



# The Florida Senate

*Interim Project Report 2005-114*

*November 2004*

Committee on Communications and Public Utilities

Senator Lee Constantine, Chair

## GOVERNMENTAL ENTITY PROVISIONING OF ELECTRIC, WATER AND WASTEWATER TREATMENT, TELECOMMUNICATIONS AND ADVANCED COMMUNICATIONS, AND CABLE SERVICES

### SUMMARY

Electric and water and wastewater services are provided by both governmental and public utilities. These services are regulated as monopolies and are not therefore subject to market forces. Since these services are not affected by competition, no changes to the relevant statutes are necessary at this time to provide the same footing in a competitive market place.

Current law provides for different levels of regulation over different types of companies providing telecommunications and advanced services. Moreover, criteria have been established to allow local governmental entities to provide telecommunications service and most of these governmental entities have met telecommunications needs in its community that may not have been met otherwise. Staff recommends the Legislature continue to monitor the status of competition, but does not recommend any changes at this time.

conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.<sup>3</sup> Section 125.01, F.S., enumerates the powers and duties of all county governments, unless preempted on a particular subject by general or special law. Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies. Several chapters of the Florida Statutes provide for municipalities and counties to own and operate utilities.<sup>4</sup>

Given these constitutional and statutory powers, local governments may provide a variety of services for public and municipal purposes. These local governments also have certain regulatory powers over entities providing these services.

Entities providing electric, water and wastewater, telecommunications, and cable services are subject to various authorities that have been delegated certain powers to regulate specific aspects of these services. The Florida Public Service Commission (PSC or commission) has certain economic, safety, and service jurisdiction.<sup>5</sup> The Department of Environmental Protection's jurisdiction also impacts these services with its power plant and transmission power line siting authority, clean air, clean water and clean drinking water standards, as well as other environmental

### BACKGROUND

#### Home Rule Fee Authority

In Florida, counties are established under Section 1 and municipalities are established under Section 2, Article VIII of the Florida Constitution. The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to

<sup>3</sup> Art. VIII, § 2(b), Fla. Const. Also See s. 166.021, F.S.

<sup>4</sup> See Ch. 125, F.S., County Government; Ch. 153, F.S., Water and Wastewater Systems; Ch. 166, F.S., Municipalities; and Ch. 180, F.S., Municipal Public Works.

<sup>5</sup> See Ch. 350, F.S., Florida Public Service Commission; Ch. 364, F.S., Telecommunications Companies; Ch. 366, F.S., Public Utilities; and Ch. 367, F.S., Water and Wastewater Systems.

<sup>1</sup> Art. VIII, § 1(f), Fla. Const.

<sup>2</sup> Art. VIII, § 1(g), Fla. Const.

concerns.<sup>6</sup> Specific regulations for each of these services where relevant will be discussed below. Finally, addressing federal regulations is beyond the scope of this project.

## Electric

### Regulation

Florida's electric services are provided by public and private companies that have a monopoly on the provisioning of the service within a territory. Florida has 56 electric utilities consisting of five investor owned utilities (IOU), 17 cooperatively owned, and 34 municipally owned utilities.<sup>7</sup>

Investor-owned utilities are regulated by the PSC under Chapter 366, F.S. The commission fully regulates the rates and services of the five investor owned utilities. The PSC is given the responsibility to ensure that Florida's electric utilities provide safe, adequate, and reliable service at the rates that are fair, just and reasonable. The commission has economic, service quality, territorial and safety jurisdiction over the IOUs. In addition, the commission has rate structure jurisdiction over the municipal electrics and is authorized to settle territorial disputes among these utilities. Finally, the commission has jurisdiction over all electric utilities in the areas of public safety, territorial boundaries, major power plant and transmission line need determinations, conservation, cogeneration, and power supply planning.<sup>8</sup>

Government entity owned utilities (GOUs) are governed by the city commissions or councils who direct operations and set the policies for the utility.<sup>9</sup> Section 180.02, F.S., provides criteria for municipalities when providing service outside their political boundaries.

