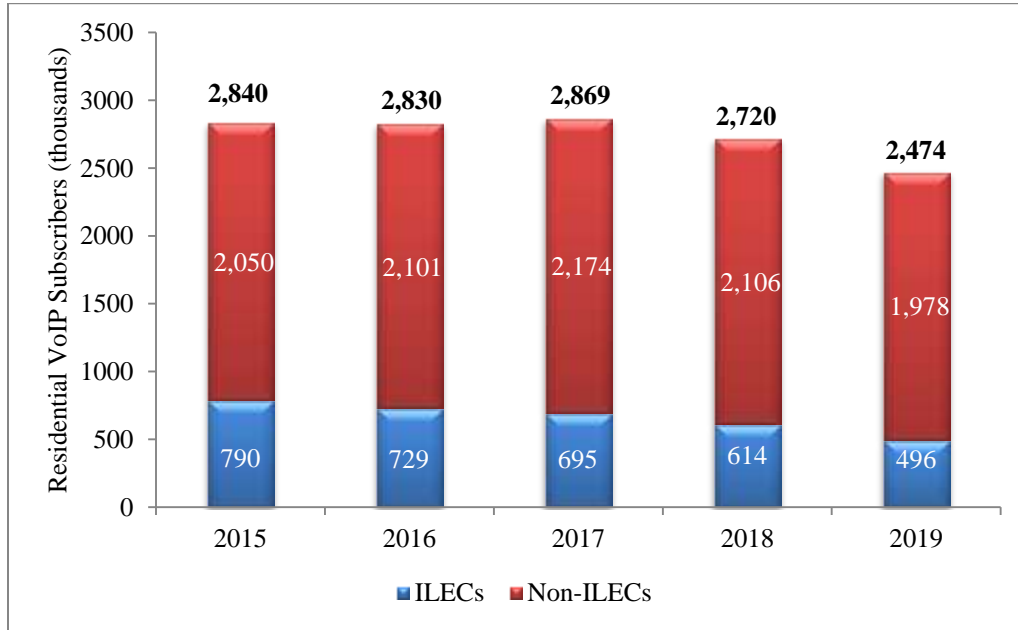
<sup>12</sup> FCC, Voice Telephone Services: Status as of December 31, 2018 Table 1, released March 06, 2020, <https://www.fcc.gov/voice-telephone-services-report>, accessed on March 24, 2020.

<sup>13</sup> FCC Voice Telephone Services Report, State-Level Subscriptions, Supplemental Table 1, Florida, released March 2020, <https://www.fcc.gov/voice-telephone-services-report>, accessed on March 24, 2020.



Figure 3-4 shows an estimated 2.5 million residential VoIP subscribers in Florida as of December 2019. This data indicates a decrease of nearly 250,000 residential VoIP subscriptions in 2019. The five year trend indicates that the residential VoIP market in Florida may have matured and/or stagnated. As previously stated, the major VoIP carriers have indicated that increased competition from wireless competitors has affected VoIP subscriptions.

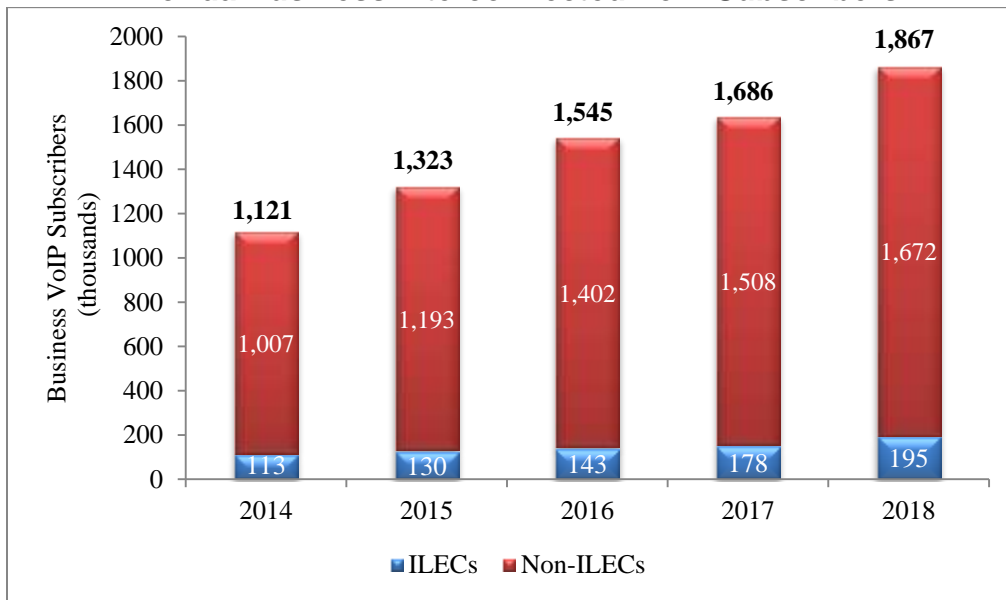
**Figure 3-4**  
**Florida Residential Interconnected VoIP Subscribers**



Source: Responses to FPSC data requests (2015-2019)

Alternatively, the business VoIP market in Florida continues to expand. Figure 3-5 displays VoIP business subscribers by ILEC and Non-ILEC carriers as reported by the FCC. ILECs and non-ILECs combined for double-digit growth in 2018, adding to the aggressive growth Florida business VoIP subscribers have enjoyed for several years. Business VoIP growth lagged behind residential growth for several years as cable companies concentrated on the residential market, but as that market matured they turned their attention towards business customers.

**Figure 3-5**  
**Florida Business Interconnected VoIP Subscribers**



Source: FCC, Voice Telephone Services Report, State Level Subscriptions



## Chapter IV. Competitive Market Analysis & Statutory Issues

### ***A. Statutory Issue – Competitive Providers***

**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.**

Functionally equivalent services are available to consumers via wireline telephony, wireless telephony, or VoIP. As of June 22, 2020, 227 CLECs had responded to the Local Competition Report data request. Of those responding, 54 companies indicate they provided local voice service in Florida in 2019.<sup>74</sup> Many offer multiple services and/or bundled packages.

As discussed in Chapter III, total wireline residential and business markets in Florida declined by 16.4 percent. CLEC total lines decreased 19.7, while ILEC total lines decreased by 15.5 percent. The CLEC wireline market share in Florida decreased from 21.6 percent in 2018 to 20.7 percent in 2019.

Florida residential VoIP subscribership accounted for 2.5 million connections by December 2019, representing an 11.1 percent decrease in lines.<sup>75</sup> Comparable 2019 end of year data was not available for business VoIP segments of the market. However, data for 2018 from the FCC indicated that the number of Florida business VoIP lines grew 10.7 percent from end of year 2017 through December 2018.<sup>76</sup> With the decline in CLEC and ILEC wirelines as well as residential VoIP lines in the state of Florida, consumers appear to be migrating to wireless services. Several CLECs reported providing a number of services: local phone service (54 CLECs), VoIP (82), broadband Internet access (67), video service (8), and bundled services (67).

The 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. Responses to FPSC data requests indicate that a substantial number of CLECs offer a variety of functionally equivalent services at comparable terms.

In response to FPSC data request questions, the majority of CLECs reported no barriers to competition or elected not to respond. However, the companies that did report competitive concerns mentioned issues with ILEC pricing practices and the lack of a formal plan for IP transition.<sup>77</sup> We note that the CLECs have not filed any petitions with the Commission to address these issues. Some of these issues may be addressed by the FCC.

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<sup>74</sup> Responses to local competition data request 2020.

<sup>75</sup> Ibid.

<sup>76</sup> FCC, “Voice Telephone Services as of December 31, 2018,” State-Level Subscriptions spreadsheets, released March 6, 2020, <https://www.fcc.gov/voice-telephone-services-report>, accessed on April 2, 2020.

<sup>77</sup> Responses to local competition data request 2020.

**Conclusion:** Dozens of competitors offered multiple combinations of services to attract customers. Also, subscriptions to wireline telephony decreased again in 2019, indicating consumer choice continues to be primarily wireless and VoIP services. Based on the multiple services offered by alternative providers and their significant market share, companies are offering functionally equivalent services to both business and residential customers.

## ***B. Statutory Issue – Consumers***

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

If companies are making functionally equivalent services available at comparable rates, terms, and conditions, as concluded in the previous issue, this issue determines whether or not there are significant impediments to consumers obtaining those services. One of the best determinants of whether consumers can obtain alternative services is the degree to which they are actually subscribing to them in large numbers.

Over the past 20 years, total traditional access lines have declined by around 87 percent in Florida, as the population has increased substantially by around 40 percent. Given the importance of telecommunications service and the large percentage decline in traditional access lines, consumers must be finding service elsewhere. Competitors have been successfully maintaining substantial and increasing shares in traditional access lines and other technologies, such as wireless and VoIP. By December 2018, the number of wireless connections in Florida reached 21.8 million, which equates to more than one connection per person.<sup>78</sup> Some consumers have migrated to VoIP. The ILEC residential VoIP market share has averaged 17 percent over the last eleven years, while peaking in 2015 at 26.3 percent.<sup>79</sup>

**Conclusion:** The ILEC wireline residential market share continues to increase; however, the traditional wireline market continues to decrease despite population growth. Increasing demand for service is being met by wireless subscription growth and VoIP. There are more wireless connections in Florida than people. Consumers are choosing to obtain a majority of wireless subscriptions and VoIP from competitors. Given competitors' substantial wireless and VoIP market shares, consumers are able to obtain functionally equivalent services at comparable rates, terms, and conditions.

## ***C. Statutory Issue – Affordability & Reliability***

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

In order to successfully compete in a free market, a business needs to provide equivalent value to consumers. The value of telecommunications service is most broadly determined by affordability and reliability. As shown in Figure 4-1, the average Florida household telephone subscription

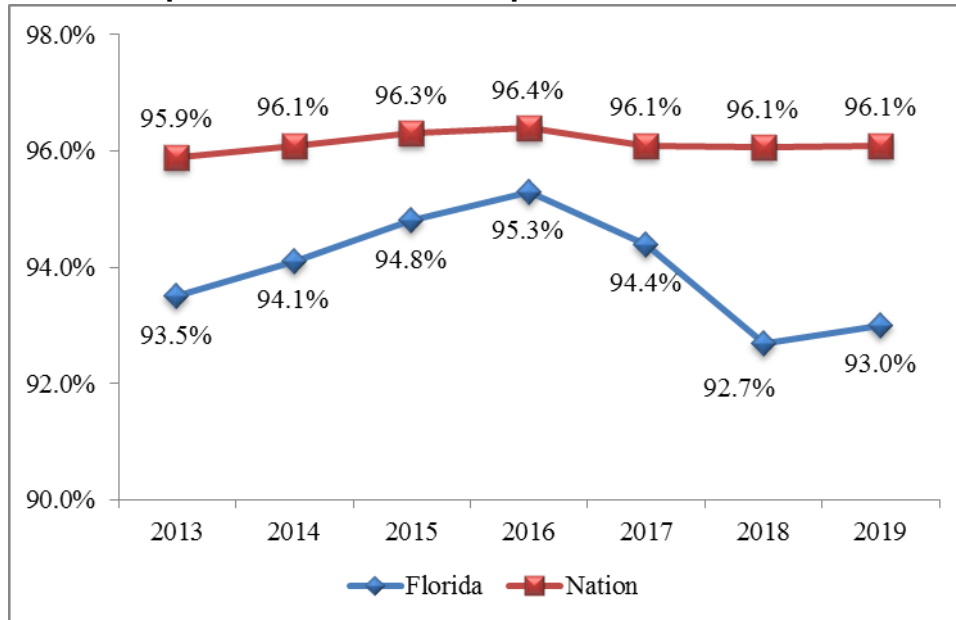
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<sup>78</sup> FCC, Voice Telephone Services Report, State-Level Subscriptions, released March 6, 2020, [https://www.fcc.gov/sites/default/files/vts\\_state\\_table\\_1.xlsx](https://www.fcc.gov/sites/default/files/vts_state_table_1.xlsx), accessed on April 10, 2020.

<sup>79</sup> FCC, Voice Telephone Services as of 12/31/18, Nationwide and State-Level Data for 2008-Present, released March 6, 2020, <https://www.fcc.gov/voice-telephone-services-report>, accessed on June 20, 2020.

rate has been nearly 94 percent over the last seven years.<sup>80</sup> This high telephone subscription rate is not a recent occurrence; the average household telephone subscription rate has been 93.2 percent over the past 35 years.<sup>81</sup>

**Figure 4-1**  
**Telephone Service Subscription: Florida vs. Nation**



Source: FCC staff interview

Following the passage of the Florida Regulatory Reform Act in 2011, the FPSC no longer retains jurisdiction over telecommunications consumer complaints and holds no data on quality of service.<sup>82</sup> However, consumers freely choosing competitors for telecommunications service suggests that they view competitors' services as having reliability that is sufficiently comparable to ILEC service.

**Conclusion:** A competitive market requires comparable affordability and reliability of service. The vast majority of Florida households subscribe to telephone service. Consumers are willing and able to choose telecommunications service from competitors using a variety of technologies, so competitors have been maintaining significant market share over an extended period of time. Based on competitors' substantial market share and market pressures requiring comparable affordability and reliability, competition is having a positive effect on the maintenance of reasonably affordable, reliable telecommunications services.

<sup>80</sup> FCC, Staff Interview, March 19, 2020.

<sup>81</sup> FCC, Staff Interviews (1985-2020)

<sup>82</sup> Florida Department of State, State Library and Archives of Florida, Telecommunications (Regulatory Reform Act), <http://laws.flrules.org/node/5694>, accessed on June 23, 2020.

***D. Statutory Issue – Carrier Disputes***

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

**Conclusion:** There were no carrier disputes filed with the FPSC under Section 364.16, F.S., in 2019.

## Chapter V. State Activities

This chapter provides a summary of state activities affecting local telecommunications competition in 2019. The state activities discussed in this chapter are important in helping to gauge how well the market is functioning for Florida businesses and consumers.

### **A. Intercarrier Matters**

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 (revised in 2010), for CenturyLink in January 2003 (revised in 2013 and 2016), and for Verizon in June 2003 (revised in 2007). Trending analysis is applied to monthly performance measurement data provided by each ILEC.<sup>83</sup>

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; financial remedies are applied to 24 of these measures. In 2019, AT&T paid \$324,814 in remedies to CLECs, which is a decrease of 41.6 percent from 2018. The greatest cause of this decrease was the avoidance of any trunk line incidents, which often result in a substantial number of blocked and redialed calls.

On October 15, 2015, CenturyLink filed proposed revisions to its Performance Measurement Plan as a result of a negotiated settlement with the Nevada Public Utilities Commission. The revisions included revising reporting requirements from monthly to quarterly, eliminating several performance measures from the plan, and amending two measures. The proposal was approved for Florida by the Commission on February 15, 2016.<sup>84</sup> CenturyLink has reported no noncompliances in the three years since the settlement.

Frontier Communications completed its purchase of Verizon Florida's wireline operations in April 2016. In its role as a major ILEC, Frontier is responsible for a Performance Measurement Plan that includes 29 measures. In 2019, Frontier maintained an average monthly compliance rate of 77.3 percent, ranging from 73.0 percent to 83.9 percent. This result represented a slight decline from 2018's average monthly compliance rate of 78.6 percent.

The Commission processed a number of other telecommunications-related items in 2019. The Commission processed 46 service schedule and tariff filings, 61 interconnection agreements and amendments, 11 carrier certifications, five certificate cancellations, and over 150 general inquiries/informal complaints.

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<sup>83</sup> FPSC Dockets: No. 20000121A-TP (AT&T), No. 20000121B-TP (CenturyLink), and No. 20000121C-TP (Frontier FL).

<sup>84</sup> Docket No. 000121B-TP, Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies. (CenturyLink Florida Track), Order No. PSC-16-0072-PAA-TP issued February 15, 2016, <<http://www.floridapsc.com/library/filings/2016/00858-2016/00858-2016.pdf>>, accessed on May 9, 2020.



## **B. Lifeline**

As a part of the FCC's Lifeline Modernization Order, released on April 27, 2016, the FCC directed the Universal Service Administrative Company (USAC) to develop the National Lifeline Eligibility Verifier (National Verifier). The purpose of the National Verifier is to determine initial subscriber eligibility, conduct annual recertification, populate a national database consisting of Lifeline customers, and provide support payments to providers serving these customers. Throughout 2019, USAC conducted quarterly launches that transitioned states and U.S. territories into the National Verifier.

On December 31, 2019, USAC finished their final launch, encompassing all 50 states, as well as all U.S. territories into the National Verifier. Upon inception into the National Verifier, states entered a soft launch period in which usage of the National Verifier was encouraged, but not mandatory, to determine customer eligibility for the Lifeline program. During this period, carriers were still able to determine Lifeline customer eligibility using previously acceptable processes.

During the soft launch period, USAC conducts a one-time reverification process. During this process, all current Lifeline customers are required to have their eligibility for the Lifeline program re-determined in order to populate the previously mentioned database. Customers being served by ETCs who do not have on hand documentation proving their eligibility for the Lifeline program are contacted by USAC, and given 60 days to provide their Lifeline eligibility documentation. Those who are non-responsive or who are not able to provide this documentation are de-enrolled from the Lifeline program.<sup>85</sup> After a determinate amount of time in soft launch status, USAC transitions states to hard launch status, in which customers must be verified through National Verifier eligibility processes. Florida entered hard launch status on March 24, 2020.

In 2007, the FPSC established the Lifeline Electronic Coordinated Enrollment Process (Coordinated Enrollment) in conjunction with the Florida Department of Children and Families (DCF).<sup>86</sup> The Coordinated Enrollment process establishes a computer interface between the FPSC and DCF, in which prospective Lifeline customers applying for either the Supplemental Nutrition Assistance Program, or Medicaid, could automatically be enrolled into the Lifeline program. Customers opting to be enrolled in the Lifeline program would then be directed to choose an ETC from which to receive Lifeline service. That customer's information would be uploaded to an FPSC database, and would be accessible to the relevant ETC. Due to the National Verifier's hard launch requiring all eligibility determination to be conducted by USAC, the Coordinated Enrollment process was no longer able to automatically enroll potential Lifeline customers.

FPSC staff has made all Florida ETCs aware of a shift in functionality of the Coordinated Enrollment database. DCF continues to populate the database with customer information;

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<sup>85</sup> The reverification process begins during the inception of a state's soft launch period but is not usually completed by the time the soft launch process ends.

<sup>86</sup> Chapter 364.10(g)(2), Florida Statutes.

however, these customers are no longer deemed eligible at the time ETCs access this information. ETCs are now charged with contacting and directing their customers to apply for the Lifeline program with USAC before being able to provide Lifeline service to them.

Though consumers are encouraged to apply for the Lifeline program online through the National Verifier portal, ETCs have been instructed by USAC on how to assist customers applying for the National Verifier.<sup>87</sup> Upon completion of an application, and subsequent approval for the Lifeline program, customers are able to find a Lifeline service provider through USAC’s “Companies Near Me” tool.<sup>88</sup> Consumers who wish to receive a paper application, or who do not have access to the internet, may call the Lifeline customer service hotline.<sup>89</sup> Individuals who are disabled may request assistance in completing an application by phone using the same Lifeline customer service hotline.

Based upon June 2019 SNAP participants, Lifeline eligible households decreased by 7 percent, while the participation rate of those households in the Lifeline program decreased by 2.7 percent from the prior year.<sup>90</sup> This decline in subscribership follows a trend of National decline in subscribership and does not necessarily reflect the impacts of the National Verifier on Florida. Table 5-1 shows the Lifeline eligibility and participation rates in Florida for the last five years.<sup>91</sup>

**Table 5-1  
Florida Lifeline Eligibility and Participation Rate**

<b>Year</b>	<b>Lifeline Enrollment</b>	<b>Eligible Households</b>	<b>Participation Rate</b>
Jun-15	833,426	2,011,166	41.4 %
Jun-16	852,255	1,712,005	49.8%
Jun-17	685,864	1,662,374	41.3%
Jun-18	694,647	1,628,111	42.7%
Jun-19	604,693	1,513,284	40.0%

Source: U.S. Department of Agriculture

<sup>87</sup> USAC, *National Verifier Application Portal*, <https://nationalverifier.servicenowservices.com/lifeline>, accessed on April 20, 2020.

<sup>88</sup> USAC, *Companies Near Me Tool*, <https://data.usac.org/publicreports/CompaniesNearMe/Download/Report>, accessed on April 20, 2020.

<sup>89</sup> USAC, *Lifeline Customer Service Hotline*, 1 (800) 234-9473.

<sup>90</sup> FPSC, *2019 Florida Lifeline Report*, released December 2019, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/Telecommunication/LifelineReport/2019.pdf>, Figure 3, accessed on April 20, 2020.

<sup>91</sup> Ibid.

### **C. Telephone Relay Service**

Telecommunications Relay Services (TRS) facilitates telephone calls between people with hearing loss or speech disabilities and other individuals by using special equipment and a communications assistance operator to relay information. Section 427.704, F.S., charges the Commission with overseeing the administration of a statewide telecommunications access system which provides TRS. Funding for TRS in Florida is through a surcharge on telephone landlines. The current assessment rate is \$.10 per landline.<sup>92</sup> In 2017, the contract for the provision of relay service was due for renewal. The FPSC oversaw the bidding process and awarded the contract to Sprint, which began in March 2018.

The COVID-19 pandemic had a significant impact on relay service in Florida and throughout the country. It was recognized by the FCC and state TRS programs as a Force Majeure event that triggered the need for a number of temporary adaptations to TRS operations throughout the country. The FCC has granted TRS providers temporary waivers of rules relating to call answer times.<sup>93</sup> These waivers are effective from March 1, 2020, through May 15, 2020.

Sprint has made adjustments to its operations to respond to the crisis and maintain the availability of relay services for users. For example, Sprint temporarily suspended in-state routing rules when service levels are deteriorating due to high call volumes. Instead, Sprint routed to the next available agent in an attempt to handle calls as quickly as possible. In addition, all forms of quality assessments and test calls that divert communications assistance operators away from handling calls were temporarily suspended.

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<sup>92</sup> The rate may not exceed \$.25 per landline.

<sup>93</sup> FCC, DA 20-281, CG Docket No. 03-123 and 10-51, Adopted March 16, 2020, <https://ecfsapi.fcc.gov/file/0316280882515/DA-20-281A1.pdf>, accessed on May 20, 2020.

## Chapter VI. Federal Activities

### A. Mergers and Acquisitions

Telecommunication carriers seeking to transfer assets or corporate control in mergers and acquisitions must first receive approval from the FCC, which examines the public interest impact of proposed mergers or acquisitions. In 2019, there were approximately 80 telecommunications mergers and acquisitions nationally. Recent transactions of interest to Florida are described below.

#### 1. Sprint/T-Mobile

During the past several years, AT&T, Verizon, T-Mobile and Sprint have been the four major wireless carriers in the U.S. These four carriers represented over 98 percent of the wireless market in 2019.<sup>94</sup> In April 2018, T-Mobile announced its decision to acquire Sprint.<sup>95</sup> This was done in order to gain access to new spectrum holdings, and to gain a greater scale of service which would be supported by their developing 5G wireless market.<sup>96</sup> The merger was met with opposition from the Federal Trade Commission, the Department of Justice, and numerous State Attorneys General. A February 2020 court decision finalized the deal, creating the \$26.5 billion merger. Sprint was required to sell off its prepaid services, Boost mobile, Virgin Mobile, as well as its 800 MHz spectrum.<sup>97</sup>

#### 2. Frontier Communications/Everest/WaveDivision

Early in 2019, Frontier Communications (Frontier) sold off close to 100 U.S cell sites for \$80 million to Everest Infrastructure.<sup>98</sup> Frontier is currently in the process of selling off wireline assets in four western states for a total of \$1.35 billion to WaveDivision.

### B. FCC Forbearance

On May 4, 2018, the United States Telecom Association (USTelecom) filed a petition with the FCC seeking forbearance from several ILEC regulatory obligations under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Communications Act), such as requirements to provide wholesale access to unbundled network elements (UNEs) and resale.

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<sup>94</sup> Statista, Wireless subscriptions market share by carrier in the U.S. from 1st quarter 2011 to 3rd quarter 2019, <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/>, December 2019, accessed on April 8, 2020.

<sup>95</sup> T-Mobile CEO John Legere announces merger with Sprint, Twitter, <https://twitter.com/JohnLegere/status/990622865522348035?s=19>, accessed on May 25, 2020.

<sup>96</sup> Barrons.com, “T-Mobile Finally Bought Sprint. It Wasn’t Easy.” April 1, 2020 <https://www.barrons.com/articles/t-mobile-us-finally-completes-its-sprint-acquisition-it-wasnt-easy-51585752809>, accessed on June 17<sup>th</sup>, 2020.

<sup>97</sup> Justice.gov, “Court Enters Final Judgement in T-Mobile/Sprint Transaction”, released April 1, 2019, <https://www.justice.gov/opa/pr/court-enters-final-judgment-t-mobilesprint-transaction>, accessed on June 17, 2020.

<sup>98</sup> FierceTelecom.com, “Frontier sells off some of its wireline assets for \$1.35B”, released May 29, 2019, <https://www.fiercetelecom.com/telecom/frontier-sells-off-some-its-wireline-assets-for-1-35b>, accessed on March 25, 2020.

<sup>99,100</sup> USTelecom also requested that states not be allowed to issue similar unbundling and resale rules if forbearance is granted.<sup>101</sup>

Since the USTelecom petition, the FCC has issued orders forbearing from requirements that price cap ILECs provide their competitors with legacy transport facilities on an unbundled basis at regulated rates between wire centers. It also relaxed requirements that price cap ILECs offer CLECs analog voice-grade copper loops on an unbundled basis at regulated rates and legacy services for resale at regulated rates. These orders do not apply to unbundling obligations enabling the provision of broadband services. These FCC forbearance orders have been challenged by the trade association Incompas, the California Public Utilities Commission, and others in federal court.<sup>102</sup>

On November 25, 2019, the FCC proposed additional forbearance to eliminate and/or reduce requirements that ILECs provide the following UNEs used for broadband and legacy voice: dark fiber transport where competitive fiber exists within one-half mile of a wire center, voice-grade loops, DS0 Loops for voice and/or broadband in urban census blocks, and DS1 and DS3 Loops for broadband in areas deemed competitive. The FCC also proposes to forbear from the requirement that non-price cap ILECs resell retail legacy telecommunications services at statutorily prescribed rates.<sup>103</sup>

Following these ordered and proposed forbearances, many CLECs will find competition to be more difficult because they will no longer be guaranteed access to interconnection or resale at regulated rates. The CLECs that can best compete are those affiliated with ILECs and the larger CLECs that have invested in their own networks. In Florida, the impact on residential customers should be minimal given that CLECs comprise less than one percent of the market. Businesses would also be somewhat insulated given that the business market is mostly served by facilities-based, large CLECs, ILEC-affiliated CLECs, and ILECs.

