

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Government Efficiency Appropriations Committee

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BILL: CS/CS/SB 142

INTRODUCER: Government Efficiency Appropriations Committee, Communications & Public Utilities Committee and Senators Fasano & Argenziano

SUBJECT: Telecommunication Rates

DATE: April 18, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>GE</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The committee substitute:

- Deletes the provision that allows an incumbent telecommunications company to elect to have its basic services treated as nonbasic.
- Requires a company to request from the Public Service Commission (PSC or commission) that its service quality requirements be treated the same as competitive local exchange companies.
- Allows the company to petition the commission, after parity is reached, for minimal regulatory treatment of its retail services, at a level no greater than that currently imposed on competitive local exchange telecommunications providers. In its petition, it must show and the commission must find that:
  - the change would be in the public interest;
  - the level of competition has been demonstrated to be sufficient and sustainable to allow the commission's regulation to be supplanted by competitive forces; and
  - the company has reduced its intrastate switched network access rates to its local reciprocal interconnection rate upon grant of the petition.
- Allows the incumbent telecommunications companies to change the prices for its nonbasic services on only one day's notice and to publicly publish price lists rather than file tariffs.
- Provides for definitions and creates an automatic waiver of the carrier-of-last-resort (COLR) obligation for a local exchange telecommunications company (LEC) under certain circumstances. Notice to the Public Service Commission (PSC or commission) in a timely manner is required for automatic waivers. The bill also allows a LEC to petition for waiver for good cause shown based upon the facts and circumstances. Notice to the building owner or developer is required.

- Requires the commission to initiate rulemaking to implement this provision and maintains the commission's limitations of jurisdiction under ss. 364.011 and 364.013, F.S.

This bill amends sections 364.051 and 364.025 of the Florida Statutes.

## II. Present Situation:

Section 364.051, F. S., provides for price regulation of telecommunications services. Subsection (5), relating to nonbasic services, provides that each company must maintain tariffs with the commission containing the terms, conditions, and rates for each of its nonbasic services, and may set or change, on 15 days' notice, the rate for each of its nonbasic services, except that a price increase for any nonbasic service category shall not exceed 6 percent within a 12-month period until there is another provider providing local telecommunications service in an exchange area. After another provider offers service in the exchange area, the price for any nonbasic service category may be increase in an amount not to exceed 20 percent within a 12-month period, and the rate shall be presumptively valid.

Subsection (6) provides that when an incumbent local exchange telecommunications company (ILEC) with more than one million access lines has achieved parity<sup>1</sup>, as defined in s. 364.164(5), F.S., the ILEC's basic local telecommunications services may, at the company's election, thereafter be subject to the same regulatory treatment as its non-basic services. The company's retail quality of service requirements will thereafter be no greater than those applicable to competitive local exchange telecommunications companies (CLECs). However, the Florida Public Service Commission may, within 120 days of election by the ILEC, find that such relaxation of service quality standards is not warranted in some or all markets served by the ILEC. The commission is authorized to allow some relaxation of quality standards in some or all markets. The PSC may impose no service quality requirements for competitive local exchange telecommunications companies greater than those in effect as of January 1, 2003.

Subsection (7) provides that when an ILEC has met the condition of parity and has elected to have its basic services treated as non-basic, it may, at that time or thereafter, petition the commission for regulatory treatment of its retail services at a level no greater than that currently imposed on CLECs. The ILEC is required to show that granting the petition is in the public interest and it must further reduce its switched network access charges to a level equal to that of its intercarrier compensation rates. The commission must act on the petition within nine months and in its consideration of the petition must determine the extent to which the level of competition faced by the ILEC permits, and will continue to permit, the regulatory treatment of ILEC retail service regulated on the same basis as those of CLECs. The commission is prohibited from increasing the level of regulation on CLEC retail services beyond that which is in effect on the date of the ILEC petition.

Section 364.025, F.S., provides for universal telecommunications service. The term "universal" service" is defined as an evolving level of access to telecommunications services that, taking into

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<sup>1</sup>Section 364.164 (5), F.S., says that the term "parity" means that the local exchange telecommunications company's intrastate switched network access rate is equal to its interstate switched network access rate in effect on January 1, 2003, if the company has more than 1 million access lines in service. If the company has 1 million or fewer access lines in service, the term "parity" means that the company's intrastate switched network access rate is equal to 8 cents per minute.

account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. Subsection (1) provides Legislative intent that universal service objectives be maintained after the local exchange market is opened to competitively provided services. Each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable period to any person requesting such service within the company's service territory until January 1, 2009. This provision is generally referred to as the "carrier-of-last-resort" (COLR) obligation.