### Taxes

Electric IOUs and GOUs are subject to various taxes:

Florida Corporate Income Tax - Under s. 220.11, F.S., a tax equal to 5.5 percent of a taxpayer's net income is levied by the state. A taxpayer is defined as any corporation subject to tax under ch. 220, F.S.<sup>10</sup> The net income of a corporation is defined as that corporation's

adjusted federal income.<sup>11</sup> GOUs' net income is not taxable unless it has a federal taxable income. IOUs' income is taxable.<sup>12</sup>

Gross Receipts Tax - Section 203.01, F.S., imposes a gross receipts tax of 2.5 percent on utility services. The term utility service means electricity for light, heat, or power, and natural or manufactured gas for light, heat, or power. The gross receipts tax is levied on the company providing the service, but it is typically passed on to the consumer. Both the GOUs and IOUs are subject to the gross receipts tax.<sup>13</sup>

Sales Tax - Under Chapter 212, F.S., the state of Florida levies a sales and use tax that applies to receipts from the sale, storage, and use of tangible personal property and services unless specifically exempted. Both the GOU and the IOU must register as a dealer<sup>14</sup> and collect and remit tax.<sup>15</sup> Under s. 212.02(19), F.S., electrical power is tangible personal property and the sale of electrical power is taxable.<sup>16</sup>

Both the GOUs and the IOUs are exempt from paying sales tax on certain purchases which include (1) all fuel used in generation of electric power for sale,<sup>17</sup> (2) electric power or energy consumed or dissipated in the transmission or distribution of electrical power or energy for resale,<sup>18</sup> and (3) machinery and equipment used in production of electrical power from burning boiler fuels (subject to proration if using residual fuels).<sup>19</sup>

The purchase of machinery and equipment used for transportation and distribution of electrical energy is taxable for both GOUs and IOUs.<sup>20</sup> All other GOU purchases are tax exempt while all other IOU purchases are taxable.

Communication Services Tax - The communications services tax (CST) is a uniform statewide tax of communications services which includes gross receipts, state sales and use, local sales and use, and municipal utility taxes. It also includes franchise fees communications companies would pay to

---

<sup>11</sup> s. 220.12, F.S.

<sup>12</sup> ss. 220.03 and 220.11, F.S.

<sup>13</sup> s. 203.01, F.S.

<sup>14</sup> s. 212.18(3), F.S.

<sup>15</sup> s. 212.06(1)(a), F.S.

<sup>16</sup> s. 212.05(1)(e)1.c., F.S.

<sup>17</sup> s. 212.08(4)(a)2., F.S.

<sup>18</sup> s. 212.06(1)(b), F.S.

<sup>19</sup> s. 212.08(5)(c), F.S.

<sup>20</sup> ss. 212.05(1)(a)1.a. and 212.08(6), F.S.

---

<sup>6</sup> See Ch. 403, F.S., Environmental Control.

<sup>7</sup> <http://www.psc.state.fl.us/mcd/>

<sup>8</sup> see Ch. 366, F.S.

<sup>9</sup> see Ch. 125, F.S.

<sup>10</sup> s. 220.03, (1)(aa), F.S.

municipalities for the privilege of using public rights-of-ways. GOUs do not pay taxes for the operation of substitute communications systems<sup>21</sup> nor for the purchases of communications services.<sup>22</sup> However, IOUs do pay these taxes.<sup>23</sup>

**Documentary Stamps Tax** - Both the IOUs and GOUs pay documentary stamps tax on deeds used in transfers.<sup>24</sup> However, GOUs do not pay documentary stamps tax on bonds, debentures, and certificates of indebtedness, promissory notes, written obligations to pay money, mortgages, trust deeds, security agreements or other evidences of indebtedness<sup>25</sup> while IOUs are required to pay those taxes.<sup>26</sup>