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<sup>99</sup> USTelecom, “Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks,” filed May 4, 2018, <https://www.fcc.gov/ecfs/filing/1050419048916>, accessed on March 27, 2020.

<sup>100</sup> FCC, Communications Act of 1934, <https://transition.fcc.gov/Reports/1934new.pdf>, accessed on May 15, 2018.

<sup>101</sup> FCC Electronic Comment Filing System, “USTelecom, Petition for Forbearance. Section II B, pp. 30-31,” posted May 7, 2018, <https://www.fcc.gov/ecfs/filing/1050419048916>, accessed on June 6, 2020.

<sup>102</sup> FCC, “FCC Respondent’s Brief - Comptel v. FCC,” released March 26, 2020, <https://www.fcc.gov/document/fcc-respondents-brief-comptel-v-fcc>, accessed on March 27, 2020.

<sup>103</sup> FCC, “FCC Seeks Comment on Eliminating Unbundling Requirements,” released November 25, 2019, <https://www.fcc.gov/document/fcc-seeks-comment-eliminating-outdated-unbundling-requirements-0>, accessed on March 27, 2020.

## **C. Broadband Deployment**

FCC Chairman Ajit Pai has stated that his number one priority is expanding broadband access.<sup>104</sup> The FCC and the federal government have been using several strategies to pursue this goal. One method that the FCC is using to facilitate the process of broadband deployment is the creation of the Broadband Deployment Advisory Committee, a federal advisory committee that is intended to provide an effective means for stakeholders to exchange ideas and develop recommendations and advice on how to accelerate the deployment of high-speed internet access.<sup>105</sup> The FCC gauges its progress through the issuance of broadband deployment reports. The 2020 Broadband Deployment Report provides the most detailed view of broadband expansion, showing significant progress particularly in rural America.<sup>106</sup>

The FCC has authorized rural broadband expansion support through the Alternative Connect America Model consisting of more than \$5.6 million over ten years for 1,025 locations in Florida.<sup>107</sup> The FCC has also authorized rural broadband expansion support through the Connect America Phase II auction consisting of \$5 million over ten years for 9,859 locations in Florida.<sup>108</sup> Other major developments include the launch of the Rural Digital Opportunity Fund, which will award \$20.4 billion nationally in support of rural broadband networks over ten years.<sup>109</sup> The FCC has also proposed the 5G Fund for Rural America, which would provide \$9 billion nationally over ten years to support mobile 5G connectivity.<sup>110</sup>

The FCC is not the only agency that has been working to improve broadband deployment. The United States Department of Agriculture has also been active in promoting broadband expansion including making \$550 million available to rural areas in 2020.<sup>111</sup> The National

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<sup>104</sup> FCC, “Bridging The Digital Divide For All Americans,” <https://www.fcc.gov/about-fcc/fcc-initiatives/bridging-digital-divide-all-americans>, accessed on April 2, 2020.

<sup>105</sup> FCC, “Broadband Deployment Advisory Committee,” <https://www.fcc.gov/broadband-deployment-advisory-committee>, accessed on April 2, 2020.

<sup>106</sup> FCC, “New FCC Report Shows Digital Divide Continuing to Close,” released April 24, 2020, <https://www.fcc.gov/document/new-fcc-report-shows-digital-divide-continuing-close-0>, accessed on April 27, 2020.

<sup>107</sup> FCC, “FCC OKs \$4.9 Billion to Maintain, Improve, and Expand Rural Broadband,” released August 22, 2019, <https://www.fcc.gov/document/fcc-oks-49-billion-maintain-improve-and-expand-rural-broadband>, accessed on April 1, 2020.

<sup>108</sup> FCC, “FCC Authorizes \$89.2 million for Rural Broadband in 21 States,” released December 16, 2019, <https://www.fcc.gov/document/fcc-authorizes-892-million-rural-broadband-21-states>, accessed on April 2, 2020.

<sup>109</sup> FCC, “FCC Launches \$20 Billion Rural Digital Opportunity Fund,” released January 30, 2020, <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund>, accessed on April 1, 2020.

<sup>110</sup> FCC, “Chairman Pai Moves Forward to Establish 5G Fund for Rural America,” released April 1, 2020, <https://www.fcc.gov/document/chairman-pai-moves-forward-establish-5g-fund-rural-america>, accessed on April 3, 2020.

<sup>111</sup> USDA, “USDA to Make \$550 Million in Funding Available in 2020 to Deploy High-Speed Broadband Internet Infrastructure in Rural America,” released December 12, 2019, <https://www.usda.gov/media/press-releases/2019/12/12/usda-make-550-million-funding-available-2020-deploy-high-speed>, accessed on April 2, 2020.

Telecommunications and Information Administration’s American Broadband Initiative Milestones Report details strategies from over 20 Federal agencies for increasing broadband access and encouraging private-sector broadband investment.<sup>112</sup>

#### **D. Open Internet/Net Neutrality**

In 2018, the FCC reversed its net neutrality policy as outlined in previous reports, and opted to return to a less restrictive framework of regulating broadband as an information service under the Communications Act. As a result of this reversal, 34 states and the District of Columbia proposed net neutrality legislation, and five passed net neutrality laws or resolutions.<sup>113</sup> Six state governors issued executive orders that effectively bar state agencies from doing business with ISPs that violate net neutrality principles.<sup>114</sup>

Multiple parties, including attorneys general from 22 states, also filed legal challenges to the new policy.<sup>115</sup> On October 1, 2019, the DC Circuit Court of Appeals upheld the majority of the FCC’s deregulation of net neutrality rules, while remanding to the FCC questions on how public safety, pole attachments and Lifeline program rules would apply to information service providers if those companies are not subject to rules for common carriers.<sup>116</sup> Following the ruling, the FCC issued a public notice seeking comment on these issues.<sup>117</sup>

#### **E. Universal Service**

Universal service is the policy that all Americans should have equal access to communications services. While Florida consumers benefit from being able to make and receive calls from all parts of the nation, there is a cost associated with this policy. The Universal Service Fund (USF) is the federal fund that supports the budgets of universal service programs. The USF is funded by telecommunications providers based on an assessment of interstate and international end-user revenues.

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<sup>112</sup> NTIA, “American Broadband Initiative” updated March 26, 2020, <https://www.ntia.doc.gov/category/american-broadband-initiative>, accessed on April 2, 2020.

<sup>113</sup> NCSL, “Net Neutrality Legislation in States,” published January 23, 2019, <http://www.ncsl.org/research/telecommunications-and-information-technology/net-neutrality-legislation-in-states.aspx>, accessed on March 27, 2020.

<sup>114</sup> NRRI, “Net Neutrality State Actions Tracker,” updated May 30, 2018, <https://www.naruc.org/nrri/nrri-activities/net-neutrality-tracker/>, accessed on March 27, 2020.

<sup>115</sup> Ibid.

<sup>116</sup> The National Law Review, “The FCC’s “Restoration of Internet Freedom Order” Largely Survives on Appeal; But Net Neutrality is Not Dead Yet,” published October 8, 2019, <https://www.natlawreview.com/article/fcc-s-restoration-internet-freedom-order-largely-survives-appeal-net-neutrality-not>, accessed on March 27, 2020.

<sup>117</sup> FCC, “FCC Seeks Comment on Mozilla Decision,” issued February 19, 2020, <https://www.fcc.gov/document/wcb-seeks-comment-discrete-issues-arising-mozilla-decision>, accessed on March 27, 2020.



In general, Florida consumers pay more into the USF than what is returned to eligible service providers in Florida.<sup>118</sup> For 2018, only consumers in New York and California were larger net contributors than consumers in Florida. The FPSC monitors and participates in ongoing proceedings at the FCC and with the Federal-State Joint Board on Universal Service. Table 6-1 shows Florida’s estimated contribution and receipts for 2018 and provides a comparison of net contributions for 2016 and 2017.

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

	2016	2017	2018		
	Estimated Net	Estimated Net	Service Providers Payments	Estimated Consumer Contributions	Estimated Net
High-Cost	(\$211,994)	(\$225,547)	\$55,575	\$285,611	(\$230,036)
Low Income	4,004	(928)	79,977	68,636	\$11,342
Schools & Libraries	(48,257)	(27,616)	86,341	129,047	(\$42,707)
Rural Health Care	(13,639)	(12,188)	4,225	17,637	(13,412)
Total	(\$280,312)	(\$276,681)	\$226,118	\$513,019	(\$286,901)

Source: FCC Universal Service Monitoring Report, various years, Table 1.9

## 1. Contribution System Reform

Telecommunications service providers fund the USF based on a quarterly FCC assessment factor applied to interstate and international telecommunications revenues. Mobile wireless carriers and interconnected VoIP providers are also required to participate.<sup>119</sup> As detailed in Figure 7-2, the assessment factor has reached a high of 25 percent for the first time in the fourth quarter of 2019. Since 2016, the assessment factor has averaged about 20 percent.<sup>120</sup> The assessment factor has increased over time as the fund size of the universal service programs has grown and the assessable base (interstate and international revenues) has shrunk. By way of comparison, for 2001, the average assessment factor for the year was 7 percent. While the FCC opened various proceedings to address the growth in the assessment factor, no significant reforms have been forthcoming from the FCC. Figure 6-1 illustrates assessment factor rates and projected rates since 2016.

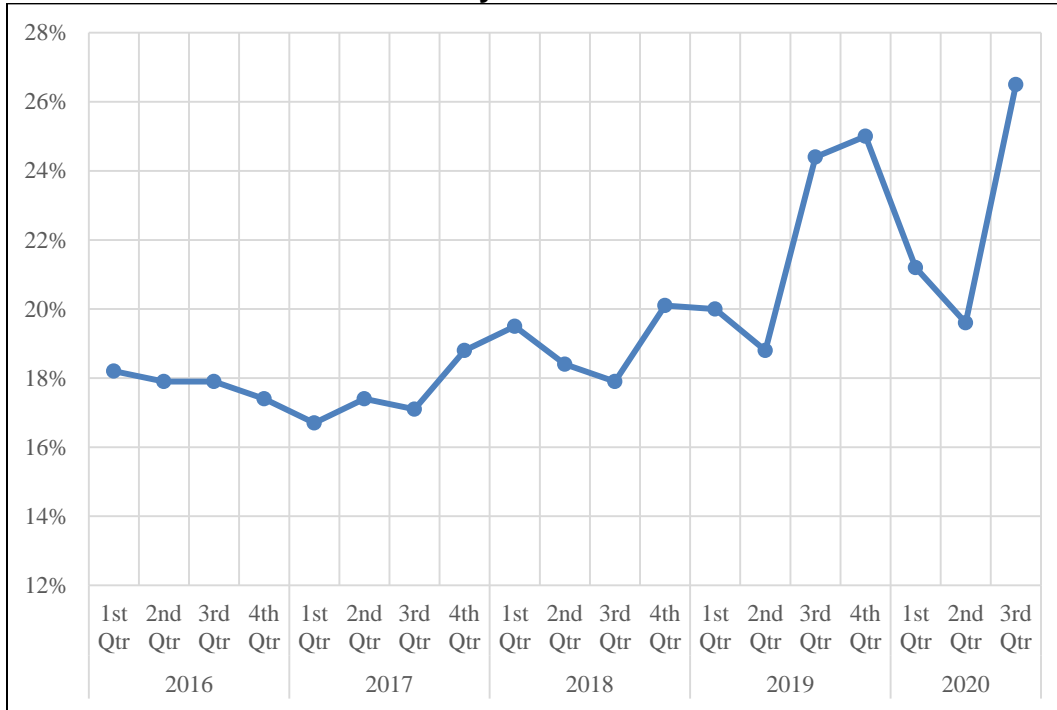
<sup>118</sup> FCC, “Universal Service Monitoring Report-2018,” released February 4, 2020, <https://docs.fcc.gov/public/attachments/DOC-362272A1.pdf>, accessed on April 16, 2020.

<sup>119</sup> Wireless carriers and interconnected VoIP providers may use the interim safe harbor percentages to estimate the interstate portion of their revenues.

<sup>120</sup> FCC, “Contribution Factor & Quarterly Filings - Universal Service Fund (USF) - Management Support,” <http://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>, accessed on April 16, 2020.



**Figure 6-1  
USF Quarterly Assessment Factor**



Source: FCC Public Notices on Proposed Contribution Factors, various quarters.

## 2. High Cost

Since 2011, the FCC has been modernizing the federal high-cost programs to maintain voice services and extend broadband capable infrastructure.<sup>121</sup> In 2019, the FCC adopted a Notice of Proposed Rulemaking (NPRM) proposing to establish the \$20.4 billion Rural Digital Opportunity Fund (RDOF) to bring high speed fixed broadband service to rural homes and small businesses that lack it.<sup>122</sup> On January 30, 2020, the FCC adopted a Report and Order, which established the framework for the RDOF, building on experience of FCC’s Connect American Fund auction by using reverse auctions in two phases.

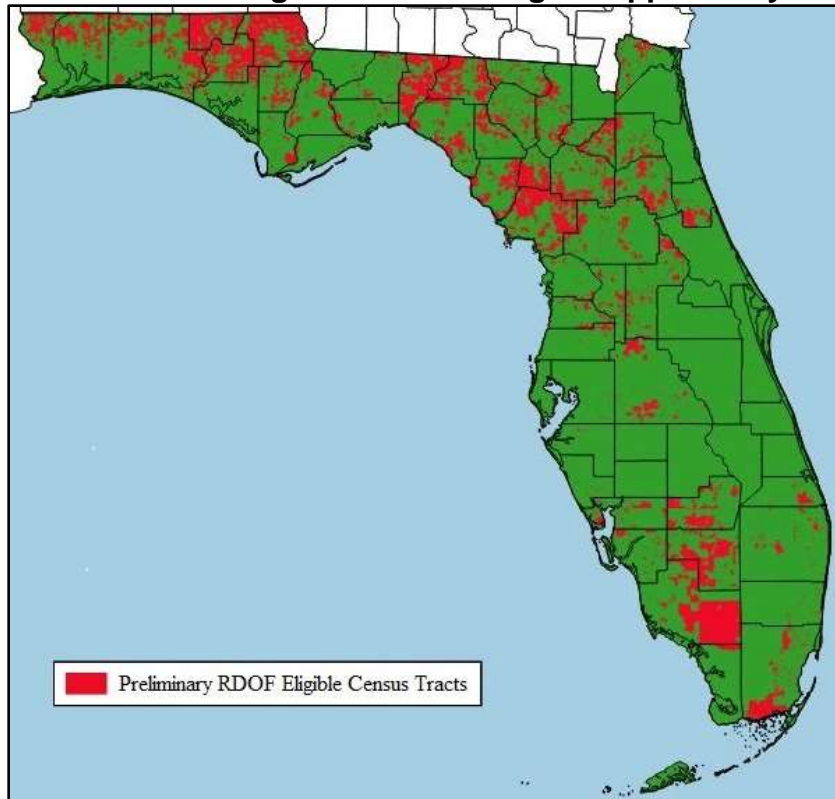
The Phase I auction, which is scheduled to begin on October 22, 2020, will target over six million homes and businesses in census blocks that are entirely unserved by voice and broadband with download speeds of at least 25 Mbps. The RDOF is structured to prioritize higher network speeds and lower latency. Phase II will cover locations in census blocks that are partially served,

<sup>121</sup> FCC 11-161, WC Docket No. 10-90, Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, released November 18, 2011, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-161A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf), accessed on May 4, 2020.

<sup>122</sup> FCC 19-77, WC Docket No. 19-126, Rural Digital Opportunity Fund, Notice of Proposed Rulemaking, released August 2, 2019, <https://docs.fcc.gov/public/attachments/FCC-19-77A1.pdf>, accessed on May 4, 2020.

as well as locations not funded in Phase I. Figure 6-2 provides a map identifying areas in Florida that will be part of Phase I.

**Figure 6-2**  
**Areas in Florida Eligible for Rural Digital Opportunity Fund**



Source: FCC, Shapefile by Census Tracts

In April 2020, the FCC released another NPRM relating to high-cost support for the deployment of 5G wireless technology in rural areas.<sup>123</sup> In the NPRM, the FCC considered the establishment of a budget of up to \$9 billion, to be distributed in two phases. Phase I would budget \$8 billion to support eligible rural areas, whereas Phase II would focus on harder to serve areas such as farms and ranches. Like the RDOF, the 5G Fund for Rural America would use a competitive reverse account format to award funding for wireless broadband service. The FCC is considering different options that would begin the auctions either in 2021 or a couple of years later to provide additional time for better wireless broadband data to be collected.

### **3. Schools and Libraries**

The schools and libraries support program, commonly known as the E-rate Program, provides financial support to eligible schools and libraries for connectivity. This support helps to reduce the cost associated with telecommunications services, Internet access, and eligible equipment.

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<sup>123</sup> FCC 20-52, GN Docket No. 20-32, Establishing a 5G Fund for Rural America, Notice of Proposed Rulemaking and Order, released April 24, 2020, <https://docs.fcc.gov/public/attachments/FCC-20-52A1.pdf>, accessed on May 5, 2020.

The discounts range from 20 percent to 90 percent of the costs of eligible services, depending on the level of poverty and whether the school or library is located in an urban or rural area. The E-Rate program has two funding categories that support schools and libraries. Category one provides connectivity to schools and libraries and category two provides connectivity for services within schools and libraries.

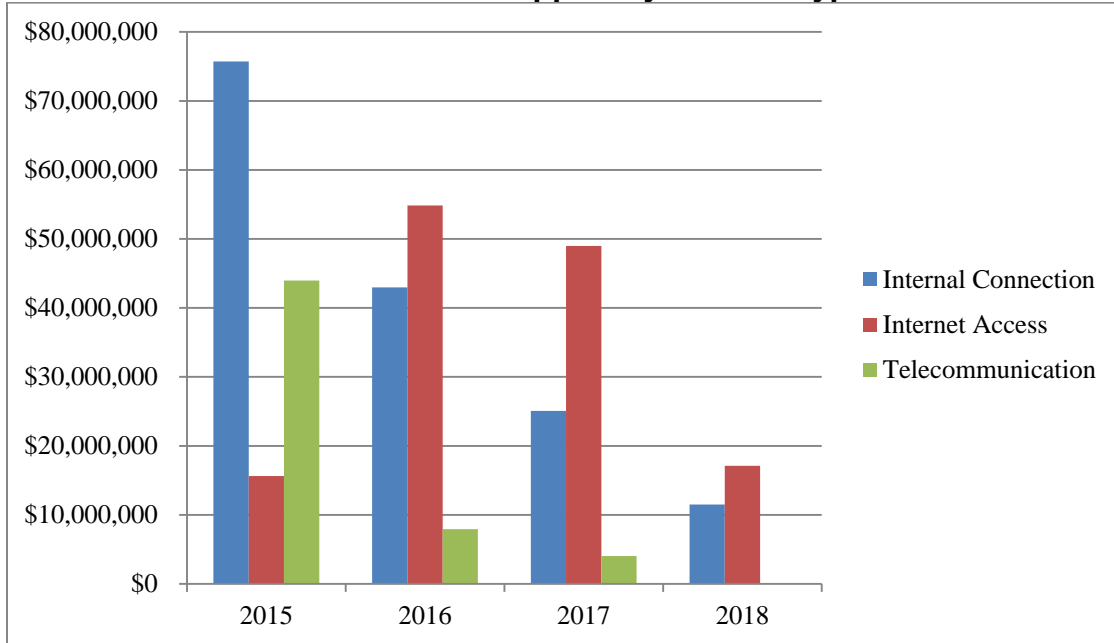
In 2014, the FCC took steps to continue to modernize the E-Rate program by adopting a new budget approach for category two funding. The FCC established a five-year trial period (from 2015 to 2019) to help determine if this approach would be a more effective means to ensure greater access to E-Rate discounts for internal connections. In 2017, the FCC sought comment and received near-unanimous support of the new category two budget approach. It found that under this approach greater funding was available for internal connections, funding was distributed to more applicants in a more equitable and predictable manner, and it gave applicants more flexibility to determine how best to upgrade their systems. Therefore, in December 2019, the FCC released an Order making the category two budget approach permanent.<sup>124</sup>

Figure 6-3 shows the amount of support distributed to Florida by service type between 2015 to 2018. Although the FCC has noted greater availability of funding for internal connections under the category two budget approach, support to Florida for internal connections continues to decline.

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<sup>124</sup> FCC 19-117, WC Docket No. 13-184, Modernizing the E-Rate Program for Schools and Libraries, Report and Order, released December 3, 2019.

**Figure 6-3  
Florida E-Rate Support by Service Type**



Source: USAC

Schools and libraries have been greatly affected by COVID-19 as they close for extended periods of time to protect their students and patrons. In response, the FCC has temporarily waived and extended several E-Rate filing, information request and service implementation deadlines.<sup>125</sup> Also, acknowledging the need for increased connectivity during this pandemic, the FCC waived the E-Rate program gift rules through September 30, 2020.<sup>126</sup> This waiver will enable service providers to offer, and E-rate program participants to solicit and accept improved broadband connections or equipment for remote learning without running afoul of FCC rules.

#### **4. Low Income**

The Lifeline program provides a monthly discount on phone or broadband service for qualifying low-income consumers to ensure that all Americans have the opportunities and security that phone service brings. On April 27, 2016, the FCC released its Lifeline Modernization Order that further reformed the Lifeline program by establishing a budget of \$2.25 billion in federal funding, indexed to inflation. The FCC stated that in order to be sustainable and achieve its goals of providing low-income consumers with robust, affordable, and modern services, a forward-

<sup>125</sup>FCC 20-364, CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism, Order, released April 1, 2020.

<sup>126</sup> FCC 20-290, WC Docket No. 02-60, CC Docket No. 02-6, Rural Health Care Universal Service Support Mechanism, Schools and Libraries Universal Service Support Mechanism, Order, released March 18, 2020

looking, broadband focused Lifeline program should be adopted. Authorized support for the Lifeline program in 2019 was \$981 million, down from \$1.14 billion in 2018.<sup>127</sup>

Included in the Lifeline Modernization Order were reforms that began a phase-down of federal funding support for voice-only services. Reductions in support are scheduled each year, eventually phasing out completely by December 1, 2022. Lifeline customers who receive voice-only service now receive a \$7.25 discount on their monthly bills. Lifeline customers who select either broadband or a bundle of broadband and voice services that meets the FCC’s minimum service standards are entitled to continue to receive a \$9.25 Lifeline discount. Prior to the complete phase out of support for voice-only services, the FCC will reevaluate its conclusion as part of a 2021 report on the state of the Lifeline marketplace. Table 6-2 outlines the FCC’s phase down schedule.

**Table 6-2  
Lifeline Support Phase Down Schedule**

<b>Effective Dates</b>	<b>Fixed Voice</b>	<b>Mobile Voice</b>	<b>Fixed Broadband</b>	<b>Mobile Broadband</b>
Through 11/30/20	\$7.25	\$7.25	\$9.25	\$9.25
From 12/1/20 to 11/30/21	\$5.25	\$5.25	\$9.25	\$9.25
After 11/30/21	0	0	\$9.25	\$9.25

Source: FCC 2016 Lifeline Modernization Order (FCC 16-38)

At the 2019 National Association of Regulatory Utility Commissioners (NARUC) Summer Policy Summit, resolutions were passed urging the FCC to halt its planned phase down of fixed and mobile voice support on December 1, 2019.<sup>128</sup> The resolutions also urged the FCC to completely forego their plans to ultimately eliminate voice-only Lifeline support. According to NARUC, if ETCs are unable to invest in the technologies required to provide the ever-increasing minimum broadband standards, they may be forced to relinquish their ETC designations. NARUC also asserts that if voice-only ETCs opt to relinquish, many elderly and low-income individuals will be forced to purchase higher cost bundled Lifeline service from the remaining service providers.

<sup>127</sup> USAC, *Universal Service Administrative Company 2019 Annual Report*, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2019/USAC-2019-Annual-Report.pdf>, page 8, accessed on April 20, 2020.

<sup>128</sup> NARUC, *Resolution on the Lifeline National Verifier Launch and Minimum Service Standards*, adopted July 24, 2019, <https://pubs.naruc.org/pub/3C86755C-FD04-1CF1-7558-180073A15B6A>, accessed on April 20, 2020.

On March 17, 2020, the FCC released an Order suspending the usage requirement rule of the Lifeline program as a result of the COVID-19 pandemic.<sup>129</sup> The Order also suspends de-enrollment due to customer reverification non-response, halts USAC from requesting new reverification eligibility information from customers, and waives the recertification rules of the Lifeline program. A follow-up Order, released on April 29, 2020, amended the income eligibility rules for the Lifeline program.<sup>130</sup> Under these new provisions, customers qualifying for the Lifeline program under income eligibility documentation need only provide three consecutive months of documentation proving they make at or less than 135 percent of the Federal Poverty Guidelines.<sup>131</sup> The amendment allows customers to provide documentation proving recent unemployment due to COVID-19, such as a notice of unemployment benefits, or notice of a successful application for unemployment benefits. The follow-up Order extends the suspension of March 17, 2020's rules, and institutes the amendment of the income eligibility rules, until June 30, 2020.

## 5. Rural Health Care

The goal of the Rural Health Care (RHC) Program is to ensure the affordability of telehealth services in rural communities to promote healthcare in underserved and hard to reach geographic areas. To achieve these goals, RHC Program provides funding to eligible rural healthcare providers for broadband and telecommunications services.<sup>132</sup> Funding is distributed through two programs: the Telecommunications (Telecom) Program and the Healthcare Connect Fund Program.

The Telecom Program subsidizes the difference between urban and rural rates for telecommunications services. By comparison, the Healthcare Connect Fund Program promotes the use of broadband services by providing a flat 65% discount on an array of communications services to both individual rural healthcare providers and any related healthcare consortia.<sup>133</sup> In June 2018, the FCC increased the cap of the RHC Program from \$400 million to \$571 million. This cap is annually adjusted for inflation. Figure 6-4 illustrates a comparison of the amounts disbursed for funding years 2015-2019 by program in the state of Florida.

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<sup>129</sup> FCC Order, DA 20-285, *In the Matter of Lifeline and Link Up Reform and Modernization*, released March 17, 2020, <https://docs.fcc.gov/public/attachments/DA-20-285A1.pdf>, accessed on April 20, 2020.

