

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1191 CS Telecommunication Rates
SPONSOR(S): Legg and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	16 Y, 0 N, w/CS	Cater	Holt
2) Local Government Council	7 Y, 0 N	Camechis	Hamby
3) Finance & Tax Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

This bill addresses ex parte presentations by any person to Commissioners and staff of the Public Service Commission (PSC), price regulation of basic services provided by incumbent local exchange telecommunications companies (LECs), retail service quality requirements imposed on LECs, and regulatory treatment of LEC retail services.

Ex Parte Presentations. First, the bill requires the PSC to adopt rules regulating ex parte presentations in PSC proceedings and provides guidelines for establishing varying degrees of disclosure for three types of proceedings:

- o Exempt proceedings, in which ex parte presentations may be freely made;
- o Permit-but-disclose proceeding in which ex parte presentations are permissible but subject to certain disclosure requirements; and
- o Restricted proceedings, in which ex parte presentations are generally prohibited.

The bill also provides procedures for processing written ex parte presentations and memoranda of oral ex parte presentations and definitions of specific terms.

Price and Service Regulation. The bill allows LECs to either file price tariffs with the PSC, as is currently required, or publicly publish the terms, conditions, and rates for each of its nonbasic services. Further, the bill allows a LEC to set or change, on 1 day's notice rather than 15 day's notice, the rate for each nonbasic service.

In addition, the bill deletes a provision that allows basic local service provided by certain LECs to be subject to the same regulatory treatment as nonbasic services at the discretion of the LEC. Deletion of this provision limits the ability of certain LECs to increase rates for basic services after parity is achieved in the future. The bill also requires a LEC to petition the PSC for approval to reduce its retail service quality requirements to minimal requirements currently imposed on competitive providers.

Lastly, the bill allows certain LECs to petition the PSC for less stringent regulatory treatment of retail services at a level no greater than that currently imposed on competitive providers. In its petition, a LEC must show and the PSC must find that:

- o The reduction of regulatory oversight is in the public interest;
- o The level of competition faced by the LEC is sufficient and sustainable to allow competition to supplant regulation by the PSC; and
- o The LEC will reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon PSC approval of its petition.

The PSC will incur indeterminate additional expenditures associated with adopting rules relating to ex parte communications and with publishing notices of ex parte communications received by commissioners and staff of the PSC; however, the PSC may experience lower administrative costs if LECs publicly publish nonbasic service rate increases rather than filing tariffs with the PSC.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -The bill requires the PSC to adopt rules governing ex parte communications in PSC proceedings and provides guidelines; reduces the authority of certain LECs to increase future rates for basic services; revises the process that LECs must follow in order to obtain the same regulatory treatment of services as competitive providers; and allows each LEC, at its option, to either file price tariffs with the PSC or to publicly publish the terms, conditions, and rates for each of its nonbasic services.

B. EFFECT OF PROPOSED CHANGES:

Background Information

Incumbent Local Exchange Companies ("LECs") are defined as telephone companies that were historically granted exclusive franchises to build, maintain, and provide local telephone service, and include any company certificated by the PSC to provide local exchange telecommunications service in this state on or before June 30, 1995. The following LECs currently provide service in Florida¹:

- ALLTEL Florida, Inc.
- BellSouth Telecommunications, Inc.
- Frontier Communications of the South, Inc.
- GTC, Inc. d/b/a GT Com
- ITS Telecommunications Systems, Inc.
- Northeast Florida Telephone Company d/b/a NEFCOM
- Quincy Telephone Company d/b/a TDS Telecom/Quincy Telephone
- Smart City Telecommunications LLC d/b/a Smart City Telecom
- Sprint-Florida, Incorporated
- Verizon Florida Inc.

According to staff of the PSC, the following three LECs have 1 million or more access service lines in Florida, but none of the LECs have reduced their intrastate switched network access charges to parity with interstate switched network access charges:

- BellSouth Telecommunications, Inc.
- Sprint-Florida, Incorporated
- Verizon Florida Inc.

A Competitive Local Exchange Telecommunications Company ("competitive provider") includes any company certificated by the PSC to provide local exchange telecommunications in this state on or after July 1, 1995. According to PSC records, there are currently 410 competitive carriers certificated in Florida.²

¹ PSC Website, <http://www.psc.state.fl.us/apps/utility/mcd/Display.aspx?numPerPage=50>, viewed on April 17, 2006.

² PSC Website, <http://www.psc.state.fl.us/apps/utility/mcd/Display.aspx?numPerPage=50>, viewed on April 17, 2006.