**Intangible tax** - Intangible personal property is defined in chapter 199, F.S., as all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents, including, but not limited to all stocks or shares of incorporated or unincorporated companies, business trusts, and mutual funds, all notes, bonds and other obligations for the payment of money, all condominium and cooperative apartment leases of recreation facilities, land leases, and leases of other commonly used faculties, and certain leasehold or other possessory interests in real property owned by the United States, the state, any political subdivision of the state, any municipality of the state, or any agency authority, and other public body corporate of the state which are undeveloped or predominantly used for residential or commercial purposes and upon which rental payments are due. The intangible personal property of a GOU is generally exempt from both the recurring and nonrecurring tax.<sup>27</sup> IOU intangible personal property is generally subject to both the recurring and nonrecurring tax.<sup>28</sup>

**Property Tax** - Ad valorem, “according to value,” is a tax imposed on the value of property. GOUs are generally exempt from these taxes<sup>29</sup> while IOUs are subject to them.<sup>30</sup>

<sup>21</sup> s. 202.12(1)(b), F.S.

<sup>22</sup> s. 202.125, F.S.

<sup>23</sup> s. 202.12(1), F.S.

<sup>24</sup> s. 201.02, F.S.

<sup>25</sup> s. 201.24, F.S.

<sup>26</sup> ss. 201.07 and 201.08, F.S.

<sup>27</sup> s. 199.183, F.S.

<sup>28</sup> ss. 199.032 and 199.133, F.S.

<sup>29</sup> s. 196.199, F.S.

<sup>30</sup> s. 196.001, F.S.

## Water and Wastewater

### Regulation

Private companies and governmental entities have a monopoly to provide water and wastewater services within a territory. Pursuant to Chapter 367, F.S., the commission has regulatory authority over 182 investor-owned water and wastewater utilities in 36 of 67 counties and comprise of more than 1,000 systems. Each of the remaining 31 counties have opted to regulate water and wastewater systems within their boundaries. The commission establishes and monitors earnings levels for regulated water and wastewater companies under its jurisdiction. In addition, the commission oversees quality of service issues and addresses customer complaints.

All water and wastewater utilities must also meet standards set by the regional water management districts, the state Department of Environmental Protection, and federal clean water requirements. The provision of chapters 373 and 403, F.S., apply to GOUs and IOUs equally.

### Taxes

Generally, government owned water and wastewater utilities are not subject to the various taxes discussed above for electric utilities while the investor owned utilities are subject to the tax with the following exceptions. Investor owned utilities are not subject to gross receipts tax and sales of water are generally exempt from sales tax.<sup>31</sup> Both types of utilities must pay documentary stamps tax on deeds used in transfers.<sup>32</sup>

## Telecommunications and Advanced Services and Cable

### Regulation

Telecommunications services – The Florida Telecommunications Act of 1995 substantially amended Chapter 364, F.S., to open local telecommunications service to competition. At that time, 13 companies were certificated at the commission. Currently, there are 10 companies certificated as incumbent local exchange telecommunications companies and 431 companies certificated as competitive local exchange

<sup>31</sup> s. 212.08(4)(a)1., F.S.

<sup>32</sup> s. 201.02, F.S.

telecommunications companies (CLECs). Of those 431 CLECs, 10 are municipalities.<sup>33</sup>

Advanced services – Under Chapter 47, United States Code, the Federal Communications Commission has jurisdiction over all communications services. According to the FCC, advanced telecommunications capability is the availability of high-speed, switched, broadband telecommunications that enable users to originate and receive high-quality voice, data, graphics, and video using any technology.<sup>34</sup> Advanced services may include digital subscriber line (DSL), cable, optic fiber, wireless, and broadband over power line (BPL) and the necessary switches and software to create the service. The Florida Legislature has specifically exempted from certain regulation by the PSC wireless, broadband, and Voice over Internet Protocol (VoIP) services. Commission jurisdiction remains unaddressed as to certain issues such as interconnection.