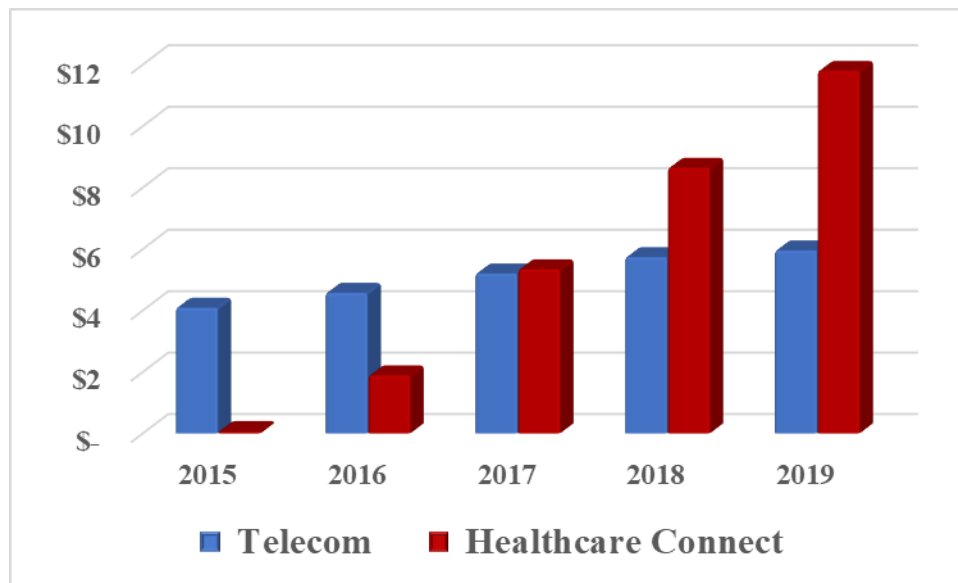
<sup>130</sup> FCC Order, DA 20-462, *In the Matter of Lifeline and Link Up Reform and Modernization*, released April 29, 2020, <https://docs.fcc.gov/public/attachments/DA-20-462A1.pdf>, accessed on April 30, 2020.

<sup>131</sup> USAC, *Federal Poverty Guidelines for Lifeline*, [https://www.usac.org/wp-content/uploads/lifeline/documents/handouts/Income\\_Requirements.pdf](https://www.usac.org/wp-content/uploads/lifeline/documents/handouts/Income_Requirements.pdf), accessed on April 30, 2020.

<sup>132</sup> Universal Service Administrative Company 2019 Annual Report, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2019/USAC-2019-Annual-Report.pdf>, page 16, accessed on April 6, 2020.

<sup>133</sup> FCC, "Universal Service Monitoring Report-2019," <https://docs.fcc.gov/public/attachments/DOC-362272A1.pdf>, accessed on April 20, 2020.

**Figure 6-4**  
**Rural Health Care Funding Disbursements for Florida by Program**  
(In Millions)



Source: Universal Service Monitoring Report

On August 1, 2019, the FCC adopted an Order reforming the RHC Program.<sup>134</sup> The reforms are intended to ensure funds are disbursed efficiently and equitably and promote transparency in the program’s administration. Among other changes, the Order restructured how funding was distributed by identifying different rural classes: Extremely Rural, Rural, and Less Rural. Should demand exceed the funds available, the support will be prioritized based on rural class tiers, with extremely rural areas getting the highest priority over less rural areas, and whether the area is medically underserved.

## ***F. Major Calling Actions***

Federal and state agencies routinely initiated regulatory actions and enforcement proceedings to deter noncompliance with government regulations. In 2019 and 2020, the FCC and Federal Trade Commission (FTC) took several actions to protect Florida residents and businesses, from robocalls, calling violations, call completion issues, cramming, customer privacy violations, and Universal Service Fund violations.

### **1. Robocalls**

The FCC took several actions in 2019 to build on its previous efforts to halt the proliferation of robocalls. These actions including issuing a declaratory ruling allowing carriers to block illegal and unwanted calls before they reach consumers' phones and beginning work on a report on

<sup>134</sup> FCC, “FCC Strengthens Rural Health Care Program,” released August 20, 2019, <https://docs.fcc.gov/public/attachments/FCC-19-78A1.pdf>, accessed on April 7, 2020.

consumer call blocking options.<sup>135,136</sup> Following the adoption of the Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, which provides for a longer statute of limitations and enhanced fines for robocalls, the FCC sent letters to several telecom carriers that provide international gateway service to encourage cooperation in efforts to trace robocalls that originate on or pass through their networks.<sup>137,138</sup> The FCC also mandated the adoption of caller identification authentication standards to reduce spoofing and identify robocalls.<sup>139</sup>

## 2. Call Completion Issues

The FCC is charged by the Communications Act with making communications service available for national defense and safety of life and property. In keeping with that responsibility, the FCC takes enforcement actions when calls are not or cannot be completed. On November 4, 2019, the FCC announced settlements of \$400,000 and \$175,000 and respective compliance plans with CenturyLink and West Safety Communications, respectively, to conclude investigations into a multi-state 911 outage that took place on August 1, 2018.<sup>140</sup>

## 3. Calling Violations

The Truth in Caller ID Act prohibits callers from deliberately falsifying caller ID information. Disguising one's identity with the intent to harm, defraud consumers, or wrongfully obtain anything of value is called "spoofing."<sup>141</sup> Changes in technology have made it easier and cheaper for scammers to make robocalls and to spoof caller ID information. To address this consumer problem, the FCC and FTC have focused both on enforcement actions and on pursuing policies to help consumers and their service providers block malicious robocalls. Some recent examples of calling violation enforcement actions include:

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<sup>135</sup> FCC, "FCC Affirms Robocall Blocking by Default to Protect Consumers," released June 7, 2019, <https://www.fcc.gov/document/fcc-affirms-robocall-blocking-default-protect-consumers-0>, accessed on March 23, 2020.

<sup>136</sup> FCC, "Chairman Pai Announces Review of Consumers' Robocall Blocking Options," released December 20, 2019, <https://www.fcc.gov/document/chairman-pai-announces-review-consumers-robocall-blocking-options>, accessed on March 23, 2020.

<sup>137</sup> Congress.gov, "S.151 - Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act," released December 30, 2019, <https://www.congress.gov/bill/116th-congress/senate-bill/151?q=%7B%22search%22%3A%5B%22traced%22%5D%7D&s=2&r=4>, accessed on March 23, 2020.

<sup>138</sup> FCC, "FCC Moves to Trace Back to International Fraudsters," released February 4, 2020, <https://www.fcc.gov/document/fcc-moves-trace-robocalls-back-international-fraudsters>, accessed on March 23, 2020.

<sup>139</sup> FCC, "FCC Mandates Adoption of STIR/SHAKEN," released April 1, 2020, <https://www.fcc.gov/document/chairman-pai-demands-industry-adopt-protocols-end-illegal-spoofing>, accessed on April 1, 2020.

<sup>140</sup> FCC, "Companies Agree to Pay \$575,000 for Multi-State 911 Outage in Aug 2018" released November 4, 2019, <https://www.fcc.gov/document/companies-agree-pay-575000-multi-state-911-outage-aug-2018>, accessed on March 24, 2020.

<sup>141</sup> Congress, "S.30 - Truth in Caller ID Act of 2009," updated December 22, 2010, <https://www.congress.gov/bill/111th-congress/senate-bill/30/>, accessed on June 15, 2020.



- On January 13, 2020, the FTC announced settlements totaling more than \$7.8 million against Christopher Cotroneo and call center Cabb Group, LLC, and Christina and Robert Peterson II for making millions of illegal robocalls from 2014 through 2017, on behalf of Florida-based Grand Bahama Cruise Line LLC and others.<sup>142</sup>
- On January 31, 2020, the FCC fined Scott Rhodes nearly \$13 million for using caller ID spoofing in thousands of robocalls in 2018 that targeted specific communities with the intent to cause harm in several states, including making racist attacks about a Florida gubernatorial candidate.<sup>143</sup>

#### **4. Cramming**

“Cramming” is the illegal act of placing unauthorized charges on a customer’s telephone bill. Crammers often rely on confusing telephone bills to trick consumers into paying for services they did not authorize or receive, or that cost more than the consumer was led to believe. On August 13, 2019, CenturyLink agreed to a settlement of \$550,000 and a compliance plan to resolve an investigation into the company’s placement of unauthorized third-party charges and fees onto consumers’ bills.<sup>144</sup>

#### **5. Customer Privacy Violations**

The Communications Act requires telecommunications carriers to protect the confidentiality of certain customer data related to the provision of telecommunications service, including location information. Carriers that violate those rules are subject to enforcement action. On February 28, 2020, the FCC proposed fines totaling \$208 million against the nation’s four largest wireless carriers for selling access to their customers’ location information without taking reasonable measures to protect against unauthorized access.<sup>145</sup>

#### **6. Universal Service Fund Violations**

In order to maximize the efficiency of limited funding for universal service programs, the FCC takes enforcement action against companies that commit Universal Service Fund violations. On April 2, 2020, the FCC proposed fines of over \$6 million against the prepaid wireless carrier TracFone Wireless for seeking federal Lifeline support for ineligible subscribers and for

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<sup>142</sup> FTC, “Defendants Who Helped Blast Consumers with Millions of Cruise Line Robocalls Settle FTC Complaint” released January 10, 2020, <https://www.ftc.gov/news-events/press-releases/2020/01/defendants-who-helped-blast-consumers-millions-cruise-line>, accessed on March 24, 2020.

<sup>143</sup> FCC, “FCC Proposes Nearly \$13 Million Fine for Illegal Spoofed Robocalls” released January 31, 2020, <https://www.fcc.gov/document/fcc-proposes-nearly-13-million-fine-illegal-spoofed-robocalls-0>, accessed on March 24, 2020.

<sup>144</sup> FCC, “FCC Reaches \$550,000 Cramming Settlement with CenturyLink” released August 13, 2019, <https://www.fcc.gov/document/fcc-reaches-550000-cramming-settlement-centurylink-0>, accessed on March 24, 2020.

<sup>145</sup> FCC, “FCC Proposes Over \$200M in Fines for Wireless Location Data Violations,” released February 28, 2019, <https://www.fcc.gov/document/fcc-proposes-over-200m-fines-wireless-location-data-violations>, accessed on March 4, 2020.

fabricating fictitious subscriber data for hundreds of subscriber accounts in Florida and thousands of subscriber accounts in Texas in 2018.<sup>146</sup>

## **G. Public Safety**

Florida has faced numerous public safety challenges in the use of its telecom networks.

### **1. Hurricanes**

On August 28, 2019, Florida Governor Ron DeSantis declared a state of emergency for 26 counties in Florida that were in the path of Hurricane Dorian.<sup>147</sup> The eye of the hurricane did not directly strike Florida, although the edges did some damage to the coasts. According to the FCC, at the peak level of damage in the affected Florida counties, nearly 0.2 percent of cell sites were rendered nonfunctional, while more than 35,430 cable and wireline subscribers experienced service outages.<sup>148</sup>

The FCC took several steps to prepare and respond to these issues by promoting public safety and connectivity. These steps included updating status and restoration efforts with status reports and granting an extension of the deadline for the Commission to certify carriers for high-cost support.<sup>149</sup> Additionally, on November 7, 2019, the Intergovernmental Advisory Committee of the FCC released reports that offer recommendations and best practices based on the experience and expertise of state, local, Tribal, and territorial officials and lessons learned from Hurricane Michael.<sup>150</sup> On March 27 2020, the BDAC approved a report and recommendations from its Disaster Response and Recovery Working Group. The report discussed best practices during disaster planning, response and recovery, as well as recommendations for enhancing resilience and promoting further coordination between stakeholders.<sup>151</sup> The FCC also proposed a framework to share information from its Network Outage Reporting System and Disaster Information Reporting System with qualified federal, state, Tribal and local government agencies that reasonably require the information for public safety.<sup>152</sup>

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<sup>146</sup> FCC, “FCC Proposes \$6M Fine Against TracFone in Lifeline Case” released April 2, 2020, <https://www.fcc.gov/document/fcc-proposes-6m-fine-against-tracfone-lifeline-case>, accessed on April 3, 2020.

<sup>147</sup> Flagov, “Governor Ron DeSantis Declares State of Emergency, Urges Floridians to Prepare for Hurricane Dorian”, released August 28, 2019, <https://www.flgov.com/2019/08/28/governor-ron-desantis-declares-state-of-emergency-urges-floridians-to-prepare-for-hurricane-dorian/>, accessed on March 24, 2020.

<sup>148</sup> FCC, “Communications Status Report for September 3, 2019” and “Communications Status Report for September 4, 2019”, released September 3-4, 2019, <https://www.fcc.gov/dorian>, accessed on March 24, 2020.

<sup>149</sup> FCC, “FCC Waives 54.314 Deadline for the FPSC until October 11”, released September 16, 2019, <https://www.fcc.gov/document/wcb-waives-54314-deadline-fl-psc-until-october-11>, accessed on March 24, 2020.

<sup>150</sup> FCC, “FCC Issues Advisory Committee Public Safety and Telehealth Reports”, released November 7, 2019, <https://www.fcc.gov/document/fcc-issues-advisory-committee-public-safety-and-telehealth-reports>, accessed on March 24, 2020

<sup>151</sup> FCC, BDAC Disaster Response and Recovery Working Group Report, released March 27, 2020, <https://www.fcc.gov/news-events/events/2020/03/broadband-deployment-advisory-committee-meeting-march-2020>, accessed on March 27, 2020.

## **2. COVID-19**

COVID-19 was declared a pandemic by the World Health Organization. The virus and virus control efforts are causing great disruptions in the United States and in Florida. In order to help ameliorate the situation, the FCC has taken several actions including granting waivers for Lifeline recertifications and reverifications, TRS telework, extending E-Rate application deadlines, issuing Special Temporary Authority to several carriers for spectrum sharing, and allowing competitive ETCs flexibility in use of USF support. The FCC has also issued the Keep Americans Connected Pledge for broadband and telephone service providers. The pledge commits providers to not terminate service and to waive any late fees for any residential or small business customers impacted by COVID-19, and to open access to Wi-Fi hotspots for 60 days. As of March 24, 2020, more than 550 companies and associations have taken the pledge. A list of FCC COVID-19 actions is available at the agency's website.<sup>153</sup>

Also in response to COVID-19, on March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), which in addition to many other provisions, grants an additional \$100 million for rural broadband support under the Rural Utilities Service of the USDA, \$200 million for the Rural Health Care Program of the FCC, \$25 million for the RUS Distance Learning, Telemedicine and Broadband Program, and \$50 million for museum and library digital network funding through the Institute of Museum and Library Services.<sup>154,155</sup>

## **3. Cybersecurity**

In 2019, following increasing concerns of cybersecurity threats from foreign components in US telecommunications networks, President Trump signed an executive order prohibiting ownership of communications technology in US networks by foreign adversaries.<sup>156</sup> The FCC subsequently issued an order barring use of Universal Service Fund support for equipment or services from companies posing a national security threat, and the FCC also opened an online portal where participants in the FCC's Universal Service Fund programs must report on use of impermissible

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<sup>152</sup> FCC, "FCC Proposes Promoting Public Safety Through Fed-State Info Sharing", released February 28, 2020, <https://www.fcc.gov/document/fcc-proposes-promoting-public-safety-through-fed-state-info-sharing-0>, accessed on March 26, 2020.

<sup>153</sup> FCC, Coronavirus, Updated March 20, 2020, <https://www.fcc.gov/coronavirus>, accessed on March 24, 2020.

<sup>154</sup> Congress.gov, H.R. 748 – CARES Act, updated March 27, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/748>, accessed on April 2, 2020.

<sup>155</sup> Cooley, "CARES Act Provisions That Impact Telecommunications Industry," published March 29, 2020, <https://www.cooley.com/news/insight/2020/2020-03-29-cares-act-provisions-that-impact-telecommunications-industry>, accessed on April 2, 2020.

<sup>156</sup> White House, "Executive Order on Securing the Information and Communications Technology and Services Supply Chain", released May 15, 2019, <https://www.whitehouse.gov/presidential-actions/executive-order-securing-information-communications-technology-services-supply-chain/>, accessed on March 26, 2020.

equipment and services and costs of replacement.<sup>157,158</sup> To help with those costs, President Trump also signed into law the Secured and Trusted Communications Act into law, which provides financial support for providers to replace equipment in their networks that poses a security risk.<sup>159</sup>

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<sup>157</sup>FCC, “Protecting National Security Through FCC Programs”, released November 26, 2019, <https://www.fcc.gov/document/protecting-national-security-through-fcc-programs-0>, accessed on March 26, 2020.

<sup>158</sup> FCC, “FCC Opens Supply Chain Information Collection Reporting Portal”, released February 26, 2020, <https://www.fcc.gov/document/fcc-opens-supply-chain-information-collection-reporting-portal-0>, accessed on March 26, 2020.

<sup>159</sup> Congress, “H.R.4998 - Secure and Trusted Communications Networks Act of 2019”, updated March 12, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/4998>, accessed on March 26, 2020.



## Appendix A. List of Certified CLECs as of December 31, 2019

\*\* Indicates companies that did not respond to the Commission's data request  
as of July 6, 2020

TY060	382 Networks, Inc.	TX587	Broadsmart Florida, Inc.
TA057	**A.SUR Net, Inc.	TX655	Broadview Networks, Inc.
TX880	Access One, Inc.	TX995	Broadvox-CLEC, LLC
TX707	ACN Communication Services, LLC	TX804	Broadwing Communications, LLC
TX808	Airespring, Inc.	TX297	BT Communications Sales LLC
TY008	Airus Inc.	TX679	BullsEye Telecom, Inc.
TY168	Altaworx LLC	TX105	Business Telecom, LLC d/b/a EarthLink Business
TY161	American Dark Fiber, LLC	TY155	Call One Inc. of Illinois
TX920	American Telephone Company LLC	TX990	Callis Communications, Inc.
TX592	ANEW Broadband, Inc.	TY093	Campus Communications Group, Inc.
TX726	ANPI Business, Inc.	TY009	CBTS Technology Solutions LLC
TA062	AT&T Corp.	TL727	CenturyLink
TL720	AT&T Florida	TX273	CenturyLink Communications, LLC d/b/a Embarq Communications
TX956	ATC Outdoor DAS, LLC	TY148	Citadel Design & Construction, LLC
TY137	Atlantic Broadband Enterprise, LLC	TY163	**City Communications, Inc
TY105	Atlantis Communications LLC	TA052	City of Bartow
TX471	ATN, Inc.	TX062	City of Gainesville, a municipal corporation d/b/a GRUCom
TX918	Bandwidth.com CLEC, LLC	TA018	City of Lakeland
TY089	Barr Tell USA, Inc.	TA041	City of Leesburg
TY156	Batchlink, Inc.	TX097	City of Ocala d/b/a Ocala Electric Utility
TX713	BCM One, Inc.	TY030	Clear Rate Communications, Inc.
TX400	BCN Telecom, Inc.	TY096	Cloud Computing Concepts, d/b/a C3
TY116	BeCruising Telecom LLC d/b/a BeCru	TX426	Cogent Communications of Florida LHC, Inc.
TX031	BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast	TA061	Comcast Business Communications, LLC
TX827	Benchmark Communications, LLC d/b/a TotalComUSA	TX576	Comcast Phone of Florida, LLC d/b/a Comcast Digital Phone
TX947	BetterWorld Telecom LLC d/b/a BetterWorld Telecom	TY018	Comity Communications,
TX631	Bright House Networks Information Services (Florida), LLC	TY058	Communications Authority, Inc
TX980	Broadband Dynamics, L.L.C.	TX728	ComNet (USA) LLC
TX966	BroadRiver Communication Corporation		

TY179	**Compu-Design USA Inc. dba Dade Institute of Technology	TX882	First Choice Technology, Inc.
TX759	COMTECH 21, LLC	TX910	First Communications, LLC
TX816	Consolidated Communications Enterprise Services, Inc.	TY132	FL Network Transport, LLC
TL719	Consolidated Communications/GTC	TY032	Florida Hearing and Telephone Corporation
TA075	Conterra Ultra Broadband, LLC	TX369	Florida Phone Systems, Inc.
TY025	Convergia, Inc.	TX716	Fort Pierce Utilities Authority d/b/a FPUAnet Communications
TX830	CoreTel Florida, Inc.	TX705	France Telecom Corporate Solutions L.L.C.
TA027	Cox Florida Telcom, L.P.	TX493	Frontier Communications of America, Inc.
TY024	Crexendo Business Solutions, Inc.	TL732	Frontier Communications of the South, LLC
TY076	**Crosstel Tandem, Inc.	TL710	Frontier Florida LLC
TY152	**Crown Castle Fiber LLC	TX624	Frontier Florida LLC
TA074	**Crown Castle NG East LLC	TX326	Fusion Cloud Services, LLC
TX801	**Crown Castle NG East LLC	TX486	Fusion Communications, LLC d/b/a Fusion Communication Services, LLC
TY166	CTI Fiber Services, LLC	TY047	Fusion, LLC dba Fusion Connect, LLC
TX860	Custom Network Solutions, Inc.	TY104	GC Pivotal, LLC d/b/a Global Capacity
TY077	Custom Tel, LLC	TX618	Georgia Public Web, Inc.
TY061	**Dais Communications, LLC	TY085	GetGo Communications LLC
TA045	Dedicated Fiber Systems, Inc.	TY129	GigaMonster, LLC
TX056	DeltaCom, LLC d/b/a EarthLink Business	TX563	Global Connection Inc. of America (of Georgia)
TX991	DIGITALIPVOICE, INC.	TX176	Global Crossing Local Services, Inc.
TY106	Discount CLEC Services Corporation	TY113	Goff Network Technologies - Florida, Inc. d/b/a USA FIBER
TY053	dishNET Wireline L.L.C.	TX685	Granite Telecommunications, LLC
TX974	DSCI, LLC	TX971	Great America Networks, Inc.
TX609	DSL Internet Corp. d/b/a DSLi d/b/a	TA034	GRU Communication Services/GRUCom/GRU
TX380	EarthLink Business, LLC	TX650	Harbor Communications, LLC
TX390	Easy Telephone Services Company	TY162	Hargray of Florida, Inc.
TX160	Electronet Broadband Communications, Inc.	TA067	Hayes E-Government Resources, Inc.
TX921	ENA Services, LLC	TY111	HD Carrier, LLC
TY130	eNetworks, LLC d/b/a eNetworks NC, LLC	TY177	HFA of Florida LLC
TX699	Enhanced Communications Network, Inc. d/a Asian American Association	TX740	Home Town Telephone, LLC
TY003	Entelegent Solutions, Inc.	TX879	Hotwire Communications, Ltd.
TY165	ExteNet Asset Entity , LLC		
TX881	ExteNet Systems, Inc.		
TY158	**Faster.IO, Inc.		
TX978	FiberLight, LLC		
TX603	Fibernet Direct Florida LLC		

TY169	Hudson Fiber Network Inc	TX841	Matrix Telecom, LLC d/b/a
TX694	IDT America, Corp. d/b/a IDT		Impact Telecom d/b/a Startec d/b/a
TX819	inContact, Inc.		Americatel d/b/a Matrix Business
TY127	INDIGITAL, INC d/b/a INdigital		Technologies d/b/a Trinsic
TY109	**INNOVATIVE TECH PROS, CORP D/B/A INNOVATIVE TECH PROS		Communications d/b/a Vartec
TY101	Integrated Path Communications, LLC		Telecom d/b/a Excel
TY121	InteleTel, LLC		Telecommunications d/b/a Clear
TA080	Inteltrace, Inc.	TX842	**MCC Telephony of Florida, LLC
TX614	Intellifiber Networks, LLC	TA005	MCImetro Access Transmission
TX364	Interactive Services Network, Inc. d/b/a ISN Telcom d/b/a IPFone		Services Corp. d/b/a Verizon
TX792	InterGlobe Communications, Inc.		Access Transmission Services
TY079	InterMetro Fiber, LLC	TX539	McLeodUSA Telecommunications
TA081	IPC Network Services, Inc.		Services, L.L.C.
TY102	ITS Fiber, LLC d/b/a ITS Fiber	TY173	Metro Fibernet, LLC d/b/a
TL712	ITS Telecommunications Systems, Inc.		MetroNet
TX085	ITS Telecommunications Systems, Inc. d/b/a ITS Fiber	TX408	Metropolitan Telecommunications
TX884	J C Telecommunication Co., LLC		of Florida, Inc. d/b/a MetTel
TY181	JEA	TY042	Miami-Dade Broadband Coalition
TY107	**Joytel Wireless Communications, Inc.		I LLC
TX504	Keys Energy Services	TX984	Micro-Comm, Inc.
TX215	Knology of Florida, Inc. d/b/a	TX865	Mitel Cloud Services, Inc.
	WOW! Internet, Cable and Phone	TY136	MIX Networks, Inc.
TA063	Latin American Nautilus U.S.A. Inc.	TY171	**Mobex, Inc.
TX238	Level 3 Communications, LLC	TY128	Mobilitie Management, LLC
TA013	Level 3 Telecom of Florida, LP	TA079	Mobilitie, LLC
TX994	Lightspeed CLEC, Inc.	TY044	MOSAIC NETWORKX LLC
TX476	Lingo Telecom of the South, LLC	TX901	MULTIPHONE LATIN
TX823	Litestream Holdings, LLC		AMERICA, INC.
TY069	Local Access LLC	TY164	Myakka Communications, Inc.
TY041	Local Telecommunications Services - FL, LLC	TY066	Nebula Telecommunications of
TY170	Luxury Telecommunications LLC d/b/a Luxury Telecommunications		Florida LLC
TY147	Magna5 LLC	TL715	NEFCOM
TX937	Maryland TeleCommunication Systems, Inc.	TA083	Network Innovations, Inc.
TY023	MassComm, LLC	TX187	Network Telephone, LLC
		TX805	Neutral Tandem-Florida, LLC
		TX935	New Horizons Communications
			Corp.
		TY174	NGA 911, L.L.C.
		TX934	Norstar Telecommunications, LLC
		TY034	**North County Communications Corporation