Ex Parte Communications

Current Situation

Black's Law Dictionary defines "ex parte communication" as a "communication between counsel and the court when opposing counsel is not present. Such communications are ordinarily prohibited."³ Section 350.042, F.S., addresses ex parte communications with commissioners of the Public Service Commission (PSC) but does not address ex parte communications with PSC staff. That section provides in part as follows:

(1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

This section further prohibits ex parte communications with commissioners regarding the merits of a case with the exception of:

- Communications from individual residential customers representing only themselves;
- Rulemaking proceedings;
- Declaratory statement proceedings;
- Workshops; and
- Internal Affairs meetings.

Ex parte communications between PSC staff and parties to most cases in which hearings are required are governed by PSC Rule 25-22.033, F.A.C. The rule requires that all parties receive copies of any written communication and that reasonable notice be given to all parties of scheduled meetings and conference calls regarding the merits of a case. This rule does not apply to proposed agency action proceedings prior to the commission vote, rulemaking proceedings, declaratory statement proceedings, docket and undocketed audits, telephone service evaluations, water and wastewater staff assisted rate cases, non-rate case tariffs, and electric and gas safety inspections.

Effect of Proposed Changes

This bill amends s. 350.042(1), F.S., to provide an additional exception to the prohibition against ex parte communications with PSC commissioners. The bill exempts communications specifically allowed in s. 120.80(13)(d), F.S., of the Florida Administrative Procedure Act, and s. 364.017, F.S., which is created by this bill.

The bill creates s. 364.017, F.S., relating to ex parte communications. To ensure the fairness and integrity of its decisionmaking, the bill requires the PSC to adopt rules regulating ex parte presentations in PSC proceedings and provides guidelines for establishing varying degrees of disclosure for three types of proceedings:

1. Exempt proceedings, in which ex parte presentations may be freely made;
2. Permit-but-disclose proceeding in which ex parte presentations are permissible but subject to certain disclosure requirements; and
3. Restricted proceedings, in which ex parte presentations are generally prohibited.

³ Black's Law Dictionary (8th ed. 2004).

Regardless of the type of proceeding, there must be a designated period of time prior to the date scheduled for a decision to be made when all presentations or correspondence to PSC decisionmaking staff are prohibited. The only exceptions to this requirement include those instances where the presentation is otherwise allowed by statute; the presentation relates to emergency situations involving public health, safety, or welfare; or the presentation involves classified security information.

If a person submits a written ex parte presentation that is not exempt, that person must submit two copies of the presentation to the commission clerk under separate cover no later than the next business day. If a person makes an oral ex parte presentation that is not exempt and that presents data or arguments not already reflected in written filings, the person must submit to the commission clerk an original and one copy of a memorandum summarizing the new data or arguments no later than the next business day. The memorandum must also be provided to the commissioners or PSC employees involved in the oral presentation. The memoranda must contain a summary of the substance of the presentation, not just a list of subjects discussed.

The commission clerk is required to place in the public record all written ex parte presentations and memoranda reflecting oral ex parte presentations. The clerk must issue public notice of all such submissions received, at least twice per week, for any permit-but-disclose proceeding.

The bill creates the following definitions for purposes of this section:

- “Decisionmaking personnel” means “any member, officer, or employee of the commission who is or may reasonably be expected to be involved in formulating a substantive recommendation or decision, rule, or order in a proceeding. Any person who has been made a party to a proceeding or who otherwise has been excluded from the decisionmaking process shall not be treated as a decisionmaker with respect to that proceeding, and any person designated as part of a separate trial staff shall not be considered a decisionmaking person in the designated proceeding.”
- “Ex parte presentation” means “any presentation that, if written, is not served on the parties of record to the proceeding or, if oral, is made without advance notice to the parties and without opportunity for the parties to be present.”
- “Presentation” means “a communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or outcome of a proceeding. Excluded from this definition are inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending proceedings, and inquiries relating solely to the status of a proceeding.”

Tariff Filings

Current Situation

Section 364.051(5)(a), F.S., requires each incumbent local exchange telecommunications company (LEC) to maintain tariffs with the PSC containing the terms, conditions, and rates for each of its nonbasic services, and allows LECs to set or change, on 15 days' notice, the rate for each of its nonbasic services.

Effect of Proposed Changes

This bill amends s. 364.051(5)(a), F.S., to allow LECs, in lieu of filing tariffs at the PSC, to publicly publish the terms, conditions, and rates of nonbasic services. The proposed change also allows LECs to set or change those rates on one day's notice rather than 15 days' notice.