In Interim Project Report 2006-106<sup>2</sup>, committee staff reviewed the broad question of access by communications companies to customers in multitenant environments, which was argued impeded competition. The report addressed the broad issues of property, carrier-of-last-resort, and customer protection. The COLR obligation becomes an issue when a tenant may request service from the LEC who is obligated to provide the service but cannot gain physical access to rights-of-way or closets. The LEC must deny the customer service. The report suggested a course of action to remedy the conundrum by seeking recourse with the commission. On December 16, 2005, BellSouth filed a Petition for Waiver of Rules 25-4.066 and 25-4.067, Florida Administrative Code and to Initiate Rulemaking.<sup>3</sup> The most recent action has been to waive the time the commission has to make its determination. Current law does not provide for waiver of the carrier-of-last-resort obligations. However, s. 364.01(4)(f), F.S., provides the commission with authority to eliminate rules and regulations that delay or impair the transition to competition.

### III. Effect of Proposed Changes:

Section 1 amends subsections (5),(6), (7), and (8) of s. 364.051, F.S., relating to nonbasic services and price regulation. The bill allows an ILEC at its option to publicly publish the terms, conditions, and rates for each of its nonbasic services rather than file tariffs and to change those terms, conditions, and rates on 1 day's notice. The Public Service Commission may establish guidelines for what is to be included when a company elects to publicly publish its terms, conditions, and rates for nonbasic services.

Subsection (6) is amended to remove the ILEC's ability to elect that its basic local telecommunications service be subject to the same regulatory treatment as its nonbasic services. The bill further requires that a company that wants to reduce its service quality requirements must file a request with the commission that its retail service quality requirements be equal to those requirements that are imposed on CLECs unless the commission determines otherwise within 120 days.

Subsection (7) is amended to allow an ILEC that has reached parity under s. 364.164(5), F.S., to petition the commission for regulatory treatment of its retail service at a level no greater than the regulatory treatment imposed upon CLECs. Section 364.337, F.S., provides for the regulation of CLECs, requiring certification by the commission and providing for basic local

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<sup>2</sup> Report 2006-106, *Review of Access by Communications Companies to Customers in Multitenant Environments*, Committee on Communications and Public Utilities, September 2005.

<sup>3</sup> Public Service Commission Docket No. 050922-TL.

telecommunications standards. In addition to showing that granting the petition is in the public interest and reducing its intrastate switched network access rates to its local reciprocal interconnection rate upon grant of the commission, the company must demonstrate that the competition faced by the company is sufficient and sustainable to allow such competition to supplant regulation by the commission. The provision that the commission shall determine the extent to which the level of competition faced by the ILEC permits and will continue to permit the company to have its retail services regulated no differently than the CLECs are being regulated is deleted.

Section 2 creates a new subsection (6) of s. 364.025, F.S., to provide definitions of the terms “owner or developer,” “communications service provider,” and “communications service” to be used in the subsection. A local exchange telecommunications company (LEC) having the COLR obligation is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including apartments, condominiums, subdivisions, office buildings or office parks, when the owner or developer:

- Permits only one communications service provider to install its communications service related facilities or equipment to the exclusion of the LEC during the construction phase of the property;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the LEC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the LEC, to the occupants or residents in any manner, including collection through rent, fees or dues; or
- Enters into an agreement with the communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the LEC’s access to the property.

The LEC relieved of its COLR obligation under the provision stated above must notify the commission of that fact in a timely manner.

A LEC may seek a waiver of its COLR obligation if the commission finds good cause shown based on the facts and circumstances of provision of service to multitenant business and residential property when it is not automatically relieved. Notice must be given by the company to the relevant building owner or developer. The commission has 90 days to act on the petition. The commission is to initiate rulemaking to implement the provision.

1) If the conditions for automatic waiver cease to exist, 2) the owner or developer requests in writing that the LEC make service available to customers at the property and confirms in writing the conditions no longer exist at the property, and 3) no other arrangements have been or plan to be arranged for service, then the COLR obligation again applies to the LEC. The LEC may require the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially. The LEC is allowed a reasonable time following the request from the owner or developer to make arrangement for service availability. If any conditions for automatic waiver again exist on the property, the waiver again applies.

The commission's limitations of jurisdiction under ss. 364.011 (long distance broadband, VoIP, and wireless) and 364.013 (broadband and VoIP), F.S., remain effective.

Section 3 provides an effective date upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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