Cable - Cable company facilities are broadband facilities capable of providing may advanced services, including voice, data, and video. Cable companies are regulated at the federal level, but states are allowed franchise and taxing authority. Neither state nor federal law prohibit local governments from providing cable services. Federal law does prohibit counties and municipalities from awarding exclusive cable franchises and, if a cable operator provides telecommunications services, that operator cannot be required to obtain a franchise for the provision of telecommunications services.<sup>35</sup>

#### Taxes

Corporate income tax - Under s. 220.03 and 220.11, F.S., GOUs do not pay corporate income tax unless they have federal taxable income. However, IOUs do pay corporate income tax.

Gross receipts tax - Both GOUs and IOUs are subject to gross receipts tax administered under s.202.01(1)(a)2., F.S.

Sales Tax - Both GOUs and IOUs must register as a dealer if selling or leasing tangible personal property<sup>36</sup> and must collect and remit the sales tax.<sup>37</sup> A sale of communications service is subject to the CST. Purchases by a GOU of communications services are exempt from sales tax.<sup>38</sup> Purchases by a dealer are not taxable if for resale<sup>39</sup> or internal use.<sup>40</sup>

Communications Services Tax - In 2000, Chapter 2000-260, Laws of Florida, substantially changed Florida's communications tax law by creating a new chapter 202, F.S., the Communications Services Tax Simplification Law. This law subjected communications services to a uniform statewide tax rate and a local tax to be administered by the Department of Revenue. The CST is a combination of seven different types of communications taxes and fees combined into a two-tiered tax consisting of a state tax and a local option tax on communications services. The CST combines the sales tax on communications services, the local public services tax, and local franchise fees on telecommunications companies and cable companies, allocates the gross receipts tax on communications services, and provides a permit fee option for local governments. The CST provides for a revenue neutral taxing scheme that is administered by the Department of Revenue. Both GOU and IOU must register as a dealer<sup>41</sup> and collect and remit tax.<sup>42</sup> Sale of communications service by both GOU and IOU are subject to tax.<sup>43</sup> GOU purchases of communications services are exempt from paying tax.<sup>44</sup> Finally, Purchases by a dealer are not taxable if for resale<sup>45</sup> or internal use.<sup>46</sup>

Documentary Stamps Tax - Both the IOU and GOU pay the documentary stamps tax on deed used in transfers.<sup>47</sup> However, GOUs do not pay documentary stamps tax on bonds, debentures, and certificates of indebtedness, promissory notes, written obligations to pay money, mortgages, trust deeds, security agreements

<sup>33</sup> The municipal CLECs certificated by the PSC as of October 2004 include: Cities of Daytona, Gainesville, Lakeland, Ocala, Quincy, and Tallahassee, Ft. Pierce Utility Authority d/b/a Gigaband, Kissimmee Utility Authority, Utility Commission of New Smyrna Beach d/b/a Spanks Communications, and Utility Board of the City of Key West d/b/a Keys Energy Services.

<sup>34</sup> p. 37, *Newton's Telecom Dictionary*, Harry Newton, CMP Books, 2001.

<sup>35</sup> 47 U.S.C. § 541.

<sup>36</sup> s. 212.18(3), F.S.

<sup>37</sup> s. 212.06(1)(a), F.S.

<sup>38</sup> s. 202.125, F.S.

<sup>39</sup> s. 202.16(2), F.S.

<sup>40</sup> s. 202.11(14)(b)6., F.S.

<sup>41</sup> s. 202.17, F.S.

<sup>42</sup> s. 202.16, F.S.

<sup>43</sup> s. 202.12(1)(a), F.S.

<sup>44</sup> s. 202.125, F.S.

<sup>45</sup> s. 202.16(2), F.S.

<sup>46</sup> s. 202.11(14)(b)6., F.S.