Section 364.051(5)(b), F.S., provides the PSC with continuing regulatory oversight over nonbasic services to ensure the resolution of service complaints, prevent cross-subsidization of nonbasic service with revenues from basic service, and ensure that all providers are treated fairly. If LECs are not required to file price tariffs for nonbasic services with the PSC or to maintain past price lists that were publicly published, the PSC may have difficulty providing continued regulatory oversight of nonbasic services.

Rates for Basic and Nonbasic Services

Current Situation

Section 364.051(3), F.S., addresses rate increases for basic services provided by LECs, and allows a LEC to adjust, on 30 days' notice, its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent. Section 364.051(6), F.S., currently allows a LEC that has more than 1 million access lines in Florida the option of having its basic services treated as nonbasic services once parity is achieved in the future. This means that, once parity is achieved, a LEC may decide to increase rates for basic services in the same manner that rates for nonbasic services are increased.

Section 364.051(5), F.S., addresses rate increases for nonbasic services, and provides that an increase in any nonbasic service category may not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area, at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period. Increases in nonbasic rates are presumptively valid.

Therefore, in the future, if a qualified LEC chooses to treat basic services the same as nonbasic services, rate increases for basic services may not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area, at which time the price for any nonbasic service category may be increased in an amount not to exceed 20 percent within a 12-month period. These increases in basic rates are also presumptively valid.

Effect of Proposed Changes

This bill amends s. 364.051(6), F.S., to delete the provision that allows LECs the option of treating basic services as nonbasic services. Therefore, after parity is reached, a LEC may adjust, on 30 days' notice, its basic service revenues once in any 12-month period in an amount not to exceed the change in inflation less 1 percent.

Retail Service Quality Requirements

Current Situation

Retail service quality requirements address such things as a company's response time to requests for new services and response times to reports of service interruptions. With respect to a LEC that has more than 1 million access lines in service that has achieved parity, s. 364.051(6), F.S., provides that basic services may, at the company's election, be subject to the same regulatory treatment as nonbasic services. The company's retail quality of service requirements will thereafter be no greater than those applicable to competitive providers, without prior approval of the PSC. However, the PSC may, within 120 days after election by the LEC, find that relaxation of service quality standards is not warranted in some or all markets served by the LEC. The PSC is authorized to allow relaxation of quality standards

in some or all markets. The PSC may not impose service quality requirements for competitive providers greater than those in effect on January 1, 2003.

Effect of Proposed Changes

The bill amends s. 364.051(6), F.S., to provide that after a LEC with 1 million or more access lines in Florida achieves parity, the LEC's retail service quality requirements that are not already equal to the requirements imposed on competitive carriers will, upon the LEC's request to the PSC, be no greater than those imposed upon competitive carriers unless the PSC, within 120 days after the LEC submits its request, determines otherwise.

Regulatory Treatment of Retail Services

Current Situation

Section 364.051(7), F.S., provides that if a LEC with more than 1 million access lines in Florida achieves parity and has elected to have its basic services treated as nonbasic services, the LEC may, at that time or thereafter, petition the PSC for regulatory treatment of its retail services at a level no greater than that currently imposed on competitive providers. In order to receive reduced regulatory treatment, the LEC must:

- Demonstrate that a reduction of regulatory oversight is in the public interest; and
- Reduce its intrastate switched network access rates to a level equal to that of its intercarrier compensation rates upon PSC approval of its petition.

The PSC must act on the petition within nine months and, in its consideration of the petition, determine the extent to which the level of competition faced by the LEC permits, and will continue to permit, the regulatory treatment of LEC retail service regulated on the same basis as those of competitive providers. The PSC is prohibited from increasing the level of regulation on retail services offered by competitive providers beyond that which is in effect on the date of the LEC petition.

Section 364.337, F.S., provides for minimal regulation of competitive carriers, requiring certification by the PSC and providing for basic local telecommunications standards. Section 364.337(5), F.S., provides the PSC with continuing regulatory oversight of the provision of basic local exchange telecommunications service provided by competitive providers for the sole purposes of establishing reasonable service quality criteria, assuring resolution of service complaints, and ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.

Effect of Proposed Changes

This bill continues to allow a LEC with more than 1 million access lines that has achieved parity to petition the PSC for minimal regulatory treatment of its retail services at a level no greater than that currently imposed on competitive providers, but amends s. 364.051(7), F.S., to require the LEC to show and the PSC to find that:

- A reduction of regulatory oversight is in the public interest;
- *The level of competition faced by the LEC is sufficient and sustainable to allow competition to supplant regulation by the PSC;* and
- The LEC will reduce its intrastate switched network access rates to a level equal to that of its intercarrier compensation rates upon PSC approval of the petition.