TX227	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 d/b/a Blueridge Telecom Systems	TY176	Smart Choice Communications, LLC
TY108	Offramp, LLC	TX252	Smart City Networks, Limited Partnership
TX927	One Voice Communications, Inc.	TY159	Smart City Solutions II, LLC
TY087	Onvoy, LLC	TX625	Smart City Solutions, LLC d/b/a Smart City Communications
TY021	Opextel LLC d/b/a Alodiga	TL731	Smart City Telecom
TX797	**Optical Telecommunications, Inc. d/b/a HControl Corporation d/b/a SH Services LLC	TX301	Southeastern Services, Inc.
TX038	**Orlando Telephone Company, Inc. d/b/a Summit Broadband	TA059	Southern Light, LLC
TY119	PacOptic Networks, LLC	TX610	Southern Light, LLC
TX234	PaeTec Communications, LLC	TX414	Southern Telecom, Inc. d/b/a Southern Telecom of America, Inc.
TY151	**Paradigm Telecom II, LLC	TX722	Spectrotel, Inc. d/b/a OneTouch Communications d/b/a Touch Base Communications
TY133	Paradigm Telecom, Inc.	TX045	Sprint Communications Company Limited Partnership
TY154	PeakNet, LLC	TY144	SQF, LLC
TX891	Peerless Network of Florida, LLC	TY036	Stratus Networks, Inc.
TX676	Phone Club Corporation	TX895	**Sunesys, LLC
TX409	**PNG Telecommunications, Inc. d/b/a PowerNet Global Communications	TY138	Synergem Technologies, Inc.
TX959	Preferred Long Distance, Inc.	TX691	T3 Communications, Inc.
TX874	Protection Plus of the Florida Keys, Inc. d/b/a ENGAGE COMMUNICATIONS	TY103	Talk America Services, LLC
TY120	**Pure Telephone Corp	TX036	Talk America, LLC d/b/a Windstream Talk America, LLC
TY172	QCSTelecom, Inc.	TY122	TALKIE COMMUNICATIONS, INC.
TX372	QuantumShift Communications, Inc.	TY131	TampaBay DSL Inc d/b/a PBX-Change
TY062	RCLEC, Inc.	TL718	TDS Telecom
TY140	Real Fast Networks LLC	TX606	Telapex Long Distance, Inc.
TY110	Reddot Networks Inc.	TX993	TelCentris Communications, LLC
TX433	Sandhills Telecommunications Group, Inc. d/b/a SanTel Communications	TY045	Telco Experts, LLC
TY126	SBA DAS & Small Cells, LLC	TX912	TelCove Operations, LLC
TY027	Seminole Telecom of Florida, LLC	TX836	Tele Circuit Network Corporation
TY180	Simwood, Inc.	TX903	Telecom Management, Inc. d/b/a Pioneer Telephone
TY134	**SKYNET360, LLC	TA085	Teleport Communications America, LLC
		TY153	Teliix, Inc.
		TX870	Telrite Corporation
		TX791	Terra Nova Telecom, Inc.
		TY081	**TerraNovaNet, Inc.
		TX082	The Other Phone Company, LLC

TY149	TIME CLOCK SOLUTIONS, LLC	TX964	VoDa Networks, Inc.
TY090	Time Warner Cable Business LLC	TY098	Vodafone US Inc.
TY178	**Tone Communication Services LLC	TY043	Voxbeam Telecommunications Inc.
TY094	Total Marketing Concepts, LLC	TY135	**WAHL TV INC.
TX936	Touchtone Communications Inc.	TY157	WANRack, LLC
TX900	Tristar Communications Corp.	TY141	Webpass Florida LLC
TY146	Triton Networks LLC	TX607	West Safety Communications Inc.
TY142	United Commercial Telecom, LLC	TX590	West Telecom Services, LLC
TY145	Uniti Fiber LLC	TX641	Wholesale Carrier Services, Inc.
TX165	US LEC of Florida, LLC d/b/a PAETEC Business Services	TY054	Wide Voice, LLC
TY056	US Signal Company, L.L.C.	TY031	WiMacTel, Inc.
TX987	Vanco US, LLC	TL716	Windstream Florida, LLC
TY175	**Vector Axis Florida LLC	TX957	Windstream KDL, LLC
TY004	Velocity The Greatest Phone Company Ever, Inc.	TX645	Windstream Norlight, LLC
TX071	Verizon Select Services Inc.	TX824	Windstream NuVox, LLC
TY160	Vero Fiber Networks, LLC d/b/a Vero Networks	TY038	WonderLink Communications, LLC
TY125	Vesta Solutions, Inc.	TX953	WTI Communications, Inc.
		TX205	XO Communications Services, LLC
		TX850	YMax Communications Corp.
		TY074	Zayo Group, LLC



## Glossary

4G	The short name for fourth-generation wireless, the stage of broadband mobile communications that will supercede the third generation (3G). A 4G network requires a mobile device to be able to exchange data at 100 Mbit/sec.
5G	5G is the coming fifth-generation wireless broadband technology. 5G will provide better speeds and coverage than the current 4G. 5G is set to offer speeds of up to 1 Gb/s for tens of connections or tens of Mb/s for tens of thousands of connections. 5G is not scheduled for launch until 2020.
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.
Communications Act or The Act	The federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, established a national framework to enable CLECs to enter the local telecommunications marketplace.
DSL	Digital Subscriber Line, a technology that connects the user to broadband connections across a telephone network. It uses the same copper loops as wireline telephone service.
Facilities-based VoIP service	This term refers to VoIP service provided by the same company that provides the customer's broadband connection. Facilities-based VoIP services are generally provided over private managed networks and are capable of being provided according to most telephone standards. While this service uses Internet Protocol for its transmission, it is not generally provided over the public Internet.
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.

Interconnected VoIP service	According to the FCC, it is a VoIP service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate and terminate on the public switched telephone network.
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 non-wireline voice communications such as wireless or VoIP.
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.
Over-the-Top VoIP service	This term refers to VoIP service that is provided independently from a particular broadband connection and is transmitted via the public Internet.
Switched Access	Local exchange telecommunications company-provided exchange access services that offer switched interconnections between local telephone subscribers and long distance or other companies.
TDM	Time Division Multiplexing is a method of transmitting and receiving independent signals over a common signal path by means of synchronized switches at each end of the transmission line so that each signal appears on the line only a fraction of the time in an alternating pattern. TDM circuit switched lines represent the traditional wireline access line data within this report and do not include VoIP connections.
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.
Universal Service	This term describes the financial support mechanisms that constitute the national universal service fund. This fund provides compensation to 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.
Universal Service Administrative Company (USAC)	USAC is an independent American nonprofit corporation designated as the administrator of the federal Universal Service Fund by the Federal Communications Commission. USAC is a subsidiary of the National Exchange Carrier Association.
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.
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# 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-**

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**DATE:** July 17, 2020

**TO:** Braulio L. Baez, Executive Director

**FROM:** Marissa Ramos, Public Utilities Supervisor, Division of Engineering *TB*  
Todd M. Brown, Public Utilities Supervisor, Division of Accounting & Finance *ALM*  
Shannon J. Hudson, Economic Supervisor, Division of Economics *JGH*  
Matthew Vogel, Public Utilities Supervisor, Office of Industry Development & Market Analysis *CAH*  
Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel *SMC*  
Kurt Schrader, Senior Attorney, Office of the General Counsel

**RE:** Briefing on water and wastewater items: Testing in Water Distribution System/Quality of Service, Flushing Requirements and Practices, Boil Water Noticing, Reserve Funds, and Customer Deposits

**CRITICAL INFORMATION:** Place on July 28, 2020 Internal Affairs Agenda.  
**Briefing Only**

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Over the past several months, the Florida Public Service Commission (Commission) has had discussions and raised questions about several topics in the water and wastewater industry. These topics include: testing in the water distribution system with respect to quality of service, flushing requirements and practices, boil water noticing, reserve funds, and customer deposits. Commission staff from the Divisions of Engineering, Accounting & Finance, Economics, the Offices of Industry Development & Market Analysis and General Counsel prepared this briefing memorandum to address these topics.

## I. Testing in Water Distribution System/Quality of Service

### A. Florida Department of Environmental Protection water quality testing protocols and practices

In order to address water quality, the Florida Department of Environmental Protection (DEP) enforces the federal Safe Drinking Water Act<sup>1</sup> in Florida and has adopted the U.S. Environmental Protection Agency's (EPA) rules and regulations. Water quality is evaluated based on primary and secondary drinking water standards. Primary drinking water standards protect the public health and DEP Rule 62-550.310, Florida Administrative Code (F.A.C.), contains the maximum contaminant and residual levels to maintain these standards. Secondary

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<sup>1</sup> The Safe Drinking Water Act is the main federal law regarding drinking water quality in the United States and authorizes the EPA to promulgate national drinking water standards to protect against health effects from exposure to naturally occurring and man-made contaminants in drinking water.



water quality standards regulate contaminants that may impact the aesthetics such as taste, odor, and color of drinking water. DEP Rules 62-550.320 and 62-550.325, F.A.C., address the maximum contaminant levels and treatment techniques for secondary drinking water standards.

To ensure compliance with state and federal drinking water laws and standards, the DEP regularly reviews how, where, and when drinking water is tested and the data resulting from these tests. Additionally, the DEP conducts facility site inspections to ensure that permit requirements are met. The DEP also conducts inspections in response to complaints or identified compliance concerns. If a compliance concern does arise, the DEP works with the utility to perform a system analysis to identify operational improvements and corrective actions to bring the facility back into compliance with drinking water standards as quickly as possible. Following a compliance issue, utilities may be required to increase the frequency of their water testing. The DEP reviews the results to ensure the facility returns to compliance. The DEP also makes the water-quality test results available to the public.<sup>2</sup>

With respect to testing in water distribution systems, the DEP requires testing for several primary water contaminants including, but not limited to: lead, residual disinfectants, and asbestos. The scheduling and frequency of testing for these primary water standards is mandated and monitored by the DEP and is also dependent upon individual characteristics of the utility.

Testing of secondary water contaminants is required once every three years with the testing location(s) at the water supply entry point(s) to the distribution system, pursuant to Table 7: Monitoring Frequencies and Locations of DEP Rule 62-550.822, F.A.C. Currently, there are no DEP mandated testing requirements for secondary water quality within the water distribution systems. While the DEP rules do not require testing in the distribution system for secondary standards, this does not preclude the DEP from ordering such testing to be conducted.

## **B. PSC authority and practices**

Chapter 367, Florida Statutes (F.S.), sets forth the Commission's authority over water and wastewater utilities and addresses, among other things: certificates, regulatory assessment fees, the fixing and changing of rates, petitions to revoke certificates of authorization, and quality of water service.

Specifically, Section 367.0812(1), F.S., states:

- (1) In fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory, the commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection. In determining whether a utility has satisfied its obligation to provide quality of water service that meets these standards, the commission shall consider:

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<sup>2</sup> [https://floridadep.gov/sites/default/files/drinking-water-standards-facts\\_0.pdf](https://floridadep.gov/sites/default/files/drinking-water-standards-facts_0.pdf)

- (a) Testimony and evidence provided by customers and the utility;
- (b) The results of past tests required by a county health department or the Department of Environmental Protection which measure the utility's compliance with the applicable secondary water quality standards;
- (c) Complaints regarding the applicable secondary water quality standards filed by customers with the commission, the Department of Environmental Protection, the respective local governmental entity, or a county health department during the past 5 years.

Pursuant to Section 367.111(3), F.S., the Commission may, on its own motion or based on complaints of customers of a water utility subject to its jurisdiction, review water quality as it pertains to secondary drinking water standards established by the DEP. In addition to complaints filed with regulatory agencies, water utilities seeking a rate increase to provide a copy of all complaints that the utility has received regarding secondary water quality standards during the past five years pursuant to Rule 25-30.440, F.A.C.

Customer input is a key factor in the Commission's evaluation of a utility's quality of service as it relates to secondary water quality standards. As such, it is important to ensure that customer communications regarding water quality are obtained. Customers may provide comments via email, letter, or telephone. Customers may also speak at customer meetings, if applicable. The information gathered from these resources is placed in the docket file of the active proceeding for the Commission's consideration. If there is not an active docket for the utility when a customer comment is received, the customer's comments are addressed by the Commission's Bureau of Consumer Assistance or by technical staff. Additionally, customers have an opportunity to speak at Commission conferences.

When the quality of service for a water utility is determined to be unsatisfactory, the Commission has taken a variety of actions. In the past, the Commission has implemented additional reporting or testing requirements, imposed a reduction to the utility's return on equity, or reduced a utility officer's salary in an effort to hold utility management accountable for the identified quality of service issue.

As discussed above, testing for secondary contaminants is required by the DEP at least once every three years at the water distribution entry point(s). However, the water a customer consumes may be miles away from the location where the water samples are taken. As such, the water customers consume may have different characteristics than the water at the entry point to the distribution system. The DEP has discretion to require testing in the distribution system, if circumstances warrant. Based on a review of prior water rate case proceedings, the Commission has ordered, or staff has requested, additional testing in a utility's distribution system four times in the last 25 years. A brief description of these cases is provided below in chronological order.

***Aloha Utilities, Inc.***

In 1997, pursuant to Commission Order No. PSC-97-0280-FOF-WS, in Docket Nos. 19950615-SU and 19960545-WS, the Commission determined that the quality of service provided by Aloha Utilities, Inc. (Aloha) was unsatisfactory and ordered Aloha to evaluate treatment alternatives for the removal of hydrogen sulfide. In that Order, the Commission noted numerous customer complaints regarding discoloration of the water.

Later that same year, by Order No. PSC-97-1512-FOF-WS, the Commission required Aloha to survey its customers to determine how many customers had quality of service problems. The Commission further stated that it would conduct visits at selected homes based on the result of the required survey.

In a subsequent order, the Commission noted that Aloha was meeting DEP standards at the point of delivery to the distribution system. However, the Commission recognized that customers were not satisfied with the product they received. Giving consideration to the input from Aloha's customers, the Commission ordered Aloha to implement a pilot project to enhance the water quality and to file monthly reports regarding the status of the pilot project. The Commission also acknowledged that the piping in customers' homes could be a cause for the discoloration and stated that if the utility were to propose an incentive program to customers for re-piping, the Commission could review recovery of the associated costs. In 2006, the Commission approved a settlement between Aloha, OPC, and several individual interveners which resolved the water quality concerns.<sup>3</sup>

***Utilities Inc. of Florida***

In 2010, as part of Docket No. 20090462-WS, the Commission ordered Utilities Inc. of Florida (UIF) to update a 2009 secondary water system quality test for its Summertree water system. The Summertree water system was one of several water systems evaluated in that docket. In its order, the Commission noted that the water provided to the Summertree system was in compliance with DEP's secondary standards at the point of entry into the distribution system. However, the Commission recognized that, dependent upon water usage by customers, water quality can diminish during low consumption periods. The updated test provided by UIF indicated that the Utility continued to meet DEP secondary standards at the point of entry.

In 2014, by Order No. PSC-14-0025-PAA-WS, the Commission found the quality of water in the Summertree water system to be unsatisfactory due to customer complaints. The Commission reduced the return on equity 100-basis points for the Summertree system. UIF was also ordered to engage its Summertree customers and present suitable options to address the quality issues relating to secondary water standards. The customers were surveyed on the presented options, and customers voted for the interconnection with Pasco County.

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<sup>3</sup> Docket No. 20050018-WU, *In re: Initiation of deletion proceedings against Aloha Utilities, Inc. for failure to provide sufficient water service consistent with the reasonable and proper operation of the utility system in the public interest, in violation of Section 367.111(2), Florida Statutes.*

As part of the approval of the cost of the interconnection, by Order No. PSC-16-0505-PAA-WS, the Commission required UIF to provide secondary water quality results for portions of its Summertree water distribution system at least every six months until the Commission found the quality of the water to be satisfactory. The specific testing locations were determined by CPH Engineering in its treatment alternatives analysis report, which was submitted on behalf of UIF. As of the date of this memorandum, UIF continues to file test results with the Commission and the results appear to be passing DEP standards. It should be noted that because of its interconnection with Pasco County, the Summertree system is now a consecutive water system and according to the DEP, it is not subject to its secondary water standards. UIF has not requested the removal of the 100-basis point reduction at this time.

### ***Cypress Lakes Utilities Inc.***

In 2013 (Docket No. 20130212-WS), Cypress Lakes Utilities Inc. (Cypress Lakes) applied for a rate increase. Preliminary data showed that the Utility was in compliance with all DEP primary and secondary water quality standards. However, to address water quality concerns raised by seven customers at the customer meeting, staff requested that Cypress Lakes conduct tests of the water in the distribution system at locations close to these seven customers' meters. Cypress Lakes conducted tests at eight points in its water distribution system and the total cost for the testing was \$2,200 (\$275 per test location), which was recovered through customer rates. The test results, which were below the DEP's maximum contaminant levels, were considered in the Commission's ultimate determination that the quality of service provided by Cypress Lakes was satisfactory.

### ***Bocilla Utilities, Inc.***

In 2017, as part of Docket No. 20160065-WU, the Commission determined the overall quality of service for Bocilla Utilities, Inc., (Bocilla) to be unsatisfactory and assessed a 50-basis point reduction to its return on equity. The Commission's determination of unsatisfactory was based on customer complaints regarding the quality of Bocilla's product and its customer service. Bocilla purchases and resells water to its customers, as such, it is a consecutive water system and according to the DEP is not subject to its secondary water standards. However, the Commission ordered Bocilla to demonstrate that it met DEP's secondary water quality standards at six locations. The six locations selected for testing were based on locations that Bocilla was currently using for flushing and monitoring purposes. Bocilla filed a letter and documentation demonstrating that it had made the Commission's ordered improvements and that the water in its distribution system was passing DEP standards. The Utility also requested that the matter be brought before the Commission to consider restoring the 50-basis point reduction to its return on equity. The Commission approved Bocilla's request, found its quality of service as satisfactory, and removed the 50-basis point reduction within the same docket.

### **C. Funding for Additional Testing**

In each case discussed above, the decision to require testing in a utility's distribution system was the result of input from dissatisfied customers and not DEP water quality tests results taken at the point of entry to the distribution system. The number and locations of the tests were based on case-specific information. Additionally, in the cases above, the utility was responsible for

conducting the testing and providing the results to the Commission. The Commission does not perform water quality testing as water quality tests are performed by independent labs.

There has been significant consideration given to customer input before requesting or ordering additional testing for purposes of evaluating a utility's quality of service. It is important to understand that there are costs associated with water quality tests. Traditionally, these costs would be eligible for recovery from the general body of ratepayers, but could also be assigned directly to the customers who are dissatisfied, much like a meter test. The cost of testing, the assignment of the costs, the potential rate impacts, and who benefits from the test(s) should all be considered.

In the Cypress Lakes matter mentioned above, the Utility conducted tests at eight points in its water distribution system, as discussed above. The total cost for the testing was \$2,200 (\$275 per test location) which was recovered through customer rates. Depending on the size of the system and the number of tests required, testing in the utility's distribution system can be costly. The Commission regulates water systems with varying customer counts which can range anywhere from 50 to 5,000 customers. The rate impact of testing within the distribution system of a small utility may be greater because there are fewer customers to absorb the costs. Moreover, it is possible that not all customers would benefit from these tests as the tests are performed to address the concerns raised by a specific customer or group of customers.

As an alternative to the general body of customers paying for testing in the distribution system, staff estimated what it could cost if the Legislature were to authorize the Commission to fund such testing. Staff calculated the average expense for additional testing by looking at the average number of staff assisted rate cases (SARCs) filed with the Commission per year, estimating cost per test using the cost data from the Cypress Lakes docket, and estimating the number of tests needed per system. The average number of SARCs filed each year for the past five years was six, the cost of testing in the Cypress Lakes case was \$275 per test, and it was estimated that 10 tests per utility would be conducted. This resulted in a total expense of \$16,500 for additional testing in the distribution system annually for six utilities. It should be noted that this is only an example, and this type of expense goes beyond the PSC's current budget authority.

## **II. Flushing Requirements and Practices**

The DEP oversees water utility flushing requirements and practices. Florida's water management districts also have rules regarding water utility operations during water shortage events; some of these rules regulate flushing practices during such events. Flushing is performed to maintain water quality and residual disinfectant concentration levels throughout a utility's distribution system. Utilities perform flushing at their discretion and pursuant to DEP Rule 62-555.350(2) and (6), F.A.C, which states that water suppliers should flush dead-end water mains conveying finished drinking water quarterly, or in accordance with a written flushing program established by the water supplier. Additionally, these dead-end water mains containing finished drinking water should also be flushed as necessary when legitimate water quality complaints are received. Flushing should also be conducted after the water supplier increases the residual disinfectant

concentration to the required minimum level and should be continued until the disinfectant concentration is restored.

In accordance with PSC Rule 25-30.4325(1)(e) and (10), F.A.C., staff analyzes a utility's flushing volumes when comparing the gallons of water a utility has pumped with the gallons of water it has sold and when calculating excessive unaccounted for water (EUW). Staff does not include the gallons used for flushing in its calculation of EUW because they are accounted for by the utility and flushing is employed to improve water quality. Based on past Commission cases, it appears that flushing is conducted more often in systems with a seasonal customer base or systems where customers are more spread-out within the distribution system.

At its May 19, 2020, Internal Affairs meeting, the Commission heard comments that water management districts may be placing limits on the amount a utility flushes, which in turn could cause issues with water quality. However, this issue has not surfaced in past rate proceedings. Staff will continue to evaluate the flushing practices of the utilities regulated by the Commission. If issues regarding water management district limitations on flushing arise, they will be brought to the Commission's attention.

### **III. Boil Water Notices**

Pursuant to the EPA's Public Notification Rule 65 FR 25982, boil water notices must be distributed within 24 hours of a situation where there is the potential for human health to be impacted. The EPA requires water suppliers to utilize media outlets such as television, radio, and newspapers, post their notice in public places, personally deliver a notice to their customers, or use an alternative method approved by the primary agency. For water systems in Florida, the primary agency is the DEP district office or the county health department, depending on which agency is responsible for the water system.

Based on the Commission's inquiry, staff explored the use of email and text messaging to convey boil water notices. After discussions with the DEP, staff found that if approved by the primary agency, the water utility may deliver boil water notices via email or other electronic method such as text messages. However, these methods may not adequately reach the entirety of a customer base because some customers do not have access to or utilize email or text messaging. Boil water notices must contain all information required by the EPA, which may be difficult to convey via text messaging.

With the ranging characteristics of water utilities regulated by the Commission, the way utilities render boil water notices may differ based on a number of factors such as the situation calling for the notice or demographics of the utility's customer base. It appears that many of the utilities use door hangers for boil water notices, which may be attributable to the reason for the boil water notice being a localized incident. However, other methods for communicating boil water notices have been utilized. For example, utilities have posted notices at community entrances, on Radio/TV, and have used an automated calling system.

As noted above, several different modes may be used by a utility if approved by the utility's primary agency. Furthermore, since the Commission is not the primary agency, the Commission does not have the authority to require a particular delivery method for boil water notices. The primary agency is the DEP district office or the county health department, depending on which agency is responsible for the water system. Additionally, there may be additional costs to set up the email or text notifications of boil water notices.

## **IV. Reserve Funds**

### **A. Statutory Background**

Water and wastewater utilities' lack of cash reserves, and limited availability of owner, bank, or investor financing affect the ability of the utility to cover repair costs for critical infrastructure. To address concerns over deferred maintenance of critical infrastructure and delays in necessary repairs, during the 2016 Legislative Session, the Florida Legislature enacted House Bill 491, which modified Section 367.081(2)(c), F.S. This statute states that, upon its own motion or upon the request of a utility, the Commission may authorize a utility to create a utility reserve fund for infrastructure repair and replacement for a utility for existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. Further, the Commission was required to adopt rules to govern the implementation, management, and use of the reserve fund. The Legislature determined the establishment of a utility reserve fund may reduce borrowing costs and make funding for repairs more readily available.<sup>4</sup> The availability of the reserve funds may allow the utility to avoid or defer the need for a future rate case, the expenses of which are ultimately borne by ratepayers.<sup>5</sup>

The Commission adopted Rule 25-30.444, F.A.C., Utility Reserve Fund, and Rule 25-30.4445, F.A.C., Notice of Application for Utility Reserve Fund. Both rules went into effect on June 20, 2017. To date, no water and/or wastewater utility has requested the Commission's approval of a reserve fund.

### **B. Rule 25-30.444, F.A.C., Utility Reserve Fund**

Rule 25-30.444, F.A.C., implements Section 367.081(2)(c), F.S., which allows the Commission to authorize a utility reserve fund for water and wastewater utilities. Under the rule, reserve funds are funded through rates in the form of a surcharge prior to project implementation. Section 367.081(2)(c), F.S., requires the Commission's rule to include: (a) provisions related to the expenses for which the fund may be used; (b) segregation of the reserve fund accounts; (c) requirements for the utility to maintain a capital improvement plan; and (d) requirements for Commission authorization prior to disbursement from the reserve fund.

#### ***Eligible Projects***

Subsection 25-30.444(1), F.A.C., identifies considerations that must be applied in determining whether a future infrastructure repair or replacement project is eligible for advance funding through a utility reserve fund and whether a utility reserve fund is the most appropriate

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<sup>4</sup> Florida House Bill Analysis, Regulatory Affairs Committee, February 9, 2016, p. 3.

<sup>5</sup> Florida House Bill Analysis, Energy and Utilities Subcommittee, April 15, 2016, p. 12.

methodology to address the required project. Projects that are eligible for a utility reserve fund include projects to repair or replace infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability and upgrades or enhancements of existing facilities necessary to comply with federal, state, or local regulatory requirements. The rule excludes certain projects and expenditures, including those related to the general plant that are not directly associated with the physical operation of the plant and for which other financing options are generally available, such as office equipment, tools, and vehicles. Projects related to expanding facilities to address future growth are also excluded.

### ***Filing Requirements***

Subsection 25-30.444(2), F.A.C., identifies the information utilities must submit in an application to create a reserve fund. For example, the subsection requires a utility to provide a capital improvement plan that includes general information about the condition of the utility's facilities and a description of all infrastructure repair and replacement projects that the utility anticipates will be necessary within the next five years, at a minimum. The subsection also requires detailed information about the projects that the utility is requesting be included in a utility reserve fund such as: a description of reasons why each project is necessary to either maintain or improve the quality or reliability of the water or wastewater service; whether the projects are required by a regulatory agency, such as the DEP; cost estimates; a projected timeline; and a description of any other funding sources that may be available to pay for a portion of the projects. The rule also allows any utility that has received an Asset Management Plan prepared by the Florida Rural Water Association to submit that plan in lieu of preparing a separate capital improvement plan. In addition, the subsection requires a description of the procedures that the utility will implement to segregate the monies collected from the utility reserve fund surcharge on the utility's books and records.