<sup>47</sup> s. 201.02, F.S.

or other evidences of indebtedness<sup>48</sup> while IOUs are required to pay the tax.<sup>49</sup>

Intangible Tax - The intangible personal property of a GOU is generally exempt from both the recurring and nonrecurring tax.<sup>50</sup> IOU intangible personal property are generally subject to both the recurring and nonrecurring tax.<sup>51</sup>

Property Tax - GOUs are generally exempt from these taxes<sup>52</sup> while IOUs are subject to them.<sup>53</sup>

October 1, 1997, Chapter 97-197, Laws of Florida, was enacted. The law provided that a telecommunications company which is a municipality, county or other entity of local government may obtain and hold a certificate required by ch. 364, F.S., and that it serves a public purpose only if the local government accounts separately for money and property utilities in providing those services, is subject to all requirements applicable to telecommunications companies, and pays ad valorem taxes or equivalent fees on its telecommunications facilities. Exempt from these provisions would be a municipality, county or other entity of local government providing telecommunications services internally or providing internal information to the public for a fee.<sup>54</sup>

The exemption that municipalities, counties, and other entities of local government had for ad valorem taxes on property used for the purpose of providing telecommunications services to the public, intangible taxes on telecommunications service-related property and sales taxes on purchases was removed. (Public use airports and public hospital authorities were excepted.)<sup>55</sup>

On appeal to the Florida Supreme Court is the decision by the First District Court of Appeals<sup>56</sup> affirming the Circuit Court for Leon County's order granting summary judgment in favor of the City of Gainesville and declaring portions of Ch. 97-197, Laws of Florida, unconstitutional. Specifically, the trial court found:

---

<sup>48</sup> s. 201.24, F.S.

<sup>49</sup> ss. 201.07 and 201.08, F.S.

<sup>50</sup> s. 199.183, F.S.

<sup>51</sup> ss. 199.032 and 199.133, F.S.

<sup>52</sup> s. 199.183, F.S.

<sup>53</sup> s. 196.001, F.S.

<sup>54</sup> ss. 125.421 and 166.047, F.S.

<sup>55</sup> ss. 125.421 and 166.047, F.S.

<sup>56</sup> Dept. of Revenue v. City of Gainesville, 859 So. 2d 595 (Fla. 1<sup>st</sup> DCA 2003).

The portions of Chapter 97-197, Laws of Florida, as codified in Sections 166.047 and 196.012(6), Florida Statutes, that (i) seek to subject municipal property used by a municipality to provide telecommunications services to the public for hire to ad valorem taxation "or fees in an amount equal thereto," (ii) purport to define what is a "municipal purpose" under the Constitution under Article VII, §3(a) of the Florida Constitution, and (iii) condition municipalities' holding or exercise of their telecommunications certificates of approval on the payment of ad valorem taxes or equivalent "fees" on such telecommunications property are hereby declared facially unconstitutional, because they irreconcilably contravene Article VII, §3(a) of the Florida Constitution.

In confirming the trial court's decision, the First DCA stated that the City's property in question:

. . . is being used by the City for a municipal purpose and the legislature's attempt to condition the provision of these municipal services on the payment of any amount equal to any ad valorem tax liability is in direct conflict with Article VII, §3(a) of the Florida Constitution.<sup>57</sup>

The Supreme Court heard oral argument on October 5, 2004. While decision will be forthcoming, none is expected prior to completion of this report.

## METHODOLOGY

Staff reviewed relevant Florida Statutes and Internet sites. Staff also discussed the issues with staff of the Department of Revenue and various industry and government representatives and gathered other relevant information.

## FINDINGS

Electric and Water and Wastewater - The electric and water and wastewater services are provisioned by both governmental and private entities. Statutes regulating these entities providing these services sometimes differentiate between providers or apply to the services without regard to the provider. Most important about the provisioning of these services is that electric service and water and wastewater service are provided under a monopoly granted for a particular territory. Without a competitive market, there is no reason to create competitive parity for the providers of these services.

---

<sup>57</sup> Gainesville, 859 So. 2d, at 597.

Telecommunications, Advanced services and Cable - Unlike electric and water and wastewater service, which are provided by monopolies, telecommunications and advanced services are provided by companies that compete for customers. Since 1995, with the passage of the Telecommunications Act, the policy of this state is to allow for the competitive provision of telecommunications services. Congress took the same step in 1996. Since that time, the goal has been to reduce regulation and encourage competition and to create a market that dictates price, service and quality standards, and products.