The second bullet above is a new requirement created by this bill. The bill deletes the provision requiring the PSC to determine the extent to which the level of competition faced by a LEC permits and will continue to permit the company to have its retail services regulated differently than its competitors.

C. SECTION DIRECTORY:

- Section 1. Amends s. 350.042, F.S., specifying provisions for ex parte communications procedures.
- Section 2. Creates s. 364.017, F.S., providing for ex parte communications relating to PSC proceedings; directing the PSC to adopt rules to regulate such communications.
- Section 3. Amends s. 364.051, F.S., relating to price regulation; allowing certain local exchange telecommunications companies to publish terms, conditions, and rates for nonbasic services in lieu of maintaining tariffs with the PSC; revising the notice requirement for price changes to nonbasic services; removing a provision that allows a company to elect that its basic services be subject to the same regulatory treatment as its nonbasic services; providing for a request from a company to the PSC to make certain reductions in its retail service quality requirements; revising criteria for granting a petition to change regulatory treatment of retail services.
- Section 4. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues: None
- 2. Expenditures: The PSC will incur indeterminate additional expenditures associated with adopting rules relating to ex parte communications and with publishing notices of ex parte communications received by commissioners and staff of the PSC; however, the PSC may experience lower administrative costs if LECs publicly publish nonbasic service rate increases rather than filing tariffs with the PSC. In addition, costs of providing regulatory oversight of LECs may be reduced in the future if the PSC grants LEC petitions for reductions in current regulatory treatment of retail services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues: None
- 2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The LECs may experience a reduction in costs if a LEC publicly publishes price lists for nonbasic services rather than filing price tariffs with the PSC. In addition, LECs may experience an economic benefit if the PSC grants petitions for reductions of regulatory oversight in the future. Consumers potentially benefit from the reduction in authority of LECs to increase future rates for basic services, assuming the qualified LECs would have increased future rates in excess of the change in inflation less 1 percent.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None

B. **RULE-MAKING AUTHORITY:** The bill requires the PSC to adopt rules regulating ex parte communications in PSC proceeding.

C. **DRAFTING ISSUES OR OTHER COMMENTS:** The bill amends s. 364.051(5)(a), F.S., to allow a LEC to publicly publish, in lieu of filing tariffs at the PSC, the terms, conditions, and rates of nonbasic services and allows LECs to set or change those rates on one day's notice. However s. 364.051(5)(b), F.S., provides the PSC with continuing regulatory oversight of nonbasic services to ensure the resolution of service complaints, prevent cross-subsidization of nonbasic service with revenues from basic service, and ensure that all providers are treated fairly. If the LECs are not required to file their prices for nonbasic services with the PSC or maintain price lists after a change in prices, the PSC may have difficulty performing its oversight function.

The current PSC statute relating to ex parte communications is located in s. 350.042, F.S., while the bill's provisions for ex parte communications are contained in s. 364.017, F.S.,. While ch. 350, F.S., governs the Public Service Commission generally, ch. 364, F.S., governs the regulation of telecommunications companies. Since the new ex parte communications provisions are created in ch. 364, F.S., these provisions may be construed to only apply to proceeding involving telecommunications companies, and not apply to proceeding involving electric, natural gas, water, or wastewater companies, which are also regulated by the PSC.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment to the bill. The strike-all amendment eliminated the language repealing the rate rebalancing provisions of the Tele-competition Innovation and Infrastructure Enhancement Act of 2003, and replaced it with new provisions. These new provisions:

- Establish guidelines regarding ex parte presentations at the PSC which:
 - Requires the PSC to establish rules;
 - Provides guidelines for public disclosure of ex parte communications; and
 - Provides definitions.
- Delete a provision allowing a LEC to elect to have its basic service treated as nonbasic service.
- Require a LEC to request from the PSC to have its service quality requirements treated the same as competitive companies.
- Allow the LEC to petition the PSC after parity is reached, for lesser regulatory treatment of its retail services. The petition must show and the PSC must find:
 - The change would be in the public interest.
 - The level of competition has been demonstrated to be sufficient and sustainable to allow regulation be supplanted by competitive forces.
 - The company has reduced its intrastate switched network access rates to its local reciprocal interconnect rate once the petition is granted.
- Allow the LEC to changes its prices for nonbasic services on only one day's notice and to publicly publish its pricelists rather than file tariffs with the PSC.