### ***Reporting Requirements***

Subsection 25-30.444(3), F.A.C., identifies reporting requirements for the utilities in order for the Commission to review the monies collected in the utility reserve fund. This subsection provides several reporting requirements that will continue as long as the utility reserve fund is in effect. The reports include: monthly reports of the money deposited into and disbursed from the utility reserve fund; project status reports every six months; an annual update in the utility's annual report; and an update of the utility's capital improvement plan every three years.

### ***Disbursement of Funds***

Subsection 25-30.444(4), F.A.C., lists the information that a utility must file with the Commission to request disbursement of funds from an escrow account or authorization to use funds secured by an irrevocable letter of credit to carry out its capital improvement plan.

### ***Utility Reserve Fund Modifications***

Subsection 25-30.444(5), F.A.C., allows for modification of the reserve fund when a utility must undertake a project that was not anticipated when the reserve fund was created or when the utility must make significant modifications to a previously approved project. To apply for a modification, the utility must file the necessary information, including a statement describing why the new project or modification of a previously approved project is necessary and whether



the utility is requesting a change in the utility reserve fund surcharge or only acknowledgement of the project modifications. If the new project or project modification is required by a governmental or regulatory agency, the utility must provide the Commission with a copy of the rule, regulation, order, or other regulatory directive that requires the new project or project modification.

### ***Final Disposition of Reserve Fund***

Subsection 25-30.444(6), F.A.C., identifies the conditions under which the Commission will determine the final disposition of a utility reserve fund. This subsection provides that the utility reserve fund surcharge will be discontinued after all approved eligible projects have been completed, sufficient funds have been collected in the utility reserve fund to cover the cost of the approved eligible projects, and the final disbursement has been made from the utility reserve fund. The rule provides that during the utility's next rate proceeding, the utility's rate base, capital structure, operating expenses, and rates shall be adjusted as needed to reflect the completed projects. Any monies that remain in the utility reserve fund following the last disbursement for the completed eligible projects shall be refunded to the customers with interest. The rule also provides a process for evaluating the reserve fund if there are any changes in utility ownership or if the utility is abandoned. If the utility fails to follow through with the eligible projects or comply with the security, fund maintenance, or reporting rule requirements, the Commission shall initiate a review of the utility reserve fund and surcharge to determine whether the reserve fund and surcharge should be discontinued and whether all monies in the reserve fund should be refunded to the customers with interest.

### **C. Emergency Funds**

During the development of the rule, the utilities argued that reserve funds may be needed to pay for emergency work that was not part of the capital improvement plan submitted to the Commission. To address the utilities' concerns about situations where an emergency may require the use of the funds in the reserve account, the Commission included language in the rule to allow disbursements from the reserve fund for certain emergency repairs under specific circumstances so that the utilities' access to the funds could be considered in limited emergency situations. Assuming that a utility has implemented a reserve fund, and there are funds available, the rule provides an exception for the use of reserve funds for emergency repairs to infrastructure directly related to the provision of water and/or wastewater service. The rule language also requires the utilities to reimburse the reserve fund for the emergency repairs or describe how the utility reserve fund projects or timeline could be modified to address the funding needs of the previously approved projects. If these options are not possible, the utility may request a modification of the surcharge.

As noted earlier, because no water and/or wastewater utilities have established a reserve fund at this time, there are no reserve funds available for emergency use. To expand the use of the reserve fund methodology for use in addressing a broader range of emergency situations, it would be necessary to make a statutory change to Section 367.081, F.S., and amend Rule 25-30.444, F.A.C., to broaden the applicability of funds collected through a reserve fund surcharge for emergency purposes.

## V. Customer Deposits

Rule 25-30.311, F.A.C., Customer Deposits, addresses two kinds of customer deposits. There are initial deposits and new or additional deposits.

The amount of a new or additional deposit is not contained in a utility's tariff. Pursuant to Rule 25-30.311(7), F.A.C.:

A utility may require, upon reasonable written notice of not less than 30 days, such request or notice being separate and apart from any bill for service, a new deposit, where previously waived or returned, or an additional deposit, in order to secure payment of current bills; provided, however, that the total amount of the required deposit should not exceed an amount equal to the average actual charge for water and/or wastewater service for two billing periods for the 12-month period immediately prior to the date of notice. In the event the customer has had service less than 12 months, then the utility shall base its new or additional deposit upon the average monthly billing available.

Thus, under Subsection (7) of the rule, a utility may require a new or additional deposit in order to secure payment of current bills. Historically, utilities have applied this rule to current customers who would not qualify for a refund of a deposit pursuant to Rule 25-30.311(5), F.A.C. Under this interpretation of the rule, some utilities have requested a new or additional deposit when a current customer, in the preceding 12 months: (a) made more than one late payment of a bill (after expiration of 20 days from the date of mailing or delivery by the utility); (b) paid with a check refused by a bank; (c) has been disconnected for nonpayment; (d) at any time tampered with the meter; or (e) used service in a fraudulent or unauthorized manner. The amount of a new or additional deposit does not require prior Commission approval. The rule governs the determination of the amount for the new or additional deposit.

For initial deposits, the dollar amount of the initial deposit must be approved and contained in the utility's tariff.<sup>6</sup> Rule 25-30.311(1), F.A.C., states:

Each company's tariff shall contain their specific criteria for determining the amount of initial deposit. Each utility may require an applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the customer from complying with the utilities' rules for prompt payment of bills.

The rule does not specify the methodology for determining the amount of the initial deposit. Historically, the Commission has adopted the average actual charge for water and/or wastewater service for two billing periods similar to new or additional deposits. However, new or additional deposits are based on the average usage of the individual customer and initial deposits are based on the average residential usage of the utility since there is no prior history of usage.

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<sup>6</sup> Section 367.081(1), F.S., provides that, with exceptions not applicable to customer deposits, a utility may only charge rates and charges that have been approved by the Commission.

The reason the deposit is based on a two-month average is that, at the point in time the water meter is actually read by a meter reader, typically a full month of usage has already passed. The usage period is referred to as the service period, or the period of time from the previous meter reading to the current meter reading. Typically, this period of time is approximately 30 days, if the utility has a monthly billing cycle. However, the cycle time may vary between 27 to 33 days.

Once the meter is read, a bill is prepared and rendered. The time between the meter read and the bill preparation varies among utilities, but is usually between five to seven days. Payment is due twenty days from the date the bill has been mailed or presented, consistent with Rule 25-30.335(4), F.A.C. Therefore, the actual payment is due approximately two months after the service is actually rendered.

If payment is not received by the 20th day, it is considered delinquent pursuant to Rule 25-30.335(4), F.A.C. At that point in time, the utility may begin disconnection of services. Pursuant to Rule 25-30.320(2)(g), F.A.C., a utility may discontinue service for nonpayment of bills, provided the customer has been provided "at least 5 working days' written notice," and there has been a diligent attempt to have the customer comply. Thus, service cannot be disconnected until well after two months subsequent to the bill being rendered. Also, an additional month of usage has already been provided to the delinquent customer, and presumably another month's bill has been issued by the time service can be disconnected.

Staff found that the majority of states have rules similar to Florida, where deposits are set based at two months of estimated bills. The following outlines customer deposit practices of varying states.

- The following states cap the amount for customer deposits at two months of estimated bills:

Florida	New York
Alabama	New Mexico
Arizona	North Carolina
Arkansas	Oregon
California	Pennsylvania
Delaware	South Carolina
Illinois	Tennessee
Massachusetts	Virginia
Missouri	Washington

- Two states, Mississippi and West Virginia, cap the amount of customer deposits for one month of estimated bills.
- Louisiana caps the amount of customer deposits at two and a half months of customer bills.

- Iowa and Colorado cap the amount of customer deposits at three months of customer bills.
- Indiana caps the amount of customer deposits at four months of customer bills.
- Staff found one state that has a fixed amount for customer deposits. Texas caps the amount for a deposit for water and wastewater, separately. The fixed amounts are \$50 for water customers and \$50 for wastewater customers.
- The following states do not have commission regulation of water/wastewater services:

District of Columbia

Georgia

Michigan

Minnesota

North Dakota

South Dakota

The Commission has recognized that customer deposits may be required to encourage payment of bills or recovery of past due amounts. Collecting a customer deposit is consistent with one of the fundamental principles of ratemaking - ensuring that the cost of providing service is recovered from the cost causer. The cost of providing service varies among utilities, in turn, so do the rates. In addition, the demographics in terms of average usage varies as well. The rates and average usage determine the appropriate amount of a deposit and are unique to the individual utility. Since deposits are a product of the aforementioned components, it may be challenging to benchmark deposits. Benchmarking could lead to inadequate deposits. If utilities do not collect adequate deposits to cover the cost of providing service, the result could lead to an increase in bad debt expense. Ultimately, the bad debt expense is included in the utility's revenue requirement, and therefore is included in the service rates charged to the general body of ratepayers.

Overall, deposits minimize the exposure of bad debt expense for the utility, which benefits the general body of ratepayers. In order to capitalize on this minimization, deposits must be designed based on the cost of providing service by the utility.

MR:pz

cc: Keith Hetrick, General Counsel

Apryl Lynn, Deputy Executive Director - Administrative

Mark Futrell, Deputy Executive Director - Technical

## 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 records reflect that there were no supplemental materials provided to the Commission during this Internal Affairs meeting.

# IV. Transcript

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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PROCEEDINGS: INTERNAL AFFAIRS  
  
COMMISSIONERS  
PARTICIPATING: CHAIRMAN GARY F. CLARK  
COMMISSIONER ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER ANDREW GILES FAY  
  
DATE: Tuesday, July 28, 2020  
  
TIME: Commenced: 9:30 a.m.  
Concluded: 11:20 a.m.  
  
PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida  
  
REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
114 W. 5TH AVENUE  
TALLAHASSEE, FLORIDA  
(850) 894-0828



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

2 CHAIRMAN CLARK: All right. We will go ahead  
3 and get started this morning. Good morning, and  
4 welcome to Internal Affairs. We will call this  
5 meeting to order. It's great to see everyone this  
6 morning, and we are going to have a -- we got a  
7 little bit lengthier IA than normal, but I think  
8 we've got a lot of great information that we are  
9 going to cover today, and hopefully we will have  
10 some insightful conversations and are able to give  
11 our staff some -- some great direction.

12 So we will open it up with Item No. 1, it's  
13 the Draft Review of the 2020 Report on the Status  
14 of Competition in the Telecommunications Industry.  
15 And I believe, Mr. Baez, are you going to introduce  
16 that or is that straight to Mr. Wooten -- or Mark,  
17 I am sorry.

18 MR. FUTRELL: Yes, sir, Mr. Chairman. We have  
19 staff on the phone, and so with your indulgence, we  
20 will let -- suggest Mr. Eric Wooten from IDM to  
21 introduce the item.

22 CHAIRMAN CLARK: Thank you.

23 Mr. Wooten, you are recognized.

24 MR. WOOTEN: Morning, Commissioners, Eric  
25 Wooten from the Office of Industry Development &

1 Market Analysis.

2 Item No. 1 is the draft of the 2020 report on  
3 the status of competition in the telecommunications  
4 industry. The report shows that, consistent with  
5 previous years, the wireline market continues to  
6 decline, market shares remain relatively stable,  
7 and consumers continue to transition to wireless  
8 and voice services.

9 The report must be submitted to the  
10 Legislature by August 1st, and staff is seeking  
11 your approval to do so, as well as administrative  
12 authority to make minor edits, if needed.

13 Staff is available for questions.

14 CHAIRMAN CLARK: All right. Commissioners,  
15 any questions on the telecom report?

16 Commissioner Fay.

17 COMMISSIONER FAY: Thank you, Mr. Chairman.

18 I just have two quick questions. One is, the  
19 report talks about the reduction of landline that  
20 you were mentioning, Eric. And when you look at  
21 the data in here, there is a 23-percent reduction  
22 for Frontier, a 20-percent reduction for  
23 CenturyLink, and then a 4.6-percent reduction to  
24 AT&T. Any idea why the AT&T reduction is so much  
25 lower than the -- the other providers?

1 MR. WOOTEN: Yes -- yes, sir.

2 So we don't actually have the reasons for the  
3 differential in the data that staff received, but  
4 we can investigate further and get back to you if  
5 you like.

6 COMMISSIONER FAY: Yeah, I would appreciate  
7 that. I mean, it's just such a significant  
8 difference. I know there is going to be natural --  
9 a natural reduction in landlines because of the  
10 obvious transition to wireless, but there is --  
11 between Frontier and AT&T, I mean, AT&T is, you  
12 know, 20 percent less difference in line  
13 reductions, and so they are either doing something  
14 really right, or their customer base just isn't --  
15 isn't quite making that turnover yet. But, yeah,  
16 if you have got any feedback on that, I would  
17 appreciate it.

18 And the other question, kind of in the same  
19 line, is the report shows that there is a slight  
20 uptick for those who have wire -- wireline and  
21 wireless lines in 2019, in which the previous years  
22 we've seen a reduction in that. So just curious if  
23 you have any thoughts on what might have occurred  
24 in 2019 that -- that bumped that. And it might  
25 just be the significant wireless increase, but it

1 was hard to tell from the report.

2 MR. WOOTEN: Yes, sir, well -- this is Eric  
3 again.

4 So my thoughts -- I mean, I don't have a  
5 definitive reason for that, but I would think that  
6 it could be something to do with fumbling. That's  
7 what they are all pushing now, and so I know that  
8 that's one of the reasons I maintain a landline is  
9 because it's cheaper, so -- I mean, I don't -- I  
10 don't -- see if my supervisor Mark Long has any  
11 insight on this one.

12 MR. LONG: Hi, this is Mark Long.

13 Not particularly. You know, one-year changes  
14 happen frequently. Once it becomes two or three  
15 years, then we try to find out if it's a trend or  
16 not.

17 And far as historically the line loss previous  
18 question. In previous years, AT&T has had line  
19 losses in the teens where Frontier and/or  
20 CenturyLink have been in the low single digits, so,  
21 you know, they kind of swapped places. And so, you  
22 know, a one-year kind of anomaly like that we don't  
23 legal really raise our eyebrows at, but if it  
24 happens over a couple of years, then we start  
25 trying to find out what's up.

1           COMMISSIONER FAY: Got you. Okay. Great.  
2           Thanks. I appreciate that.

3           And just one last question. The report, on  
4           page 40, talks about the TRS services, and the  
5           FCC's extension of the requirements of those  
6           services. So essentially they are allowed to be a  
7           little bit slower with their -- their responses to  
8           the call intakes for obvious reasons, just since  
9           the virus the call numbers have gone up. And  
10          they've got a waiver in there for those providers  
11          up to May 2020, but do you know if the FCC has, or  
12          is going to extend that waiver for them so these  
13          providers can, you know, continue to manage these  
14          calls that might take a little longer without being  
15          dinged for it?

16          MR. WOOTEN: Yeah, this is Eric. They've  
17          extended that through August 31st.

18          COMMISSIONER FAY: Great. And that will cover  
19          those call numbers, the response times?

20          MR. WOOTEN: Yeah. Yeah. Those were the  
21          previous orders, and they just extended it again.

22          COMMISSIONER FAY: Great. Good news.

23          All right. Well, thank you. I appreciate it.  
24          That's all I have.

25          CHAIRMAN CLARK: Thank you, Commissioner Fay.

1 Commissioner Brown.

2 COMMISSIONER BROWN: Thank you, Mr. Chairman.

3 I guess along the same vein, I appreciate you  
4 putting a section in here regarding public safety,  
5 and including hurricanes and COVID and  
6 cybersecurity. Do -- Eric or Mark, do we know any  
7 additional information that the telecom companies  
8 are doing to address COVID-19?

9 MR. WOOTEN: Well, the -- this is Eric.

10 So the industry, one of the big things, you  
11 seem to be aware that the FCC has their Keeping  
12 Americans Connected plan, and -- I mean, voluntary  
13 pledge, that is. And they ended up with more than  
14 800 companies signing up to that where they would  
15 agree not to cut anyone's service or add late fees  
16 and for business -- small business and residential  
17 customers, and also that -- that has expired.

18 What the FCC -- they extended it once and then  
19 they let it expire with the idea that if they are  
20 not pulling in revenue, you know, eventually some  
21 of the companies would go out of business and then  
22 no one would have service. But a lot of the  
23 individual companies are still maintaining some of  
24 those, you know, provisions where they are -- are  
25 working with their customers for -- for COVID

1 issues.

2 So -- I mean, the companies are still doing  
3 what they can. But it is becoming a problem for  
4 the smaller companies. And that's why I guess the  
5 FCC is just now advocating to Congress that  
6 recognize that those companies need help.

7 And so then that kind of rolls into when the  
8 CARES Act, which was the first big coronavirus  
9 relief act, had some money for that, and then --  
10 but, yeah, so the companies are still trying to do  
11 what they can as that Keeping Americans Connected  
12 pledge expired.

13 COMMISSIONER BROWN: But they -- but they are  
14 receiving federal aid to help keep America  
15 connected?

16 MR. WOOTEN: So, no, that didn't provide any.  
17 The CARES Act did provide a lot more money for  
18 broadband support and for telehealth and some of  
19 these programs that have been used more.

20 The telehealth you have see in the last couple  
21 of months, they've really expedited approval for  
22 telehealth projects. There have been 11 telehealth  
23 projects in Florida worth more than \$5 million of  
24 support that stems from some of that, but there is  
25 some federal support for some of the programs

1           that's been ramped up.

2           COMMISSIONER BROWN: Thank you. That's what I  
3           thought it had to do with more rural -- rural  
4           broadband and the telehealth funding. So I  
5           appreciate that.

6           And again good report as always, and I support  
7           the submission of it.

8           MR. WOOTEN: Thank you.

9           CHAIRMAN CLARK: Thank you, Commissioner  
10          Brown.

11          Any other questions from any Commissioners?

12          All right. I will entertain a motion to  
13          approve this report and granting staff authority to  
14          make any necessary changes.

15          COMMISSIONER BROWN: So moved, Mr. Chairman.

16          COMMISSIONER FAY: Second.

17          CHAIRMAN CLARK: I have a motion and a second  
18          to approve.

19          Any discussion on the motion?

20          All in favor, say aye.

21          (Chorus of ayes.)

22          CHAIRMAN CLARK: Opposed?

23          (No response.)

24          CHAIRMAN CLARK: Motion carries.

25          All right. Thank you very much, Mr. Wooten



1 and Mr. Long, appreciate it.

2 All right. Next item up is a briefing on  
3 water and wastewater items. Mr. Baez declared this  
4 was water day at the PSC, and I was going to bring  
5 any swim trunks and super soaker, but I didn't  
6 think that was necessary, so...

7 We do want to have a discussion today about  
8 some of the issues that have come up during a  
9 couple of our recent water cases. Some of the  
10 concerns that the Commission has expressed in how  
11 we are dealing with four or five specific areas.  
12 And, Mr. Baez, I will call on you to -- to  
13 introduce the item if -- if you choose to do so.

14 MR. BAEZ: I will do a brief introduction, but  
15 then pass on down the line to the folks that  
16 actually know things.

17 What -- what we tried do and place before you,  
18 Commissioners, is -- is a -- is a primer -- I think  
19 that's the right way to say it -- for you all to  
20 get acquainted with -- with the issues and to give  
21 you a basis for discussion today.

22 I want to thank staff for their hard work on  
23 this. A lot of people had their -- had their hands  
24 on it and put in some -- had some good output. So  
25 thanks to staff for putting it together, and I hope

1           you agree and use it to your liking.

2           CHAIRMAN CLARK: Thank you.

3           Mark.

4           MR. FUTRELL: Mr. Chairman, Marissa Ramos is  
5           on the phone, and along with the other staff that  
6           participated in this project, and Ms. Ramos will  
7           introduce the item for you.

8           CHAIRMAN CLARK: Thank you.

9           Ms. Ramos, you are recognized.

10          MS. RAMOS: Good morning, Commissioners. I am  
11          Marissa Ramos speaking on behalf of Commission  
12          staff, and here to present IA memo briefing on  
13          several water and wastewater items.

14          I will give a brief overview of the items  
15          discussed in the memo, and then we can turn it back  
16          to Commissioners for discussion and questions.

17          This briefing is in response to discussions  
18          and questions raised by the Commission about  
19          several topics in the water and wastewater  
20          industry. These topics are testing the water  
21          distribution system in regards to the quality of  
22          service, flushing requirements and practices, boil  
23          water noticing, reserve funds and customer  
24          deposits.

25          First, the memo discusses elements of

1 conducting additional testing in the water  
2 utility's distribution system for secondary water  
3 quality standards. The DEP requires utilities to  
4 test for secondary water contaminants once every  
5 three years at the water supply entry points.  
6 However, this does not preclude the DEP or the  
7 Commission from ordering additional testing it be  
8 conducted in the distribution system.

9 Staff provided examples of previous cases  
10 where the Commission has ordered such testing to be  
11 conducted, and it has also discussed possible  
12 funding options for the testing within the memo.

13 At a previous Internal Affairs meeting the  
14 FRWA discussed limits on flushing and its impact on  
15 water quality. Florida's water management  
16 districts monitor and regulate the state's water  
17 supply and have rules that impose flushing limits  
18 during water shortage event. However, staff is not  
19 aware of any quality of service issues brought  
20 about a flushing restriction in any docket before  
21 the Commission, but if such issues do arise, we  
22 will bring them to the Commission's attention.

23 The Commission has also raised questions about  
24 the delivery methods of boil water notices,  
25 specifically if it was possible for utilities to

1 send boil water notices via electronic methods,  
2 such as text or email.

3 It staff reached out to DEP, and it was  
4 determined that the primary agency, which is either  
5 the DEP District Office or County Health  
6 Department, has the authority to approve additional  
7 or alternative delivery methods. In addition, DEP  
8 indicated that it is not aware of any anticipated  
9 changes to the public noticing rule by any  
10 agencies.

11 The next section of staff memo addresses the  
12 concerns of utilities' lack of cash reserve and  
13 limited financing options and the affect it has on  
14 repairing critical infrastructure.

15 Additionally, staff discusses aspects of the  
16 Commission's utility reserve fund rule and how the  
17 rule contemplates disbursements from the reserve  
18 fund for emergency repairs.

19 Finally, staff explains -- finally, staff  
20 explains the Commission's practice in establishing  
21 new initial deposits, and provides examples of how  
22 the deposits are calculated in other states.

23 Traditionally, the Commission has calculated  
24 customer deposits that are equivalent to the  
25 average of two monthly service bills --

1 UNIDENDIFIED SPEAKER: Hello.

2 MS. RAMOS: -- that concludes my briefing  
3 overview.

4 Thank you for having us here today to present  
5 this briefing. Myself and staff members from the  
6 other divisions are here on the line to discuss  
7 these topics and answer any questions you may have.

8 CHAIRMAN CLARK: All right. Thank you,  
9 Ms. Ramas.

10 We have someone whose line is unmuted. If you  
11 would please check your line. It's none of the --  
12 Commissioners, it's not you. It's someone that has  
13 called in apparently, so we are trying to identify  
14 that individual now. We are getting a little bit  
15 of feedback and interference here. So I think  
16 we've got it fixed now.

17 All right. So here is, just for discussion  
18 purposes, how I would like to proceed with this  
19 item this morning. We did ask staff to bring back  
20 a list of our current practices and -- and a little  
21 bit of explanation as to what we are currently  
22 doing in regards to these five specific areas. One  
23 of the key ones that came up in the discussion was  
24 the need for additional testing as it relates to  
25 this commission's approval during a rate case, and

1           how those -- those additional testing costs could  
2           be included in the rates. Was there funding  
3           available? What were the options and alternatives  
4           we had.

5                    What I would like to do is go through these  
6           five items one at a time -- just open them up for  
7           disconnection. Say again.

8                    Mark Long, your line is open. If you would  
9           please mute your line.

10                   Do we have it muted? Okay. We think we --  
11           all right. Moving on.

12                   UNIDENTIFIED SPEAKER: I don't know like an  
13           hour or two probably. I am doing it now, so as  
14           soon as I am done, I can send it to you, call and  
15           let you now.

16                   CHAIRMAN CLARK: All right. We've got him --  
17           all right. We are back to -- back live.

18                   We are going to go through these items one at  
19           a time and just open them up for Commission  
20           discussion. The first one being the testing in the  
21           water distribution system as it relates to quality  
22           of service.

23                   And I want to thank the staff for the analysis  
24           they did and the hard work on all of the report,  
25           but it seemed to me that we came up with a number

1           that, worst case scenario, in a year's time we  
2           would be looking at about potentially \$16,000 in  
3           expenses if we did testing in each one of these  
4           cases.

5           My concern was that the DEP testing standards  
6           as it relates to where their samples are taken did  
7           not adequately -- adequately address the concerns  
8           that the consumers had when it came to the actual  
9           source of the -- the actual quality of the water  
10          that was entering their house.

11          We also had a discussion about potential  
12          problems that were associated with the entry pipes  
13          between the meter and the house, and those being a  
14          source of contaminants and problems. So that could  
15          also be something that was included in the testing.  
16          If they were tested at the meter, just on the  
17          backside of the meter before it went through the  
18          customers' pipe, and then tested inside the  
19          customers' homes, that might give us some better  
20          understanding of the quality of service that the  
21          utilities are providing before we go into a  
22          decision on rates.

23          16,000 seemed like a fairly low number to me.  
24          If we can figure out how that number could be  
25          absorbed, if there is a -- if we need budgetary

1 authority to -- to spend those dollars at the  
2 Commission's request, is this something that the  
3 Commission wants to consider approving on as an  
4 as-needed basis? If we have a -- a case that comes  
5 in and we see concerns, do we want to ask that  
6 additional testing be done, and then figure out  
7 where those costs are going to come from?

8 I would to open this up for your thoughts,  
9 ideas and discussion this morning, Commissioners.

10 Commissioner Polmann.

11 COMMISSIONER POLMANN: Thank you, Mr.  
12 Chairman.

13 Could you please clarify the \$16,000? I think  
14 you said annually, but maybe I can get some help on  
15 that.

16 CHAIRMAN CLARK: The 16,000 was an estimate  
17 that staff came up with based on, I believe that  
18 was six cases -- six SARCs cases per year and a  
19 225-dollar average cost per water test, and doing X  
20 number of tests per case, that would equal about  
21 16,000 annually if you had to do testing on all six  
22 of your cases each year. That would be the  
23 high-end number.

24 MS. RAMOS: Commissioner, this is Marissa.

25 Just to -- just to point out, that number,



1           that 16,500, we estimated that just for SARC. So  
2           the number could potentially be higher if we did  
3           conduct testing as well for cases, or even in  
4           limited proceedings.