The following discussion addresses the overall question, after determining the effects of competition, what changes to the relevant statutes, if any, are necessary so that governmental and non-governmental entities providing the same or similar services operate on the same footing in a competitive market place. As an initial consideration, a recent case in the United States Supreme Court has answered the question of whether states may limit or prohibit a governmental entity from providing communications services. The U.S. Supreme Court upheld a Missouri statute that prohibited political subdivisions from providing or offering for sale, either wholesale or retail, a telecommunications service. The Court found that the preemptive provision in 47 U.S.C. § 253, does not contemplate local governments within the meaning of the term “any entity.”<sup>58</sup> Both Louisiana and Tennessee have placed restrictions on governmental entities entering into the telecommunications business. Based upon the Nixon decision, the legislature is not preempted by federal law from prohibiting or placing restrictions on governmental entities offering telecommunications services.

Based upon the discussion of taxes above, no financial impact can be determined regarding the taxes governmental entities would otherwise remit nor a comparison made between governmental and nongovernmental entities. Moreover, because each business is different, information cannot be generalized. Therefore, any financial impact is indeterminate.

Addressing regulations, governmental entities became subject to certain requirements as of October 1997. Under ss. 125.421 and 166.047, F.S., in order to provide telecommunications services, governmental

<sup>58</sup> Nixon v. Missouri Municipal League, 124 S. Ct. 1555 (U.S. 2004).

entities must obtain a certificate under ch. 364, F.S., thus submitting to the jurisdiction of the commission. Moreover, for the provision of such service to be a public purpose, the governmental entity (1) must separately account for the revenues, expenses, property, and source of investment dollars associated with the provisions of such service, (2) is subject without exemption to all local requirements applicable to telecommunications companies, and (3) pays on its telecommunications facilities ad valorem taxes, or fees in amounts equal thereto, to any applicable taxing jurisdiction.<sup>59</sup>

A review of the competitive environment is also necessary. Where competition is robust, it can be argued that no public purpose is served when a governmental entity competes in such a market, but on the other hand, that leveling of the playing field is unnecessary. Alternatively, should there be little or no competition, governmental entities may be providing an essential service for their constituents.

There are ten governmental entities that have a certificate pursuant to ch. 364, F.S.<sup>60</sup> Because cable companies are not registered at the state level, no list of government owned cable companies is available, and therefore, staff was unable to determine the number of cities offering cable service.

The information in Table 1 below reflects that of the ten cities certificated by the commission, three are currently not providing retail service, and two more offer internet access only. One city offers long distance only, reselling the incumbent’s service and has approximately 20 customers.<sup>61</sup> There are three cities in BellSouth’s territory that appear to offer a wide range of communications services – Gainesville, Ocala, and New Smyrna Beach. The city of Quincy is in Quincy Telephone/TDS territory. All facilities are fiber based and each city stated that they began to offer high-speed internet access/broadband services because at the time these services were not available from the local carrier.<sup>62</sup> The table also reflects the size of the municipally owned telecommunication company and the incumbent company that provides service in the area.

<sup>59</sup> ss 125.421 and 166.047, F.S.

<sup>60</sup> [www.psc.state.fl.us](http://www.psc.state.fl.us)

<sup>61</sup> It should be noted when reviewing Table 1 that a customer can be a single residence or business to a large corporation or regional hospital.

<sup>62</sup> Staff telephonic interview with companies.

Section 364.386, F.S., requires the commission to prepare and deliver a report on the status of competition in the telecommunications industry to the Governor and Legislature by December 1 of each year and lists six issues the commission must address in its report. Available to staff was the draft report for 2004 which was approved by the commissioners on November 2, 2004.