5           CHAIRMAN CLARK: Correct. Those would -- that  
6           would -- yeah, I think I pointed that out as well,  
7           that was strictly SARCs cases.

8           MS. RAMOS: Okay.

9           CHAIRMAN CLARK: Thank you.

10          COMMISSIONER POLMANN: Mr. Chairman, as I  
11          understand it, our historical practice has been  
12          requiring or -- or undertaking secondary water  
13          quality testing for those systems where there has  
14          been a history of complaints, and it's on a  
15          case-by-case basis, and some determination of a  
16          significant number of complaints, and significant  
17          being some judgment call. So there is no practice  
18          historically that I am aware of that -- that there  
19          is routine sampling, and certainly the -- the  
20          requirements for DEP there are no distribution  
21          system sampling, as the staff has summarized here.

22          And not -- not to make a negative remark about  
23          DEP, they have their rules, and they are what they  
24          are, but as we have been directed by the  
25          Legislature, they don't -- those rules don't meet

1           our purposes. So I think this is a good discussion  
2           for us to have, because we have different -- we  
3           have a different need. We have a different  
4           purpose.

5           The -- the concern I have is monitoring in the  
6           distribution system becomes an important factor  
7           because we are -- we are trying to understand the  
8           influence of the actual underground pipes as they  
9           can impact the quality of water as it's moving from  
10          the treatment plant to the homes. That's well  
11          understood in terms of how that collection is done  
12          in the system, and so forth, and staff has  
13          presented us with a cost estimate.

14          The more complicated question, and Mr.  
15          Chairman, you have already identified this, is  
16          sampling from the meter to the homes, and -- and  
17          we've talked before about the type of piping and  
18          the incidents of led pipe and those things, and  
19          then the debate on the costs.

20          So I don't know if that's a separate  
21          discussion to have. That's a -- a nationwide  
22          problem. So I am not suggesting we take that on  
23          here today. I think that's much more complicated.

24          So, Mr. Chairman, I don't know what -- what  
25          you would like to do, how you want to proceed with

1           this, so I will just put that question on the  
2           table. What would you see as the next steps on  
3           this? I think this is informative, but I don't --  
4           I don't know what our next steps are, sir.

5                   CHAIRMAN CLARK: I think -- thank you,  
6           Commissioner Polmann.

7                   I think that that -- my goal here today was to  
8           bring in a level of awareness of -- of the problem  
9           and the situation and get commission input as to  
10          what our next steps should be. And I guess as a  
11          commission, we have certain opportunities before  
12          us. We could certainly look at a rule hearing  
13          where contemplated a rule that required secondary  
14          water testing at the meter on a certain sample size  
15          for every utility.

16                   I came up with some -- some ideas for a -- if  
17          you had a system that had over 500 customers, that  
18          maybe we required certain amount of testing to be  
19          done prior to submittal of a rate case, so prior to  
20          this commission approving a rate increase. Maybe  
21          if it was smaller sized systems, if we had funding  
22          available to assist with the testing.

23                   I don't want to bear the -- I don't want to  
24          put all the burden of this testing on the  
25          consumers. I honestly believe it's the utility's

1 responsibility to provide a quality service.

2 The -- the testing standard -- my concern is the  
3 testing standards that we are using now are taking  
4 their samples at a location that is not indicative  
5 of the quality of the water that the customer is  
6 receiving and paying for. And I want to ensure  
7 that if our -- our utility companies are asking us  
8 for approval for a rate increase, that they are --  
9 that it is based on a quality of service that those  
10 consumers expect.

11 And what I saw specifically in the last case  
12 that we dealt with was compelling evidence on  
13 behalf of the consumers that there is a problem  
14 there. And every time I kept asking the question  
15 to come back how are we going to deal with this,  
16 well, we don't deal with that. That's not  
17 something we deal with. We -- we kind of keep  
18 setting that back aside and not addressing it.  
19 Well, I want to put it out in the forefront so that  
20 it is an issue, that it is a factor that is being  
21 considered by this commission before we make a  
22 decision on a rate case.

23 And, Commissioner Polmann, I am not sure how  
24 we do that. That's why I wanted us to have that  
25 discussion.

1 Commissioner Graham, you are recognized.

2 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

3 I -- it's quite interesting to see you suffer  
4 through some of my old pains. I agree with what  
5 you said.

6 And then, Commissioner Polmann, testing is  
7 definitely a problem when it comes to water. I  
8 would definitely suggest we go to some sort of  
9 rule-making, because you will find out -- I am not  
10 quite sure what that was.

11 You will find a lot of these water systems  
12 have other places that they actually do testing at,  
13 but the requirement, as staff said, for DEP as it  
14 hits -- as it gets into the distribution system,  
15 where there may be other testing costs along the  
16 way. I mean, a lot of it comes down to -- I think  
17 once you get into rule-making, you start bringing  
18 people to the table, you may -- you may get  
19 suggestions from them that may be something that  
20 they can do that they -- places that they can  
21 currently test that will give them a good idea of  
22 what's going through the distribution line, or, you  
23 know, if you have to somewhere have them put in  
24 testing pots, or testing stations for -- for them  
25 to get a better sample; because, you know, we all

1 know, when it comes out of the -- when it comes out  
2 of the plant, when it gets into the distribution  
3 line, you could have, you know, hundreds of feet or  
4 hundreds of yards of pipe you go through, and God  
5 knows how old those pipes are. And we've all seen  
6 those pipes, you know, they get 15, 20 years old,  
7 and you can hardly see through those pipes. It  
8 looks like they are jammed full of clay or all  
9 kinds of heavy metals, and it's going -- it's going  
10 to change the way that the water is -- is -- it's  
11 going to change the taste and the color of the  
12 water when it gets to the homeowners.

13 And so I agree, there is something we have to  
14 do different. I know I talked about this before  
15 with staff. Don has talked about this before with  
16 staff. I hear you are talking about it now. I  
17 mean, we -- we have to -- we have to open this up,  
18 you know, we have to start that rule-making.

19 And if we have to go back to the legislators  
20 for some sort of funding source, because they are  
21 the ones that tasked us with doing this. And we  
22 are doing our best what we could with what DE  
23 gives -- what DEP gives us, but that is sufficient  
24 maybe 75, 85 percent of the time. There is the  
25 other 20 percent of the time where we need to have

1 more data, and there needs to be a funding for that  
2 data, and be it coming -- wherever it comes from,  
3 but we -- we -- I think we need to start that  
4 dialogue officially.

5 CHAIRMAN CLARK: Great. Thank you,  
6 Commissioner Graham.

7 Commissioner Polmann, you were -- you had your  
8 hand up a second ago when I called on Commissioner  
9 Graham. You are good?

10 COMMISSIONER POLMANN: You can come back to  
11 me. I -- I have some -- something back on that,  
12 but I see Commissioner Fay has his hand up.

13 CHAIRMAN CLARK: Commissioner Fay.

14 COMMISSIONER FAY: Okay. Thank you, Mr.  
15 Chairman and Commissioner Polmann.

16 So I -- one issue that I think was maybe not  
17 directly raised in -- in this memo, but I think is  
18 worth talking about, as I, similar to my colleagues  
19 here, had concerns about this process and what it  
20 looks like.

21 There are scenarios where we -- and the -- the  
22 estimation for this is on the SARC, and I think  
23 that Ms. Ramos pointed that out. The number could  
24 be bigger depending on the number of limited rate  
25 cases that we have for these water utilities,

1 but -- but part of the process since I have been  
2 here that is a challenge that we will have those  
3 decisions in front of us, and three months after  
4 that decision will be the three-year mark for the  
5 water to be tested. And so we make a decision  
6 based on the information we have in front of us,  
7 but then the idea is that down the road, that test  
8 comes back with something, staff could potentially  
9 raise it and bring it back to the Commission, so  
10 that dialogue -- I think as we talk about this  
11 process, whatever we do to change it, or  
12 potentially alter it, I think the timing is  
13 definitely something that we should consider.

14 And then just one -- one question for clarity,  
15 and I -- I might be putting Braulio on the spot  
16 here. I am not sure who on staff this question  
17 should go to, but when I read this memo, it looks  
18 like it's stating that no matter what the number is  
19 related to asking from the Commission's  
20 perspective, that we would need the authority to --  
21 to pay for that testing. We wouldn't be asking for  
22 the appropriation itself. We would just be asking  
23 for the authority within our trust fund, correct?

24 MR. BAEZ: That is approximately correct,  
25 Commissioner. Much like everything else, what we



1           are seeking is budget authority out of our own  
2           trust fund to -- to fund that. I -- I was told  
3           that Tom Ballinger is on the line, and while we are  
4           on the -- while we are on the general subject of  
5           what the -- what to do about this, there seems to  
6           be obviously consensus for the Commission for you  
7           all to -- to move this issue forward in some way.  
8           I know that Tom had something to -- to contribute  
9           in terms of process that might -- might help you  
10          decide.

11                   CHAIRMAN CLARK: Great.

12                   MR. BAEZ: Tom.

13                   CHAIRMAN CLARK: Tom, are you on the line?

14                   MR. BALLINGER: Good morning. Yes, I am.

15                   CHAIRMAN CLARK: Good morning.

16                   MR. BALLINGER: Can y'all hear me?

17                   CHAIRMAN CLARK: Yes, sir.

18                   MR. BALLINGER: Good morning.

19                   You are correct. This has been a -- a  
20           problem, but as the memo points out, we have had  
21           four instances where the Commission has ordered  
22           testing over 25 years. So clearly, you have the  
23           authority to gather that additional data, and I  
24           think the way staff has approached it is if and  
25           when we see these complaints arise that looks like

1           there is a problem and the disconnect between the  
2           utility passing a test at the source but customers  
3           complaining of what they consume, we see there is a  
4           disconnect. And that's when we can look at  
5           additional testing in the distribution system. You  
6           can pull it from ports that are close by the  
7           customer's meter. It may be a fire hydrant. It  
8           may be another testing spigot that they use for  
9           disinfection byproducts, things of that nature. So  
10          the existing ports are there. We can get a call  
11          for a test.

12                 What staff is anticipating doing the next time  
13          we have this situation arise is come to the  
14          Commission and say, here's the situation. They are  
15          passing standards at the well, customers are  
16          dissatisfied with the odor, color, taste of the  
17          water. If you want to do some additional tests,  
18          it's going to cost this much. It could be just  
19          rolled into rates, and the utility customers pay  
20          for it, or the requesting customers pay for it, or  
21          perhaps the Commission budget. That's a whole  
22          different thing of who funds it. But the thing of  
23          it is, is to get Commission approval, if you will,  
24          up front to do this testing and recovery of these  
25          costs, to get that information before final rates

1           are set.

2           I think if you go to a rule-making, we've  
3           explored this before of what metrics when to do the  
4           testing and all that is very subjective. It's  
5           going to be difficult. And it may not be  
6           appropriate since 80 to 90 percent of the time it's  
7           not an issue. So are you imposing this cost on a  
8           bunch of utilities that may not be necessary. And  
9           that's -- that's the balance we are trying to  
10          strike here.

11          So I think the case-by-case approach, where we  
12          can bring it to you when there is an issue and a  
13          disconnect, and let the Commission decide do they  
14          want the additional testing, and they will know how  
15          much it's going to cost and how much it's going to  
16          impact ratepayers, and we can move from there.

17                 CHAIRMAN CLARK: Thank you, Tom.

18                 Commissioner Graham.

19                 MR. BALLINGER: You are welcome.

20                 COMMISSIONER GRAHAM: Yes, Mr. Chairman.

21           I -- I don't know that there is some simple  
22           way to all this stuff. Some of the things that Tom  
23           says makes sense. I don't know if you need  
24           necessarily to bring it back to the Commission.  
25           Maybe just make it a staff function, if staff has

1 the information in front of them, or maybe just  
2 bring it to the Chairman, and they want to do more  
3 testing. Because I think once you -- once you  
4 write the recommendation, once you set the rates,  
5 once it comes before us, it becomes problematic  
6 going back out and trying to do testing and  
7 changing all that stuff.

8 I think if you make it part of the staff  
9 function before they write the recommendation, so  
10 we actually have that data and look at the  
11 recommendation that's in front of us, I think  
12 that's a better way of handling it.

13 And I don't know if that's through  
14 rule-making. I don't know how we -- how we give  
15 that authority to staff. And I am also not quite  
16 sure that it should come out of the trust fund, you  
17 know, maybe some of these cases it's just  
18 negligence and it should come from the utility.  
19 That's part of the question I don't have the answer  
20 for.

21 CHAIRMAN CLARK: All right. I tend to agree,  
22 Commissioner Graham, with where it's funded from.  
23 I am not certain that there is a right answer there  
24 either.

25 My concern with -- Tom, with the approach that

1           you are suggesting. I don't disagree with it in  
2           any regard. My concern is that we get to the same  
3           point we were at in the last case. We have the  
4           authority to do this, but we haven't been doing it,  
5           and so what -- what keeps us from actually going  
6           and doing the testing?

7                    And in my opinion, in the last case where we  
8           had a problem, we should have probably done some  
9           testing there, but staff didn't do it. No one here  
10          ordered it. So what is -- is there a -- a failsafe  
11          mechanism, a safety net to make sure that this gets  
12          done besides having a rule that says if you have X  
13          number of complaints in a system of X size  
14          that's -- that's coming before the Commission for a  
15          rate increase, then here, that triggers a set of  
16          testing procedures.

17                   Braulio, you have a --

18                   MR. BAEZ: I have some quick thoughts.

19                   MR. BALLINGER: Can I address that? I'm  
20          sorry --

21                   MR. BAEZ: Oh, I will defer to Tom. Go ahead,  
22          please.

23                   CHAIRMAN CLARK: Tom, Braulio has deferred to  
24          you. Go ahead.

25                   MR. BALLINGER: Thank you very much.

1           In the last case I think that came up, staff  
2           saw the significant number of complaints, so we  
3           were going to recommend unsatisfactory anyway. So  
4           the need to do additional testing wasn't there.  
5           Staff was already imposing, or going to recommend  
6           a -- a ROE penalty, or whatever, like that.

7           Other times, it may come up after the customer  
8           service hearing you have complaints, and we can  
9           still put the case on pause until we get additional  
10          testing.

11          So I think it depends on where you are in the  
12          situation. If a case is going along and it looks  
13          everything is fine, there was minimal complaints of  
14          the customers, that may be one we bring to the  
15          Commission to say, there has been 10 complaints, if  
16          you will, of this. You can do additional testing  
17          to get the information. Do you want to -- do you  
18          want to direct the utility to proceed?

19          I am a little uncomfortable with giving staff  
20          the authority to tell the utility to incur costs  
21          that's going to go to ratepayers. That -- when --  
22          you know, when you say making it a staff function  
23          to incur this cost, that makes me a little  
24          uncomfortable.

25                   CHAIRMAN CLARK: Okay. Braulio.

1           MR. BAEZ: I would agree with Tom. I think  
2           that's -- and -- and really, that's a -- I know  
3           that we can work -- there is a solution here  
4           that -- that avoids that issue.

5           But to Commissioner Graham's suggestion,  
6           while -- while having administrative authority,  
7           delegating it to staff does make it easier for us  
8           to put -- because I think the problem is one of  
9           timing.

10          We are -- we are not exactly walking in  
11          with -- with -- with the testing in hand, as you  
12          suggest, so that -- so that your decision has a  
13          full complement of information. So -- so  
14          getting -- moving that testing point, or that  
15          opportunity earlier in the process, certainly  
16          before you all have -- have a recommendation on the  
17          case before you is -- is where we want to be.

18          I think that Tom is correct, you know, that  
19          is -- that affects rates. That is a cost recovery  
20          issue, and that's something that I think it's  
21          arguably is the province of the Commission itself.

22          So I don't know. It sounds like Tom was  
23          describing, you know, like an interim issue, right?  
24          An interim issue before the Commission in order to  
25          go off and do this.

1           Now, it can be our judgment whether to bring  
2           it forward -- or it can be the staff's judgment of  
3           whether to bring it forward or not based on some  
4           criteria that -- that would agree to or set, but  
5           the decision ultimately has to be yours. If y'all  
6           are comfortable with that sort of interim issue  
7           coming up and -- and taking a crack at it that way,  
8           that's one way we can proceed.

9           Now, I think the dangers of the rule-making is  
10          that now you are making the standard for everyone,  
11          and I think you can all -- you have all seen -- you  
12          have all seen the implication of -- of the -- of  
13          the added cost, in many instances, unnecessarily.

14          CHAIRMAN CLARK: Well, every -- everything we  
15          do as a commission has a rate implication, and  
16          there is some things that -- that I think maybe --  
17          maybe we should be having -- maybe they should have  
18          rate implications, and maybe water quality  
19          standards are one of those factors that maybe that  
20          should have some rate implications.

21          MR. BAEZ: I'm not -- I'm not inclined to  
22          disagree, Chairman. I think that's -- that's fine,  
23          as long as the Commission understand that that  
24          really is an ultimate question as it should --  
25          should the costs be created because it's in the



1 public interest to do so --

2 CHAIRMAN CLARK: Yeah.

3 MR. BAEZ: -- and let that rest there?

4 I did have a question, though, because there  
5 has been -- there has been -- at least early on  
6 there was a distinction made, and certainly our  
7 estimates in the memorial are based, as Marissa had  
8 mentioned, were based on average SARCs --

9 CHAIRMAN CLARK: SARCs, correct. Yes.

10 MR. BAEZ: -- and -- and that's something  
11 that -- that may be appropriate for, you know, the  
12 funding discussion. Perhaps that's a cost that the  
13 Commission winds up bearing, and maybe that's  
14 appropriate.

15 Are you all comfortable with that type of  
16 distinction? Because if you are a utility of a  
17 certain size, then socializing the -- the  
18 additional costs potentially that you all would be  
19 agreeing is in the public interest is probably more  
20 appropriate.

21 CHAIRMAN CLARK: Right. And -- and I think  
22 that that's one of the things that I would like to  
23 see a little bit more analysis. And water quality  
24 standards should not be limited to utilities of  
25 certain sizes. And -- and I am saying that -- I

1 understand that right now we are talking about  
2 testing specifically to SARCs. That's typically  
3 the small system.

4 MR. BAEZ: Sure.

5 CHAIRMAN CLARK: So do you -- do you cover  
6 their costs and then allow the other customers to  
7 reinclude that this their rate base? I think that  
8 would depend on where the breakdown occurs.

9 I was running through my head the cost of if  
10 you had a system that had at least 500 -- at least  
11 500 consumers, is it, you know, 10 cents a month  
12 per consumer? Does that rate impact just justify  
13 testing X number of systems per year? I don't  
14 know.

15 I think that we could run some numbers out and  
16 see what those costs were, and see what the rate --  
17 potential rate impacts to the consumers were, and  
18 then the Commission could say, okay, that is in the  
19 public interest, and that is something that we want  
20 to consider, or we want to be included.

21 And maybe it's a -- it's a -- and that's kind  
22 of why I come back to wanting to look at it from a  
23 rule perspective, is to say, no, this doesn't just  
24 apply to certain systems. It doesn't just apply  
25 when you come in for a rate increase. Some of

1           these water quality standards I think are probably  
2           going even beyond our notice, and customers are  
3           complaining. If you look at our complaint log, I  
4           know we get a lot of those calls in, maybe we  
5           should be requiring certain amounts of testing  
6           at -- at the consumer level.

7           MR. BAEZ: And -- and I don't -- I want to be  
8           clear.

9           CHAIRMAN CLARK: Sure.

10          MR. BAEZ: I wasn't trying -- I wasn't trying  
11          to draw a distinction on -- on the issue of  
12          applicability, right --

13          CHAIRMAN CLARK: Right. No. No. No.  
14          Understood.

15          MR. BAEZ: -- going to get tested, and the  
16          secondary standards --

17          CHAIRMAN CLARK: Yes.

18          MR. BAEZ: -- apply to everyone. Clearly, I  
19          think we were talking more about, you know, how --

20          CHAIRMAN CLARK: Right.

21          MR. BAEZ: -- when -- I don't know, putting it  
22          bluntly, but when the Commission is on the hook  
23          for -- for -- for the cost.

24          CHAIRMAN CLARK: Yes, I agree.

25          MR. BAEZ: And -- and the reason I raised the

1 point that way is because we are already -- the  
2 SARC process, as you know, is a -- is a  
3 Commission-assisted process, and -- and therefore,  
4 the implication there is the Commission is taking  
5 on --

6 CHAIRMAN CLARK: Right.

7 MR. BAEZ: -- costs of a rate case  
8 essentially.

9 CHAIRMAN CLARK: Right. Correct.

10 MR. BAEZ: So that -- the distinction that I  
11 was suggesting works -- works more within that  
12 construct.

13 CHAIRMAN CLARK: It does.

14 MR. BAEZ: Is consistent with how we're  
15 doing -- with what we are doing now.

16 CHAIRMAN CLARK: Right.

17 MR. BAEZ: Would just be some incremental, you  
18 know, whether -- whether -- how painful it is and  
19 what the estimates ultimately are, I have no idea.  
20 And April is probably going to punch me later for  
21 committing to it, but I see that is a more natural  
22 distinction --

23 CHAIRMAN CLARK: Sure.

24 MR. BAEZ: -- to -- to carry on. The  
25 applicability is something different. I think --

1           CHAIRMAN CLARK: And I am trying to draw that  
2           association, too, is that it's so important that we  
3           need to establish the standard I think, and then  
4           figure out, okay, now, how do we divide the costs  
5           out? Now how do we -- where does this break out in  
6           terms of who's paying for what.

7           Once we say everyone needs to have this set of  
8           standards applied them. Every utility needs to  
9           have this set of standards, and then figure out how  
10          we divide the costs out, and figure out where that  
11          line makes sense. It May make sense at 200  
12          customers, 500 customers or 1,000 customers that we  
13          assist in some way from a -- a -- from a rate case  
14          assistance perspective, where we've already got  
15          that cost built in. Maybe that's part of the SARCs  
16          process from this point on.

17          I am just throwing out some ideas, but if we  
18          continue to leave this to, well, we will deal with  
19          it on a case-by-case basis, that concerns me that  
20          the next case that comes in, we didn't apply the  
21          same set of standards, and maybe everyone is not  
22          being treated the same from that perspective.

23          I am not saying that anyone is doing it  
24          intentionally. But, okay, we had customers  
25          complaining, but, you know, we followed up on three

1 of them, but, you know, the other 200 we missed, or  
2 something like that.

3 MR. BAEZ: Right. And I think -- and I think  
4 what Tom's suggestion, if I understood what -- what  
5 he was saying is, how do we -- I mean, we  
6 acknowledge -- the Commission acknowledges that  
7 taking these types of actions is creating or  
8 imposing a new cost --

9 CHAIRMAN CLARK: Correct. Yes.

10 MR. BAEZ: -- new regulatory costs, and  
11 everybody is clear on that --

12 CHAIRMAN CLARK: Yes.

13 MR. BAEZ: -- and then from -- breaking from  
14 that point is how do we -- how do we make the  
15 imposition of that cost as efficient as possible?  
16 By that, I mean, you know, that you are not -- that  
17 you are not imposing costs where the conditions do  
18 not exist --

19 CHAIRMAN CLARK: Absolutely. Yes. Yes.

20 MR. BAEZ: -- and unfortunately, that's sort  
21 of a case-by-case basis. I -- I think from a  
22 procedural standpoint, whatever we can do to move  
23 that decision point, right, whether -- whether you  
24 are going to require additional testing  
25 irrespective of -- of who is bearing the cost for

1 the moment, earlier in the process then -- then the  
2 goal of having the Commission have all of the  
3 relevant information for their decision is met and  
4 you start avoiding the after process, the report  
5 back in six months, the go out and test and, you  
6 know, et cetera, et cetera.

7 That does change the dynamic on a penalty,  
8 too. I -- I don't want that to be lost as well.  
9 Now -- now a penalty is just a penalty, and it  
10 stays because there may be no -- no redemption --  
11 no road to redemption provided after the decision.

12 So those types of things are things that you  
13 want to consider as well.

14 CHAIRMAN CLARK: And I want to -- just one  
15 final point is I don't know that -- what I would  
16 like to see ultimately is the utility companies to  
17 take this on as a natural form of doing business.

18 I -- I don't want to compare the electric  
19 business with the water business, but in the  
20 electric side, when you had a consumer complaint  
21 that involved a meter, typically you performed a  
22 meter test at that location.

23 And so from the water utility side, it seems  
24 like we don't really want to test everyone that  
25 complains water quality issue at their meter

1           because we don't know what to picks up. We don't  
2           know where things come from, or how things get in  
3           the certain state that they are in. We are going  
4           to meet the standard that's required. We don't  
5           require a standard for testing at the house right  
6           now. And I think that's -- that's the real  
7           differentiation that I want to make. Maybe they  
8           take that on as their own responsibility.

9           Okay. Let me move to Commissioners.

10           Commissioner Polmann.

11           COMMISSIONER POLMANN: Thank you, Mr.  
12           Chairman.

13           I have heard a lot here, and I have a  
14           suggestion, if you will bear with me for a few  
15           minutes. I know Commissioner Brown would -- would  
16           like me to speak for her.

17           COMMISSIONER BROWN: Absolutely.

18           COMMISSIONER POLMANN: Thank you.

19           My recollection over all these cases with  
20           regard to -- to water quality is that we addressed  
21           this when we -- when we have customer complaints,  
22           and really only when we have customer complaints  
23           and so that's the driver, as I see it.

24           So we have been given direction from the  
25           Legislature and -- and authority to consider, and



1           that's -- that's a pretty broad term. And as we  
2           all know, the secondary standards are really  
3           just -- and I don't mean to trivialize it, but  
4           aesthetics, and not a health standard. So every  
5           individual who complains has -- has some personal  
6           opinion about that. And the solution that the  
7           utilities traditionally bring back to us is  
8           flushing the system. And many of -- many of the  
9           customers say, yeah, we think it was great after  
10          they flushed, and, you know, two, three, four weeks  
11          later, the problem is back.

12                 So the issue is always what is the cost, as we  
13          spent a lot of time here talking about that. And  
14          in flushing, the cost gets hidden to some degree,  
15          so -- so never really on the money.

16                 CHAIRMAN CLARK: You have been upstaged by a  
17          baby, Commissioner Polmann. Hang on one second.

18                 MR. BAEZ: I believe it was a staff member.

19                 COMMISSIONER POLMANN: I was just wondering  
20          if -- if she was done. So --

21                 CHAIRMAN CLARK: All right. Go ahead.

22                 COMMISSIONER POLMANN: Thank you.

23                 So we are dealing with more aesthetics, and  
24          then we measure that by not meeting the standards.  
25          And then the question is how much data do we need?

1           And the issue then is delaying the improvement to  
2           the customer because we are trying to figure out  
3           what's going on, and the -- the -- the issue that  
4           we are debating here is whether we need a rule.

5           I would suggest that, as Commissioner Graham  
6           indicated, we -- we have discussed the rule, and  
7           I -- I was involved in -- in some detailed  
8           discussion about how to establish what the criteria  
9           were. We concluded that that -- that would not  
10          necessarily be a crucial exercise. It becomes  
11          very, very complicated to decide how to prepare the  
12          rule.

13          I -- I want to suggest an alternative  
14          approach, and I will -- I will describe it as a  
15          policy, and let -- let me come back to that in just  
16          a second.

17          So the fix for the water quality issue is  
18          going to be, in my mind, one of -- one of two types  
19          of things, and one is an underground infrastructure  
20          problem, which really needs to be determined on a  
21          long-term value. So we are talking about, in that  
22          case, significant dollars for capital improvements.  
23          But first you have to identify, is -- is there a  
24          major issue with the pipe? Is there a break? Is  
25          there something fundamentally broken?

1           But then a more likely case is that there is a  
2           problem with the hydraulics in the piping system  
3           which then is typically fixed by the flushing, but  
4           maybe there is a dead end, or should be a pipe  
5           connection, something that is -- that can be  
6           changed. And that requires some engineering, some  
7           modeling and some other things, but nobody does  
8           that, because flushing is easy. And I -- I would  
9           suggest that that's more the analogy of the  
10          physical therapy before you do -- before you do  
11          surgery. So everybody is doing physical therapy  
12          out there. Let's just flush the pipe, because we  
13          don't want to do surgery.

14                 So -- so my suggestion, Mr. Chairman, is this:  
15          If we could agree, short of rule-making -- a lot of  
16          discussion here today, and my suggestion is that  
17          what may be helpful to the Commission is to ask  
18          staff to prepare something that looks like a  
19          decision tree that will bring together for us an  
20          opportunity to look at how staff might make a  
21          decision that forms the recommendation that would  
22          give us an opportunity to see the process and  
23          procedures for the Commission can make a policy  
24          decision giving direction. Because we have talked  
25          about everything being a case-by-case, but then we

1 don't want it to be case-by-case. We want it to be  
2 somewhat uniform.

3 So in order to make a more unified approach to  
4 this, is there a decision tree that has the factors  
5 built in that you have described, Mr. Chairman?  
6 And then we can -- we can talk about, well, what  
7 should be the factors be? What are the parameters  
8 if you go down one part of the tree and turn left  
9 or right? It's actually laid out for us in some  
10 type of a chart.

11 At the end of that, we can then determine, is  
12 it appropriate to go into rule-making? Is there  
13 enough specificity in that decision tree that we  
14 can say, yes, this -- this is very much a fixed  
15 process, and we can assign a policy decision to  
16 this, and it -- and it becomes something we are  
17 very comfortable with, and we can explain to the  
18 public and the utilities, and then it looks like a  
19 rule.

20 The other thing we talked about a few moments  
21 ago was how much water quality sampling might be  
22 beneficial when -- when someone comes in for a rate  
23 case.

24 So in terms of rule-making, perhaps we want to  
25 consider -- and this, again, will be part of the

1 decision, that if there are any customer  
2 complaints, that we could require, in a rule  
3 change, to have, not just the list of customer  
4 complaints over the past five years, but more  
5 recently, have the utility be required to collect  
6 water quality sampling across their system, again,  
7 in some specified manner that -- that would become  
8 part of this decision tree, and say, tell us what  
9 the complaints are, but also provide us with some  
10 water quality data -- now, how you pay for that, we  
11 can debate -- so that we have some information and  
12 don't have a long drawn-out delay for the customer.

13 So just a couple of thoughts, and I see  
14 Commissioner Brown. So she's not satisfied with  
15 what I said, so, Mr. Chairman, back to you.

16 CHAIRMAN CLARK: Oh, thank you, Commissioner  
17 Polmann.

18 Commissioner Brown.

19 COMMISSIONER BROWN: Thank you.

20 And I just think the most fastidious way to --  
21 to kind of encapsulate this entire discussion is  
22 probably going to have a staff workshop to flush --  
23 flush out all of these comments and details, and I  
24 think we can maybe move on to the next item.

25 CHAIRMAN CLARK: I was kind of leaning in the

1 same direction, Commissioner Brown. I wanted to --  
2 to -- I want everybody's opinions, get everybody's  
3 thoughts on this, but a staff workshop -- and I  
4 think that getting some utility feedback in here  
5 would be extremely important for us as we look at  
6 the next step in this.

7 And to take into account Commissioner  
8 Polmann's thoughts and ideas, I think you are -- I  
9 think you are right on target, Commissioner  
10 Polmann. I think that is -- is definitely a --  
11 where I would hope we could get is a, I don't want  
12 to say non-rule rule, is that right? Is that the  
13 thing you can't do is have a non-rule rule, but get  
14 to a policy perspective where here are the  
15 questions that we answer.

16 And I would ask that each of the  
17 Commissioners, if you would, let's move in this  
18 direction. I will take a couple of comments real  
19 quick before we close but -- on this issue, but if  
20 you would list out the things that you have  
21 concerns about specifically and get those into  
22 staff.

23 Commissioner Polmann, we use those questions  
24 to help make that decision tree that you are  
25 talking about, and then use that to go into the

1 staff workshop to have those questions so we know  
2 what questions we are looking for answers to as we  
3 begin to develop that. And I think that might at  
4 least be a good starting point.

5 Again, today's intent was to be a starting  
6 point for the discussion to look at where we can  
7 take this in the future, and I don't want to  
8 belabor it and something dig in it too long.

9 Any final comments on this particular portion  
10 of the report?

11 Commissioner Polmann.

12 COMMISSIONER POLMANN: Yeah, I wasn't done.

13 CHAIRMAN CLARK: Say again. I'm sorry.

14 COMMISSIONER POLMANN: Yeah, I -- I wasn't  
15 done. There is more in this item unfortunately.  
16 So with your indulgence, sir.

17 CHAIRMAN CLARK: We are -- we are going  
18 through all five of the items on a line-by-line.  
19 We just started with that, Commissioner Polmann.  
20 Was that what you were asking?

21 COMMISSIONER POLMANN: Okay.

22 CHAIRMAN CLARK: We are going to go through  
23 the next four.

24 COMMISSIONER POLMANN: Yeah, I want to --  
25 thank you.

1           CHAIRMAN CLARK: Okay. All right. Any --  
2           any -- so the final comments are on this  
3           particular -- on the water quality testing. Any  
4           questions or comments on that portion?

5           Commissioner Polmann.

6           COMMISSIONER POLMANN: No. I am done with  
7           that.

8           CHAIRMAN CLARK: Okay. Anybody else?

9           Okay. Let's move to the next item, flushing  
10          requirements and practices, comments and discussion  
11          in this portion? No -- no questions on flushing  
12          practices.

13          So I do want -- I want to address this because  
14          it's one of the things that I've come up with I  
15          believe one of the utility companies had reported  
16          that they were being prohibited from doing flushing  
17          because of some permitting issues with the water  
18          management district. Was -- Mark, do you recall  
19          that being the case?

20          MR. FUTRELL: That sounds familiar. I don't  
21          recall it specifically. Maybe a member of the  
22          staff has a better recollection than I.

23          MR. BALLINGER: This is Tom. That came up at  
24          a presentation you had by Gary Williams of FRWF,  
25          indicating some utilities had reached that impasse,



1 if you will, with the water management district.

2 What staff has found in our rate cases, we  
3 have not had that issue arise, where a utility has  
4 been prohibited from flushing because of a water  
5 management district which was impacting water  
6 quality. So we have not seen it arise yet in a  
7 rate-making setting. If and when it does, we can  
8 address it.

9 CHAIRMAN CLARK: So -- so, Tom, we have not  
10 seen it arise in a rate-making case, but that's a  
11 very limited -- limited number, I assume, of -- of  
12 utilities that could be facing this problem.  
13 From -- from a Commission's perspective, if there  
14 are utilities out there that are having this issue,  
15 is there something this commission can do to work  
16 with the water management districts to ensure they  
17 are able to do the things that are going to provide  
18 consistent water quality?

19 MR. BALLINGER: And I -- I think we would at  
20 time of a rate case of looking at it there. So  
21 what I am saying is when utilities come before us,  
22 when we look at water quality, which is during a  
23 rate case, we have not seen where water quality has  
24 suffered because of plaque lack of flushing.

25 Remember FRWR is also dealing with utilities

1           that probably aren't in our jurisdiction. So  
2           they've got a wider net that they deal with. So  
3           there may be, and I don't doubt it that there is  
4           utilities facing that problem, we just have not had  
5           to address it yet.

6           CHAIRMAN CLARK: Okay. Well, I certainly -- I  
7           certainly would like to -- to -- I want to make  
8           sure that we offer our assistance where we can. I  
9           appreciate the comments from staff on that.

10                  Any questions on flushing?

11                  All right. Next item was boil water notices.  
12           Commissioner Brown, I believe this one has your  
13           name written all over it. You are recognized.

14           COMMISSIONER BROWN: Thank you, Mr. Chairman.  
15           And I was eager to get to this particular item, as  
16           well as the reserve fund, so thank you for moving  
17           the -- the dialogue along a little bit.

18                  I wanted to ask staff where they are in their  
19           discussions with DEP, and how they are going to  
20           be -- continue to approach the boil water notices  
21           as technology continues to be enhanced, and there  
22           are a lot of different ways to communicate.

23                  The important message of a boil water notice,  
24           which we -- in our jurisdiction, what we've seen is  
25           a lot of the complaints regarding boil water

1 notices are there because they -- the utility is  
2 small, they put a door hanger on the house and --  
3 and it blows away, or the customer just never  
4 receive notice at all.

5 So I wanted -- when we had this discussion at  
6 the -- one of the last water cases we had, I  
7 thought it would be nice to have a little  
8 exploration into how we can adapt in the 21st  
9 Century in communicating with customers. So I am  
10 kind of just setting that tone, and if you could  
11 provide us with some of the comments and knowledge  
12 that you have of investigating this issue.

13 CHAIRMAN CLARK: Mark, would you like to  
14 address it?

15 MR. FUTRELL: Yes, Commissioner Brown.

16 I think Ms. Ramos can probably provide some  
17 more information. She, in fact, has contacted DEP  
18 to explore your questions, and the questions that  
19 came up in the discussions in more depth, so Ms.  
20 Ramos can probably provide more input on that.

21 CHAIRMAN CLARK: Ms. Ramos.

22 MS. RAMOS: Sure. This is -- this is Marissa.

23 We first reached out to DEP just to get a  
24 better understanding of the rule, the noticing  
25 rule. It is an EPA rule that DEP enforces, so

1 first reached out to DEP just to get a better  
2 understanding of how the notices should be rendered  
3 and what the requirements are.

4 And then we also asked DEP about if the, you  
5 know, electronic method could be used. And right  
6 now, it's up to the primary agency, which is the  
7 local DEP office or county health department to  
8 make the decision as to whether it's appropriate to  
9 implement the electronic message.

10 And then also asked DEP if -- if rule-making  
11 was on their radar, to go ahead and include the  
12 electronic method in the public notification rule.  
13 And our contact at DEP said that not right now,  
14 she's not aware of any other agencies, Department  
15 of Health, or any of the other agencies engaging in  
16 rule-making like that, but it doesn't mean that  
17 they won't in the future.

18 COMMISSIONER BROWN: Thank you, Marissa.

19 And so my thoughts are, again, you know, we  
20 are in the 21st Century. We have -- although, with  
21 regard to the boil water notices, and the health  
22 department, and DEP as primary authority over that,  
23 this does come before us, and -- and we should at  
24 least encourage our utilities to adapt some  
25 additional measures. I am not that saying the only

1 way that they can communicate is via email or text  
2 message, but they should explore, especially the  
3 sophisticated utilities like our Class A and some  
4 the Class B that have the capabilities readily at  
5 hand when a customer opens an account. I don't --  
6 I don't think it would be burdensome or costly to  
7 potentially have an additional measure that -- with  
8 the information that they already have.

9 Is there any -- anything that you think that  
10 our commission can do to encourage the additional  
11 measures regarding -- boil water notices are not  
12 something that are slight. I mean, oftentimes, it  
13 is a -- it's a health issue for the end users. So  
14 is there anything that we could use to help  
15 facilitate the communication measures?

16 CHAIRMAN CLARK: Commissioner Brown, I would  
17 like to just tag on right here for a second. I  
18 don't -- your question may have been directed to  
19 Ms. Ramos, but from my understanding, the -- the  
20 notice requirement is a DEP statutory requirement.  
21 They are taking that on. It appears they have not  
22 taken the initiative to pursue faster, better  
23 notification.

24 I agree with you 100 percent. Door hangers  
25 are absolutely inadequate in this day and time.

1           That's an insufficient notice.

2           I would like to ask our General Counsel to  
3           look into an additional requirement that this  
4           commission placed on the utility companies. And  
5           while we do not have the authority to issue the  
6           boil notices, we do have, it is my understanding,  
7           the authority to mandate to the utility companies  
8           that they notify their customers in another manner  
9           that the boil notice -- boil water notice was  
10          issued.

11          I don't see where we could not look at and  
12          explore options to at least put out -- there are  
13          certain -- I recall EPA qualifications or EPA  
14          considerations that have to go into boil not --  
15          boil -- I keep getting that messed up -- boil water  
16          notices, and certainly that may need to be  
17          something that is -- that is written out and  
18          spelled out. But I see no reason why we can't  
19          mandate any issue where a boil water notice was --  
20          was delivered to the consumer that that be notified  
21          via text, email or other electronic medium. We can  
22          certainly ask our General Counsel to look into our  
23          authority to do so, if that satisfies your  
24          curiosity, Commissioner Brown.

25                    COMMISSIONER BROWN: Mr. Chairman, this is why

1 I love you. You could not have articulated in a  
2 fashion better than anyone here. That was exactly  
3 what I would love to explore, and I think it --  
4 again, getting these utilities in -- in a position  
5 where they can communicate better with their  
6 customers, like our electric industry is doing, and  
7 our gas industry is doing, I think is really,  
8 really ripe. So thank you.

9 CHAIRMAN CLARK: Thank you.

10 Commissioner Polmann.

11 COMMISSIONER POLMANN: Thank you, Mr.

12 Chairman.

13 Can somebody please tell me if this type of  
14 noticing to customers is a recoverable cost?

15 CHAIRMAN CLARK: I will look for an expert  
16 opinion, but my assumption would be that it  
17 absolutely would be recoverable.

18 Mark.

19 COMMISSIONER POLMANN: Well, that's why I was  
20 looking for an expert.

21 MR. FUTRELL: I agree, it would be something  
22 that's required by -- by -- by an agency, so it's a  
23 cost of doing business that would be recoverable.

24 CHAIRMAN CLARK: Yeah.

25 COMMISSIONER POLMANN: Mr. Chairman, I -- of

1 course, I am not the attorney, but I play one at  
2 work. I -- I think that may well be a basis on  
3 which we -- we can presume, but again, that's a  
4 stretch, presuming, but that gives us some kind of  
5 authority, you know, to put our foot through that  
6 door.

7 To say that -- the utility is asking the  
8 customers to pay for notifying them so that we  
9 should -- we should be able to require them to  
10 prove to us that they provided notice.

11 CHAIRMAN CLARK: Yeah.

12 COMMISSIONER POLMANN: And -- and have some  
13 say over the -- the methods or -- or sufficient  
14 notice.

15 So I think that you are on point and going the  
16 right direction. There is something wrong here  
17 that customers are saying they are not being  
18 noticed -- they are not receiving notice, and --  
19 but they are paying for it, you know, I -- I think  
20 we have some authority to -- to do this. There is  
21 no question about it.

22 And -- and back to the point that was made  
23 earlier. The boil water notice is on the basis of  
24 a health requirement. You know, it comes about  
25 because there is a loss of pressure in the



1 pipeline. The pressure falls below a certain  
2 point, and -- and there is an expectation that  
3 there is contamination in the pipe. And that's why  
4 you issue boil water notices, is a suspicion of a  
5 health problem. So this is not a minor issue.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CLARK: Thank you, Commissioner  
8 Polmann.

9 Any other comments or questions on the boil  
10 water notice?

11 All right. Let's move to the next item,  
12 reserve funds. Any commissioner have particular  
13 interest on the reserve funds?

14 Commissioner Brown.

15 COMMISSIONER BROWN: I do. And when we --  
16 when this rule was adopted I was little involved in  
17 it, so I do want to see how our utilities,  
18 particularly the small ones that really have  
19 projects that -- dire project that need  
20 infrastructure replacement, how are they utilizing  
21 this mechanism right now? And do we have data in  
22 support of what they are using it for?

23 CHAIRMAN CLARK: Mark.

24 MR. FUTRELL: Yes, Commissioner.

25 Mr. Todd Brown and Andrew Maurey from the

1           accounting and finance division are on the phone.  
2           They can provide you more information. My  
3           understand it's been limited participation, if any,  
4           but they can give you more detail.

5           COMMISSIONER BROWN: Thank you.

6           MR. BROWN: Commissioner Brown, this is Todd  
7           Brown. I will take a stab at it.

8           Unfortunately, the utilities really haven't  
9           availed themselves of the rule and kind of the  
10          possibility of using reserve funds.

11          I have only had a couple of calls since the  
12          rule went into effect from utilities, and I, you  
13          know, provided them the information that is  
14          contained in the rules, but none of them have moved  
15          forward with, you know, with putting together a  
16          reserve fund at this point.

17          COMMISSIONER BROWN: So similar to the way  
18          that staff, when they educate our utilities  
19          throughout the -- the different sizes about the  
20          index measure that, you know, we have actively been  
21          educating the utilities, is this something that we  
22          could help educate them?

23          It is limited to certain eligible products,  
24          and, you know, when it was originally developed,  
25          there was a lot of discussion from consumer groups

1 and from small -- smaller utilities saying that  
2 this could be really a beneficial regulatory  
3 mechanism for addressing those critical projects  
4 that -- that need to be handled expeditiously.

5 Could we take a more overt action -- action  
6 the way that we are doing with the index factor?

7 MR. BROWN: I think there is definitely room  
8 for improvement on our end. I -- one of the things  
9 that we discussed in the briefing the other day was  
10 the possibility of including language, kind of  
11 reminding the utilities that there is a reserve  
12 fund rule out there for them to use, and including  
13 that when we sent out our -- our notices, like at  
14 the beginning of the year when the new index -- you  
15 know, when we are getting the information out there  
16 on the new index increase, including language in  
17 there to remind them about the reserve fund.

18 And then later in the year, when we let people  
19 know, hey, you know, there is still time to get  
20 your index down, we can -- you know, we could  
21 certainly put similar language in there to remind  
22 them about using the reserve fund, or at least  
23 looking into it; especially since those are notices  
24 and correspondence that the utility -- you know,  
25 that the Commission is already having with the

1 utility.

2 COMMISSIONER BROWN: Absolutely. I think the  
3 whole intent behind the creation of this rule was  
4 to provide relief for, you know, projects that need  
5 immediate attention, whether it's regulatory  
6 requirements or infrastructure requirements, and so  
7 I think this is something -- how exactly, for a  
8 utility -- can you walk us through the process of  
9 the creation of a reserve fund for a utility that  
10 doesn't want to go through a rate case, for  
11 example, and they just want to do it really  
12 streamlined, kind of the way that the index factors  
13 are in place?

14 MR. BROWN: Well, I don't know if it's going  
15 to be as streamlined as -- as doing an index, but  
16 the one -- I think one of the things that may be a  
17 little daunting for the utility based on -- on the  
18 rule itself is coming up -- like, I know FWRA can  
19 help them put together a asset management plan.

20 Absent the asset management plan, the utility  
21 would have to put together a capital improvement  
22 plan. And I think that is probably a little  
23 daunting, especially for some of the smaller  
24 utilities that we deal with. But it's -- I mean,  
25 the same type of help that's available to utilities

1 filing rate cases is also available to -- to them.

2 If they qualify for a SARC, you know, they are  
3 also going to -- they would also qualify for staff  
4 assistance in -- in filing this and helping out.  
5 Now, I don't know if that goes as far as us helping  
6 them put together, you know, a capital improvement  
7 plan, but we would certainly work with them  
8 step-by-step through the process. I don't know if  
9 we are headed in the direction that -- that you  
10 wanted or not.

11 COMMISSIONER BROWN: No, thank you, Todd.

12 I think that the best thing to do is to at  
13 least educate the customers -- I mean, pardon me, I  
14 mean, the utilities about this mechanism, really.  
15 And I think you probably the best suggestion, is  
16 that look into putting it on the notice that we  
17 already send out regarding the index.

18 MR. BROWN: And we can --

19 COMMISSIONER BROWN: So if you could explore  
20 that, that would be helpful, I think, to everyone,  
21 all stakeholders.

22 MR. BROWN: Yeah. I think that's something we  
23 can definitely look into as we -- especially as we  
24 get closer sending out those notices, you know,  
25 after the new index is -- is approved by the

1 Commission.

2 COMMISSIONER BROWN: Thanks, Todd.

3 MR. BROWN: You are welcome.

4 CHAIRMAN CLARK: All right. Any other  
5 questions on reserve funds?

6 Commissioner Polmann.

7 COMMISSIONER POLMANN: Thank you, Mr.  
8 Chairman.

9 And so I understand it, based on the comments  
10 we just heard, this -- this is something utilities  
11 have not taken advantage of. And on the filing  
12 requirements, when I read that paragraph, the  
13 thought that I had was that that, to my mind, would  
14 be exactly the reason that they have not pursued  
15 it; because in reading that, that is a very high  
16 hurdle, as I see it.

17 And putting together an asset management plan  
18 and -- and a list of projects that you would be  
19 preparing for, intending to -- to undertake in the  
20 next five years at a minimum, so forth and so on,  
21 everything in that paragraph in order to establish  
22 the reserve fund is a tremendous amount of work.  
23 If not something to the utility is going to do on  
24 their own.

25 If I read it literally, you have got to hire a

1 consultant, or you are going to go FRWA if you are  
2 a small, and so it didn't occur to me, as Todd was  
3 indicating, that it -- that it would be something  
4 that we would get assistance from staff through a  
5 SARC. If I was reading the rule and saw that, I  
6 would say, well, I am not going to -- I am not  
7 going to bother putting all of that together. I  
8 mean, that's just how I read it. So I think as  
9 someone said, it's daunting.

10 That's just -- that's just my reaction, Mr.  
11 Chairman. Reading that, it wouldn't surprise me at  
12 all if no one pursued it. So I could don't know  
13 how to interpret it, how to explain it to the -- to  
14 the utilities. If there was some other intention,  
15 then perhaps we can -- we can provide that  
16 additional information, or -- or some other  
17 education, or make it clear that -- that there is  
18 another avenue.

19 That's my comment, Mr. Chairman.

20 CHAIRMAN CLARK: Thank you, Commissioner  
21 Polmann.

22 Other comments?

23 All right. Thank you.

24 Let's move on to the last item, consumer  
25 deposits.

1           Any commissioner have questions or comments  
2           about consumer deposits?

3           I will make a note that I read with great  
4           interest the current deposit structure, and -- and  
5           how we came to that. And I would also contend  
6           that, you know, two months deposit is probably not  
7           an adequate number. Three months is much more of  
8           a -- a way to cover and ensure that a utility  
9           company does not incur a loss should consumers  
10          decide not to pay their bills.

11          I would also turn around and -- and advocate  
12          that there are some greater alternatives to  
13          deposits. And looking at the potential for, just  
14          like in the electric business, prepaid services.  
15          Prepaid in the water business might could be  
16          considered as well, and that's a great way to avoid  
17          potential deposits.

18          But I will open it up to any questions or  
19          comments from Commissioners on this item?

20          Commissioner Fay.

21          COMMISSIONER FAY: Thank you, Mr. Chairman.

22          Just real quick, and this is sort of  
23          consistent with the dialogue on the electronic  
24          notices. I noticed the document states Texas has a  
25          cap -- a fixed amount and a cap for their



1 customers. As we are talking about these smaller  
2 utilities and the costs for administrative  
3 functions and the time that they put into doing  
4 these types of things, to me, it seemed like it  
5 would be at least worth having the discussion if a  
6 simpler, more straight-up calculation would be --  
7 would make more sense for those smaller utilities.

8 It may be that it's too rigid and wouldn't  
9 allow the flexibility that potentially would -- the  
10 Commission might want. But I think it's at least  
11 worth visiting as we try to, you know, do  
12 everything we can for these really small utilities  
13 to streamline their process.

14 Thank you.

15 CHAIRMAN CLARK: Thank you, Commissioner Fay.

16 Other questions?

17 All right. Well, that concludes our water and  
18 wastewater discussion for the day. I want to thank  
19 you all for your indulgence in -- in letting me get  
20 this item on the agenda. I think there has been  
21 some very productive discussion, some ideas that  
22 have come out of it, and some direction for staff  
23 in regards to things that the Commission would like  
24 to consider at a later date, like to have at least  
25 reviewed and explored.

1           Mr. Baez, is there any question from you or  
2 any staff about where the Commission is wanting to  
3 move here?

4           MR. BAEZ: I -- I think I am clear on the  
5 direction based on my notes. I don't know what  
6 the --

7           CHAIRMAN CLARK: I am getting lots of head  
8 nods in here, so I think everybody is onboard. Mr.  
9 Hetrick, in your responsibilities as well? Okay.

10          All right. Great. We will move on to the  
11 next item. I am still going to try to get us out  
12 of here on a reasonable time schedule today.

13          General Counsel's report, Mr. Hetrick.

14          MR. HETRICK: Thank you, Mr. Chair. I will be  
15 real brief.

16          We have been, as you know, extraordinarily  
17 busy navigating this new telehearing environment  
18 with a number of hearings on the horizon. We have  
19 been looking at new telehearing -- telecustomer  
20 hearing mechanisms. We have also been looking at  
21 this new -- this new world we live in seems to have  
22 afforded us the opportunity to look at -- at  
23 rule-making with respect to new electronic filing  
24 opportunities as well.

25          So legal staff has been really busy. And as

1           you know, since last May, we have been ramping up  
2           hearings, ramping up working with our IT folks at  
3           presenting workshops, agendas, simple hearings,  
4           settlement hearings, and moving into more complex  
5           hearings, such as the Duke CR3 hearing we just  
6           held, and ultimately culminating with a fairly  
7           complex hearing on the horizon dealing with the  
8           storm protection plans. So my staff is just --  
9           ever day is a new issue, a new opportunity, and  
10          everyone is thoroughly busy.