The draft report provides a snapshot of the current level of competition in Florida. According to the draft report, the data indicate that as of May 31, 2004, CLECs have increased their overall market share from 16% in 2003 to 17% in 2004. The CLECs' share of the business market has remained stable at 30% for both 2003 and 2004. The CLECs' share of the residential market has increased from 9% in 2003 to 10% in 2004. Finally, total local exchange access lines in Florida continue to decline as Florida's population continues to grow.<sup>63</sup>

The draft report discusses different factors that may affect competition. One such factor is actions by the FCC in response to a DC Circuit Court of Appeals decision that supports market based prices for UNE-P (unbundled network element platform that includes the local loop and switching) rather than commission ordered cost based rates. The FCC appears to encourage facilities based competition rather than continued reliance on the incumbent's network. The draft report notes that UNE-P is a way for CLECs to offer services with little investment. Most competition is in BellSouth territory because, according to the draft report, as BellSouth's UNE rates are the lowest of all ILECs.

According to the draft report, intermodal competition which includes cellular, VoIP (Voice over Internet Protocol), cable, and broadband, appears to be replacing residential and business access lines. Companies providing these alternative services are not building the same type of network as the local exchange companies, but are relying on new technology to deliver not only voice, but data and video services. These facilities include cable, wireless, or fiber which become the pipe for broadband. ILECs appear to be losing share to cable and wireless providers. While VoIP is in its infancy at this time, once certain issues are resolved (e.g., reliability, service quality, E911, and law enforcement requirements), it should gain market share.

<sup>63</sup> DRAFT Annual Report on Competition, Telecommunications Markets in Florida as of May 31, 2004, Florida Public Service Commission, October 2004.

As stated earlier, action at the federal level is encouraging competition from companies that build their own facilities. The FCC's policies appear to be pushing competition in this direction. On October 14, 2004, the FCC announced that it took further steps to encourage deployment of fiber optic broadband networks capable of delivering advanced data, video and voice service to the mass market by incumbent local telephone companies by relieving those companies of most obligations to lease advanced fiber-to-the-curb loops, where fiber is extended within 500 feet of a customer's premises.<sup>64</sup> The same day, the FCC also adopted rules for broadband over power lines to increase competition and promote broadband service to all Americans.<sup>65</sup>

While the future of intermodal competition looks promising, traditional landline competition envisioned by the 1995 Act appears to be a few more years down the road. A compelling argument is that government does not need to be in the business of providing competitive services. However, the issue is not yet ripe because of the current level of competition and the recognized policy of different levels of regulation for different providers.

Ch. 364, F.S., recognizes the need to maintain different levels of regulation for different providers because small and large incumbent local exchange telecommunications carriers (ILECs) are treated differently,<sup>66</sup> as are CLECs and ILECs,<sup>67</sup> contains provisions where equal treatment are triggered by future, conditional events.<sup>68</sup> Finally, providers of other services, wireless and VoIP, are not subject to ch. 364, F.S., at all.<sup>69</sup>

In addressing the question of whether governmental entities should be prohibited from entering into this market or whether restrictions should be imposed upon them, the data indicates that municipalities are not rushing into the telecommunications market to provide local residential telecommunications service. For example, 10 municipalities, out of 431 CLECs, have been certificated since 1996. Most that are providing

<sup>64</sup> FCC 04-248. [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-253127A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253127A1.pdf)

<sup>65</sup> *Report and Order*, FCC 04-245.

[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-253125A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253125A1.pdf)

<sup>66</sup> e.g., ss. 364.052 and 364.164(5), F.S.

<sup>67</sup> e.g., s. 364.377, F.S.. Ch. 364, F.S.

<sup>68</sup> e.g., ss. 364.01(3) and (4) and 364.164(8), F.S.

<sup>69</sup> s. 364.02(13), F.S.

communication services focus on broadband services with their own facilities, some of which were in place to serve internal functions. Generally the utility department manages the business operations of the communications services. Finally, the main reason cited for entering into the communications service were because they had facilities in place for internal operations (e.g. Gainesville Regional Utilities), no such facilities were offered by the local exchange or other company (e.g., City of Quincy), and the city recognized such facilities were needed in order to attract industry to the area.