11                    I would like to -- I am excited to announce  
12           that the recent hiring of our new Senior Legal  
13           Assistant Melissa Marzicola, who will be a  
14           wonderful addition to Kandis. She comes to us with  
15           a very -- have a wealth of high level paralegal  
16           experience from several personal injury firms over  
17           time. So she is -- and she is very stable and  
18           consistent, extremely bright, and has the kind of  
19           experience now we are really looking for, and she  
20           will be a welcome addition to Kandis The hearing  
21           process would most definitely require two senior  
22           legal assistants doing that work, so we are excited  
23           to have her onboard. So that -- and I look forward  
24           to the Commissioners meeting her, maybe through  
25           this new tele remote environment.

1                   And that's my report, Mr. Chair.

2                   CHAIRMAN CLARK: Thank you, Mr. Hetrick.

3                   And just a quick comment. I want to thank all  
4 the of our legal team for the work they have done  
5 in helping us to navigate through these hearings.  
6 I know that a lot of work went into it. We have  
7 had a number of discussions prior to each hearing,  
8 and making sure that we met the legal requirements,  
9 and your folks have also worked on the technology  
10 side as well, and I just want to say a very special  
11 thank you to our legal team for the extra work they  
12 have put in on this as well.

13                   Commissioner Brown.

14                   COMMISSIONER BROWN: You took the words right  
15 out of my mouth. I know it's a very hairy time for  
16 everyone, but especially our legal folks are having  
17 additional challenges and issues, so I really want  
18 to give them great some gratitude for all the work  
19 that you have been doing. I know you are working  
20 on so many issues, so thank you.

21                   CHAIRMAN CLARK: Thank you, Commissioner  
22 Brown.

23                   All right. Next on the agenda, Executive  
24 Director's report. Mr. Baez.

25                   MR. BAEZ: Thank you, Mr. Chairman,

1 Commissioners.

2 Commissioners, good morning again. I want to  
3 join you as well, if you don't mind, in thanking  
4 not just the legal staff, but the entire staff of  
5 the Commission for all the work that they continue  
6 to do. As I always say, we -- we are here today  
7 and having these discussions in large part because  
8 of their hard work in not just setting them up, but  
9 providing content for us to discuss, so thanks --  
10 thanks to all of them, and I urge them to keep up  
11 the good work. They are doing us very, very proud.

12 Commissioners, last week, our legislative team  
13 forwarded to you all via email a final wrapup of --  
14 of bills. Hopefully it was useful for you in terms  
15 of getting up to speed as to what -- what had  
16 passed up until that date, and certainly where the  
17 Commission stood in terms of impact from -- from  
18 legislation, including our budget.

19 So I -- I urge you, if you have any questions,  
20 please reach out to us, or -- or to the legislative  
21 team directly and they would be happy to answer any  
22 of your questions on -- on the bills at that that  
23 have passed, or the status of bills that haven't  
24 been to the Governor yet.

25 Lastly, Chairman, you had -- you had

1           referenced at I believe our last Internal Affairs a  
2           letter that was circulated to all the Commissioners  
3           from Representative McClure having to do with his  
4           request for the Commission to get an in-depth --  
5           and I am -- I am quoting here -- an in-depth and  
6           thorough review of applicable rules and appropriate  
7           regulatory policies related to customer-owned  
8           renewable facilities. And the shorthand being net  
9           metering for rooftop -- rooftop solar specifically.

10                   And we -- the staff has been in discussions  
11           and trying to work out what the Commission's  
12           options in -- in order to -- to, I guess, be true  
13           to the Representative's request, certainly whatever  
14           your will is, we will do. But we were -- we were  
15           thinking of what you are options were, and -- and  
16           certainly what the best options were to proceed  
17           under the circumstances.

18                   The first one. Originally we had, I will  
19           confess, a certain amount of heartburn over moving  
20           forward while that NARUC petition was -- was at  
21           FERC. That has since been resolved, perhaps not  
22           completely in a legal sense, but it's certainly  
23           quite now, and I think that that -- that concern,  
24           speaking only for myself, no longer applies.

25                   So in terms of moving forward and what we can

1 take as a first step, Chairman, we can -- we can  
2 run the gamut from, whether it's providing you  
3 white papers or -- or organizing a workshop. The  
4 main thrust of it to be -- or the main purpose  
5 would be, in my eyes, to get the Commission  
6 reacquainted, for starters, with the issue, because  
7 I think the last time -- I don't think that we've  
8 fully aired out the net metering issues for -- for  
9 many, many years. I know that Commissioner Graham  
10 has specific interest in it as Chairman, and we  
11 tried to do a little work there, but time and time  
12 conspired against us.

13 So it has been some time since we teed it up,  
14 and so I think it would be useful for the  
15 Commission to get reacquainted with the issues. I  
16 am sure many of the issues have changed.  
17 Certainly, if not in -- in quality but in intensity  
18 and quantity as well, I am sure.

19 We would propose, you know, programming  
20 presentations from several stakeholders, and let  
21 you all get into it with the -- with the subject  
22 matter as you see fit. That would be one -- that  
23 will be one suggestion. Probably the best road to  
24 take.

25 The other, as I had mentioned before, is to --

1 to have staff return with some kind of product that  
2 certainly would serve the same purpose, we hope, to  
3 get you acquainted with the -- with the issue as  
4 well.

5 I -- personally, I prefer more hands-on and  
6 more interaction. I think you might prefer that as  
7 well, but I leave it to your good -- good judgment  
8 to decide which way you want to go on either of  
9 these.

10 CHAIRMAN CLARK: Thank you, Mr. Baez.

11 I wanted to address this for just a brief  
12 moment. I don't want to turn this today into a  
13 discussion on the -- the pros and cons of net  
14 metering. I want it to be focused strictly on  
15 where -- what steps we need to take to address this  
16 issue. But you all -- all are in receipt of  
17 Representative McClure's letter, and I felt like we  
18 were asked to at least take a look at some issues  
19 that have been on my mind, and have been a concern  
20 for me. And I would like to say that Commissioner  
21 Graham kind of passed the baton here, and his  
22 concerns that he has addressed with net metering  
23 over the last couple of years.

24 But I do want to actually sit down with the  
25 entire Commission. I would like to propose a



1 workshop to be held fairly short order. I would  
2 like to look at no later than mid-September having  
3 a Commission workshop on the net metering concept.  
4 At the same time.

5 I would like to ask Director Baez to get staff  
6 to begin doing preliminary assessments of net  
7 metering policies in other states. Look at what  
8 has worked and what is working. Also to address  
9 our legal team in terms of asking them to begin the  
10 evaluation of Florida's current net metering  
11 statutes, and looking at how our rules apply to  
12 those statutes, and what flexibility -- what leeway  
13 we might have within current statutes.

14 I think we were asked by -- specifically by  
15 Representative McClure if there were any changes  
16 that needed to be made from a statutory  
17 perspective, that he certainly wanted to be  
18 involved in that. And I am not suggesting that  
19 this commission is going to choose to do anything,  
20 but I do want a -- to do a thorough analysis of  
21 where the industry, the renewable industry has come  
22 during the last 10, 15 years as we have seen  
23 basically exponential growth in the renewable side.

24 We see the amount of subsidy that continues to  
25 be added into the rate base for this particular

1 product, and I want to make sure that we are at  
2 least analyzing, taking a look at that. We may  
3 continue to choose to do that in the future, but I  
4 want us to do it with eyes wide open, understanding  
5 exactly what those costs are, and how this is  
6 benefiting the system.

7 I would also like to, as you said, Director  
8 Baez, have some stakeholder input into this  
9 scheduled for our workshop, to have some  
10 presentations from the pros and cons of each of  
11 those -- each methodology that we are looking at.  
12 That's kind of the direction I would like to go.

13 What I am seeking today is your blessing, or  
14 consensus that you want to move forward and put  
15 this on the agenda for the near term.

16 Commissioners.

17 Commissioner Graham.

18 COMMISSIONER GRAHAM: Thank you, Mr. Chairman.

19 I -- it's interesting, every time this issue  
20 comes up, something overwhelming comes and derails  
21 it. Last time, there was a ballot initiative that  
22 came up, and we didn't want to be in the middle of  
23 the ballot initiative, taking sides one way or the  
24 other, so we basically pulled it off the table and  
25 waited to see what happened with that, so I am glad

1           you are bringing it up again.

2                     One of the things that you did not touch on  
3           that I want to make sure that we look at are some  
4           of the insurance requirements --

5                     CHAIRMAN CLARK:   Yes.

6                     COMMISSIONER GRAHAM:  -- that they have -- the  
7           utilities put on the homeowners.  They have a Tier  
8           1 and Tier 2, anything under, I believe it's 10  
9           kilowatts did not need to have any sort of  
10          liability insurance.  Anything above 10 kilowatts,  
11          I believe is Tier 2.  Between 10 and 100 kilowatts  
12          had \$1 million liability policy.

13                    We came up with that maybe 12 years ago, back  
14          before there was any data, any background knowledge  
15          on a lot of these home systems.  I think we can  
16          probably look at those numbers.  I don't know,  
17          because there is a lot more people going above 10  
18          kilowatts because you have the EV cars and other  
19          things, other opportunities for them to use.  So  
20          maybe we want to put that -- maybe we want to look  
21          at the insurance requirement, and that's something  
22          we can get the feedback from -- from the utilities  
23          to see if there was -- if there has been a problem  
24          in the last 12 years.  If we can change that, you  
25          know, maybe change it -- maybe have another tier,

1           so it goes from 10 kilowatts to 25 kilowatts, and  
2           then anything above 25 kilowatts, you have the \$1  
3           million policy.

4           I don't know the answer to this, but there was  
5           a reporter that wrote an article on this probably a  
6           year or two ago, and I kind of held off on it  
7           because I feared once we got into this, we are  
8           going to have to get into the entire net metering.  
9           And if you are going to open that door, I would  
10          like to look at the insurance requirements as well.

11          CHAIRMAN CLARK: Absolutely. We will make  
12          specific note of that.

13          Other -- other issues that Commissioners would  
14          like do have addressed and prepared for discussion?

15          Commissioner Polmann, you had a hand up  
16          earlier.

17          COMMISSIONER POLMANN: Thank you, Mr.  
18          Chairman.

19          The -- the workshop concept I think is very  
20          good. I -- I just have a little bit of concern  
21          that -- that you review the scope of the subject  
22          matter, the agenda before you commit to that.

23          I -- I heard what you said, and I think it's  
24          very broad. You covered a lot of topics. And it  
25          sounds to me like an all-day event. Now, you know,

1 I am happy to participate at whatever level you  
2 choose -- you wish to cover, but there is a lot of  
3 material, as I see it, and I don't want to create  
4 an expectation that we are going -- going to deal  
5 with very a broad subject matter and then have the  
6 parties, participants, stakeholders feel that we  
7 didn't adequately cover everything.

8 When you began, I was wondering if we are  
9 going to have a staff and commission workshop so  
10 that we get introduced, and then have subsequent  
11 stakeholder involvement. I just wanted to raise  
12 that, Mr. Chairman. Thank you.

13 CHAIRMAN CLARK: Mr. Baez.

14 MR. BAEZ: I didn't -- I didn't hear  
15 Commissioner Polmann's reference to a workshop -- a  
16 question on the workshop specifically, I didn't  
17 hear what he said.

18 CHAIRMAN CLARK: Could you repeat that,  
19 Commissioner Polmann? I am having a little bit of  
20 difficulty understanding you.

21 Can we turn his volume up a little bit? We  
22 can't? Okay.

23 COMMISSIONER POLMANN: Well, what I said was  
24 really good.

25 MR. BAEZ: No, I got the -- I got the scoping

1 part, and I wanted to speak to that first before we  
2 move on.

3 Commissioner, we would, as always, commit to  
4 scoping the -- the workshop in a way that gets as  
5 much information, but -- but with proper breadth,  
6 right? We are not going to get too wide afield on  
7 it. And we would be glad to, you know, continue  
8 contact with your office in case you have issues  
9 that -- that you would also want covered.

10 I mean, the discussion on -- on what you might  
11 like answers to is -- shouldn't be finished at  
12 the -- at the end of this meeting, obviously. We  
13 would -- we would urge you any suggestions, any  
14 particular interest, please let us know.

15 CHAIRMAN CLARK: And that's my commitment as  
16 well, is to work on the scoping, and to make sure  
17 we've got something, Commissioner Polmann, that's a  
18 manageable meeting.

19 There are -- there are about four key issues  
20 that -- that I really want to see addressed, and  
21 that's why I was asking for Commission input into  
22 other, as Commissioner Graham's discussion on the  
23 insurance absolutely is not one that was one of my  
24 top priorities, but yes, that will be now part of  
25 our scoping. I will probably narrow mine down to

1 three points, and that being the fourth. But  
2 that's why I wanted your feedback on other issues  
3 you would like to see included in the meeting.

4 And I did intend this to be a Commission  
5 workshop, with input from stakeholders. That was  
6 my concept, but strictly, I am open to you guys'  
7 opinion.

8 COMMISSIONER POLMANN: I have nothing to add.  
9 I was -- and I think you did take the point that  
10 scope appropriately for -- for a reasonable amount  
11 of time, I could envision that there is a  
12 tremendous amount of material that we, you know, we  
13 could be in workshop all day and not feel that  
14 we've covered all the material, but I think you --  
15 I think you got the point --

16 CHAIRMAN CLARK: Yes, sir.

17 COMMISSIONER POLMANN: -- with the scoping  
18 idea. So thank you, sir.

19 CHAIRMAN CLARK: Point noted.

20 Commissioner Graham.

21 COMMISSIONER GRAHAM: Yes, Mr. Chairman.

22 I say amen to what Don Polmann just said.  
23 I -- I think if you don't -- if we are not careful  
24 about the questions that we ask, we may get answers  
25 to things that we didn't ask the question for.

1           And I do like the idea of -- you may want to  
2           have a workshop that brings everybody up to speed  
3           on where we are currently with net metering, and  
4           then have a second workshop, as Don has said, that  
5           maybe with the staff and some of the stakeholders,  
6           because it can be one of those things that you  
7           don't know what's coming in, and the volume of  
8           information coming in, and that can just be  
9           organized, and we can review it at that time.

10           CHAIRMAN CLARK: That's a -- that's a very  
11           valid point, and something that we will certainly  
12           take into consideration.

13           There is a lot of information. This is one of  
14           those that's going to be a -- certainly a contested  
15           issue, a contentious issues, and it's going to be  
16           fun.

17           Director Baez.

18           MR. BAEZ: Nope, just kind of working off what  
19           Commissioner Graham said. If -- if there are any  
20           after -- after steps, obviously, at the -- at the  
21           workshop point, we are going to discuss next steps,  
22           if anything -- whatever becomes necessary off of  
23           that, we --

24           CHAIRMAN CLARK: And one of the things that we  
25           will -- we will commit to do is we will set a fixed



1           time. There is -- there is nothing wrong with us,  
2           as a commission, establishing a fixed time. We are  
3           going to have a two-hour or three hour workshop,  
4           and we are going to adjourn it at that point, no  
5           matter where we are. So we could -- we could do  
6           that as well, so to make sure we get as much in  
7           there as quick as we can.

8                   Commissioner Brown, you were --

9                   COMMISSIONER BROWN: Thank you.

10                  I -- I appreciate you teeing this up. This is  
11                  a hot topic, pun intended, and I am sure we are  
12                  going to hear a lot of input from all of the  
13                  various groups.

14                  So I like your approach, though, taking it  
15                  from a historical perspective and getting the data  
16                  of where we are and where the rest of the country  
17                  is on their net metering policies. I think that  
18                  will be helpful setting the -- the tone of further  
19                  discussions.

20                  And that insurance component, I think, is also  
21                  a very good point, Commissioner Graham, to include.

22                  I don't have any additional topics, but I  
23                  think that we are at a juncture in our state where  
24                  we need to have the dialogue. So thank you for the  
25                  leadership on this.

1 CHAIRMAN CLARK: Thank you, Commissioner  
2 Brown.

3 Anyone else, any comments?

4 Commissioner Fay.

5 COMMISSIONER FAY: Thank you, Mr. Chairman.  
6 Just -- just real quick to, I guess, confirm  
7 procedure. I know you are probably already doing  
8 this, or going to do this, but we would -- we would  
9 have some form of a response to the representative  
10 that sent us that -- that letter, that this is how  
11 we are proceeding and -- and moving forward.

12 CHAIRMAN CLARK: Yes, sir. Absolutely. We  
13 will be responding to him this week. I have  
14 actually spoke with him on the phone, and just to  
15 let him know that we were working on his -- a  
16 response to his request, but we will be drafting  
17 that and getting it to him this week.

18 COMMISSIONER FAY: Okay. Great. Thank you,  
19 Mr. Chairman.

20 CHAIRMAN CLARK: All right. I believe that  
21 includes -- concludes everything on the agenda.  
22 Are there any other matters?

23 Commissioner Brown.

24 COMMISSIONER BROWN: Thank you. I have two.  
25 First I wanted to ask staff, and I don't mean

1 to blindside you on this, but I did want to find  
2 out what you know about the Southeast Energy  
3 Exchange Market, the SEEM, that's being developed  
4 in the southeast United States. I understand it an  
5 adaptive model to increase utility resiliency test  
6 by self power more competitively, and I know  
7 Florida is not included right now in the proposed  
8 SEEM; although, Duke Energy in the Carolinas is.  
9 Is there any more details you have about that, and  
10 are you tracking it?

11 MR. BAEZ: Commissioner --

12 MR. BALLINGER: Commissioner Brown, this is  
13 Tom Ballinger.

14 I spoke with the FRCC about this, and you are  
15 correct, Florida is not involved in it yet. But  
16 Florida does have a similar, if you will,  
17 marketplace for buying power broker system. We  
18 have the as available energy rates and hour-by-hour  
19 contracts going on.

20 This was done more out of the SERC region to  
21 try to incorporate that whole region as to one  
22 market.

23 COMMISSIONER BROWN: And -- and the intent  
24 behind creating this -- this kind of like -- not an  
25 RTO, but kind of an interesting hybrid is do you

1 know the evolution of it, the reason behind it?

2 MR. BALLINGER: I do not know the evolution of  
3 it. Quite frankly, what I know is what I have read  
4 in the articles and the clips, and speaking a  
5 little bit with FRCC, and they are not involved  
6 with it at this juncture.

7 COMMISSIONER BROWN: Okay. I will follow up  
8 with you on that and -- and see how it relates to  
9 our state. And I just wanted historical, I guess,  
10 data on what it is and why Florida is not  
11 entertaining it.

12 CHAIRMAN CLARK: Commissioner Brown, can --  
13 can we follow up with a question on that?

14 How is this different, Tom, than an RTO? I  
15 mean, I understand the concept behind an RTO, but  
16 this group -- what I read is just -- is the only  
17 difference the fact that they are trading actively  
18 for, you know, dollars for kilowatt hours?

19 MR. BALLINGER: I think it's more of a  
20 marketplace as opposed to a planning that you have  
21 in an RTO, where they would actually plan and  
22 construct the distribution system and transmission  
23 system. This is more of a market clearinghouse  
24 concept, I believe.

25 CHAIRMAN CLARK: Mark.

1           MR. FUTRELL: Yeah, I would agree, just  
2           tagging on to what Tom said. We have had something  
3           in place here for many years, an energy broker,  
4           where utilities may have some excess energy to  
5           offer at a certain price, can bid that out and  
6           other utilities can, in a wholesale setting, can --  
7           can offer, make offers in order and establish  
8           purchases and sales to help facilitate in a more  
9           efficient use of generation.

10           And I think that sounds like what this is  
11           going to, is an informal exchange market without  
12           the layer of controls that RTO establishes over  
13           planning and the movement of power between  
14           utilities.

15           CHAIRMAN CLARK: But wouldn't this same energy  
16           marketing group have to go through the RTO to  
17           deliver the power? Isn't that going to be a part  
18           of the -- the whole process? You are buying X  
19           amount of power, moving it across the system, the  
20           RTO has to have --

21           MR. FUTRELL: There is no RTO in the  
22           southeast, so the -- so the utilities in the  
23           southeast region, certainly they all have open  
24           access tariffs filed with FERC so that any -- any  
25           party can access the transmission system and pay

1 the -- the rates to use the transmission system.  
2 So I think this is just another way of facilitating  
3 the -- the more efficient use of energy across the  
4 transmission system.

5 CHAIRMAN CLARK: But each -- each independent  
6 operator, I guess, would be a better term than RTO.  
7 Each independent operator has its own balancing  
8 mechanisms in place, and that's kind of what I am  
9 questioning.

10 MR. BAEZ: We do that, too.

11 And the larger answer to Commissioner Brown's  
12 question, why -- why we are not participating  
13 and -- I mean, the -- that -- that's routed in  
14 history as well, the same reason we don't  
15 participate in an RTO, is -- is that our -- we  
16 always used to say Florida is different. I don't  
17 know -- I don't know if the answer -- if that still  
18 applies. I am sure it does. And -- and so there  
19 is many physical limitations that we have here that  
20 kind of militate against having been involved in  
21 something on a regional -- on a regional level.  
22 It's not to say that it couldn't be, but  
23 probably -- probably a little harder for us to do  
24 so.

25 So we have made do with -- I mean, it's our --

1           our utilities are active with each other in terms  
2           of energy brokers and -- and that sort of exchange.  
3           It approximates what we are talking on a regional  
4           level.

5           CHAIRMAN CLARK: All right. I apologize,  
6           Commissioner Brown. You are recognized.

7           COMMISSIONER BROWN: Thank you.

8           Just if we could get more details about it,  
9           and provide it to the individual offices --

10          MR. BAEZ: Will do.

11          COMMISSIONER BROWN: -- and have that -- you  
12          know, the evo -- how it continues to evolve and how  
13          it could impact our state, if any.

14          MR. BAEZ: We would be happy to. Thank you,  
15          Commissioner.

16          COMMISSIONER BROWN: Mr. Chairman, I have one  
17          more thing, I don't know if you have questions on  
18          the SEEM.

19          CHAIRMAN CLARK: Yes, you are recognized.

20          COMMISSIONER BROWN: Thank you.

21          I just wanted to -- I know we have a workshop  
22          tomorrow, a very important workshop on COVID, but I  
23          wanted to let you all know that I am a member of  
24          the NARUC Emergency Preparedness Recovery and  
25          Resiliency Task Force. We had our first meeting

1 last week, and I wanted to kind of give you just an  
2 update and seek your input as well.

3 So it's comprised of about 12 Commissioners  
4 from around the country, and it also has other  
5 stakeholders from DOE, FEECA, AGA, EEI and NASUCA,  
6 as well as NASEO. So it has kind of a broad  
7 spectrum of folks. And the actual deliverables  
8 that they are charging us with creating is a  
9 federal funding reference manual for commissions'  
10 sake, consensus construction standards, a black sky  
11 technical playbook and a COVID-19 lessons learned  
12 documentation.

13 So they are charged -- we are charged with  
14 kind of developing that, and the four focused areas  
15 that we are looking at, and so any input that you  
16 all have or would like to offer on behalf of our  
17 state, I would gladly incorporate and offer that  
18 up.

19 The four focus areas are research and ongoing  
20 education on the federal funding to support  
21 recovery. And that includes not just with COVID,  
22 but also disaster recovery types of events.

23 Also the other three are construction  
24 standards for FEMA during rebuilding and recovery;  
25 guide disaster preparedness, as well as the COVID



1 lessons learned and Best Practices, which of course  
2 are ongoing. So they are going to be looking at  
3 each of our states to offer up what -- what we are  
4 seeing -- that's not me -- and to incorporate that  
5 into the deliverables that we will ultimately  
6 provide.

7 So I am looking forward to tomorrow, and if  
8 there is anything that you -- each of our offices  
9 would like to include, I will continue to update  
10 you. I will know after each meeting, we will  
11 provide a memo summarizing it. And we had some  
12 technical staff that are also engaged in this, but  
13 really wanted to reach out to any of you to see if  
14 there is anything that you would like to focus on.

15 CHAIRMAN CLARK: Great. Well, thank you,  
16 Commissioner Brown, for your work.

17 If any commissioner has things they would like  
18 to submit for consideration, please get those to  
19 Commissioner Brown's office.

20 Thank you very much.

21 COMMISSIONER BROWN: Thank you.

22 CHAIRMAN CLARK: All right. Any other  
23 matters?

24 Commissioner Polmann.

25 COMMISSIONER POLMANN: Thank you, Mr.

1 Chairman.

2 Just a note, Commissioner Brown, if you could  
3 share those bullet lists that you just identified,  
4 share that with us, that would be really helpful.

5 COMMISSIONER BROWN: Absolutely. Thank you.

6 CHAIRMAN CLARK: All right.

7 COMMISSIONER POLMANN: Commission, we have --  
8 we have a hearing on the storm protection plans  
9 coming up in two weeks. I have prehearing this  
10 afternoon. The hearing in two weeks, I think, is  
11 on our calendar for three-and-a-half days. This  
12 afternoon, I will try to get the parties to settle  
13 everything, or at least condense that -- that  
14 hearing down to three-and-a-half hours.

15 My motivation for that is on August 12th, I  
16 will be absent because I will -- I will be visiting  
17 with the Public Service Commission Nominating  
18 Counsel. So, Mr. Chairman, I just want to let  
19 everybody know that if the hearing for the storm  
20 protection plan continues to August 12th, I will be  
21 in Ft. Myers, sir.

22 CHAIRMAN CLARK: Understood. That's as valid  
23 excuse as you could possibly have for missing a  
24 meeting.

25 COMMISSIONER BROWN: Good luck.

1           CHAIRMAN CLARK: Commissioner Graham gave you  
2 a huge thumbs up from cutting it from three days to  
3 three hours. You are speaking his language now.

4           COMMISSIONER POLMANN: Now, I will do my best.  
5 Of course, that will depend on the parties.

6           CHAIRMAN CLARK: All right.

7           COMMISSIONER POLMANN: Thank you, Mr.  
8 Chairman.

9           CHAIRMAN CLARK: Other comments? Any other  
10 matters?

11           All right. Well, Mr -- Commissioner Polmann  
12 does have a prehearing conference this afternoon,  
13 and we will resume tomorrow morning at 9:30 for our  
14 COVID-19 workshop. Until then, great to see  
15 everyone. Have a great day. This meeting is  
16 adjourned.

17           (Proceedings concluded at 11:20 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 11th day of August, 2020.



DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020