Allowing local governments to meet the needs of their communities benefits the local citizens. As suggested in the PSC draft competition report, the more populated areas will realize the benefits of competition sooner than less populated areas. However, local governments are stepping in to fill this need sooner. When local governments opt to provide service in a small ILEC territory, it could cause the ILEC to lose customers. However, most local governments are installing broadband facilities and generally only when the LEC chose not to provide the service at that time. Subsequent to the local governments providing service, LECs have tended to upgrade their service in that area providing competition.

**RECOMMENDATIONS**

Based upon the finding that electric and water and wastewater services are provided by monopolies, staff recommends making no changes to statutes relating to the provisioning or taxing of these services at this time.

Staff recommends the Legislature continue to monitor the status of competition and the actions of local governments. At such time that communications competition is flourishing with adequate alternatives to the customers of Florida or local governments overreach their public purpose another review may be necessary.

City <sup>70</sup>	Popula tion by City County <sup>71</sup>	ILEC Territory <sup>72</sup> Access Lines <sup>73</sup>	Services <sup>74</sup>
Daytona Beach	64,889 470,770	BellSouth <sup>75</sup> 5,402,473	Unable to determine if any service offerings.
Gainesville (GRU)	117,182 231,296	BellSouth 5,402,473	Residential/business phone; special and high-speed access; internet; wholesale -all over fiber
Lakeland	88,741 511,929	Verizon 2,177,390	Internal network only.
Ocala	281,966 47,139	Sprint 1,957,211	Internal fiber optic cable, high-speed ISP service. Service to commercial, business & gov't.
Quincy (NetQuincy)	7,352 46,491	Quincy Telephone/TD S <sup>76</sup> 14,839	Contract w/Alcatel, Inc to provide broadband fiber optic - voice, data, video. dial-up; fiber w/dial-up; new customer fiber. Wants 3,000 customers w/in 2 yrs. Also expanding cable (Comcast in area).
Tallahassee	162,310 255,500	Sprint 1,957,211	Considering only Wi-Fi for downtown and leasing dark fiber.
Ft. Pierce (Utility Authority)	38,732 211,898	BellSouth 5,402,473	Internet access via fiber optics and internal facilities.
Kissimmee	52,749 210,438	Sprint 1,957,211	Internet access, phone service agent.
New Smyrna Beach (Utility Authority)	20,595 470,770	BellSouth 5,402,473	Residential phone service by UNE-P with 17,000 retail customers. Provides some wireless internet, cable, VOIP. Currently building fiber network. 6,000+ internet customers. Serves outside territory.
Key West Utility Bd.	25,811 80,537	BellSouth 5,402,473	LD only - BST reseller, approx. 20 customers.

<sup>70</sup> [www.psc.state.fl.us/mcd/handler.cfm](http://www.psc.state.fl.us/mcd/handler.cfm)

<sup>71</sup> Pp. 8-21, Florida Estimates of Population 2003, Population Program - Bureau of Economic and Business Research, University of Florida, 2003. ([www.bcbcr.ufl.edu](http://www.bcbcr.ufl.edu))

<sup>72</sup> [www.psc.state.fl.us/general/publications/exchangemap.pdf](http://www.psc.state.fl.us/general/publications/exchangemap.pdf)

<sup>73</sup> Annual Report on Competition, pg. 10. Telecommunication Markets in Florida as of May 31, 2004, Florida Public Service Commission.

<sup>74</sup> Phone Interviews, [www.psc.state.fl.us/mcd/handler.cfm](http://www.psc.state.fl.us/mcd/handler.cfm)

<sup>75</sup> Annual Report on Competition, pg. 10. Telecommunication Markets in Florida as of May 31, 2004, Florida Public Service Commission., PSC staff information on small ILECs available in staff's official file.

<sup>76</sup> "Quincy offers broadband service," Tallahassee Democrat, Oct. 5, 2004.