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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3775

RELATING TO: Telecommunications

SPONSOR(S): Committee on Utilities and Communications and Rep. Arnall

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS YEAS 14 NAYS 2
 - (2)
 - (3)
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I. SUMMARY:

The bill takes a comprehensive approach to unraveling historic implicit subsidies supporting the goal of universal telecommunications service and replaces those implicit subsidies with an explicit universal service funding mechanism to support high cost areas and low income (Lifeline) customers. To this end, the bill provides for the following:

- Administration of an explicit universal service fund
- Public Service Commission (PSC) adoption of a “forward looking” cost proxy model to determine the amount of high cost universal service support that is necessary
- Payment of universal support by all telecommunications carriers based upon specified categories of each carrier’s intrastate revenues (there is a *de minimis* exemption)
- A gradual rebalancing of telecommunications rates including three broad categories:
 - 1) increased local rates paid by residential and small business customers;
 - 2) decreased intrastate switched access rates paid by long distance carriers to local providers; and
 - 3) decreased intrastate long distance rates.
- Repeal of the current universal service statute;
- Linkage between all of the foregoing concepts such that if any is found to be invalid, all must necessarily be invalid.

The bill also does the following: provides for nondiscriminatory access of residential and commercial tenants to telecommunications services; corrects “glitches” remaining from the 1995, rewrite of chapter 364, Florida Statutes, and, in the “glitch” sections, conforms existing language to changes anticipated by the bill; provides for a consumer information program; creates part III of chapter 364, Florida Statutes, to be known as the “Consumer Protection Act,” and; except as otherwise provided, takes effect upon becoming a law.

Revenue impact is indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

UNIVERSAL SERVICE, INTRASTATE SWITCHED ACCESS CHARGES, AND RATES FOR BASIC LOCAL TELECOMMUNICATIONS SERVICE

The following two concepts are at the heart of the matter before the Legislature:

“Network access service” is a service provided by local exchange companies to connect interexchange (“long distance”) carriers to their customers by use of the local telecommunications network. An access service is used in both originating and terminating long distance calls. See Section 364.163, Florida Statutes.

“Universal service” is an “evolving level of access to telecommunications services . . . provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high cost areas.” Section 364.025(1), Florida Statutes. See also, 47 U.S.C. 254, which sets forth federal universal service principles.

Charges for intrastate network access services (intrastate switched access charges) are priced far in excess of cost and, in many cases, substantially higher than comparable charges applicable to interstate calls (interstate switched access charges). Regulators traditionally have used revenues from the high intrastate switched access charges to implicitly subsidize universal service and maintain basic local telecommunications rates at a level below the cost to provide such service. This implicit subsidy mechanism was left in place when chapter 364, Florida Statutes, was revised in 1995 to open Florida’s local telecommunications markets to competition.

However, the pricing structure resulting from this historic regulatory policy appears to be a barrier to market entry for telecommunications providers wishing to compete in local markets. As such, the policy has contributed to the stalled development of local competition.

In its Report and Order, adopted on May 7, 1997, and released on May 8, 1997, in CC Docket No. 96-45 (Universal Service Order), the Federal Communications Commission (FCC) stated: “We believe that, as competition develops, states may be compelled by marketplace forces to convert implicit support to explicit, sustainable mechanisms consistent with section 254(f).” *Id.* at paragraph 202.

The Federal Telecommunications Act provides the following at 47 U.S.C. 254(f):

A State may adopt regulations not inconsistent with [FCC] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service

in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal universal service support mechanisms.

ACCESS TO TENANTS

As a general proposition, landlords must provide some form of access to the telecommunications network in order to attract and keep tenants. Prior to the advent of local telecommunications competition this simply meant allowing the incumbent local exchange company to have access to tenants.

With the advent of multiple providers in the local telecommunications market, new entrants in that market report that building owners are attempting to charge competitive providers a fee for the right to access tenants. It is reported that landlords typically do not extract similar charges from incumbent providers. For this reason, competitive providers are placed at a substantial disadvantage in terms of reaching customers in rental settings.

The right of a company to access a tenant by occupying the landlord's property has constitutional implications under article X, section 6 (a) of the Florida Constitution which provides in part that "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner" and similar provisions of the United States Constitution. See *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.* 493 So.2d 417 (Fla. 1986).

The Legislature has established tenant access to the local exchange company as a *right* in the limited context of commercial shared tenant services. See section 364.339, Florida Statutes; See *also*, the "glitch" portion of the bill which extends the *right* of access to residential tenants and competitive providers in shared tenant service environments. (The 1995 Florida Telecommunications Act opened local telecommunications markets to competition and the shared tenant market to residential tenants; failure to extend the *right* to tenant access to residential customers, and failure to recognize that there are multiple providers of local service is viewed as an unintended "glitch" in the 1995, Florida Act.)

"GLITCHES" REMAINING FROM THE 1995 REWRITE OF CHAPTER 364

In 1996, the PSC identified several minor and noncontroversial statutory "glitches" resulting from the 1995 rewrite of chapter 364. The consensus among the PSC and industry representatives is that as long as chapter 364 is being "opened" this session, the minor corrections recommended by the PSC should be made. The "glitch" section also includes minor corrections to statutory cross-references resulting from the changes anticipated by the bill.

CONSUMER PROTECTION

With the advent of competition there have been abuses of billing and carrier change processes. These abuses have become so prevalent that they have been given popular culture names: the unauthorized change of a carrier is known as "slamming;" charges for unauthorized or unordered services appearing on a customer's bill is known as "cramming." The PSC has several ongoing proceedings addressing related consumer billing issues. The Telecommunications Workers of America, AFL-CIO has reported that telephone operators are receiving a large volume of calls from customers who have been unable to obtain adequate information regarding charges appearing on customer bills.

B. EFFECT OF PROPOSED CHANGES:

UNIVERSAL SERVICE, INTRASTATE SWITCHED ACCESS CHARGES, AND RATES FOR BASIC LOCAL TELECOMMUNICATIONS SERVICE (Sections 1-5)

The bill replaces historic implicit subsidies supporting universal service with an explicit universal service funding mechanism supporting high cost areas and low income customers.

To this end, the bill provides for the following:

- Establishment and administration of an explicit universal service trust fund.
- PSC adoption of a "forward looking" cost proxy model to determine the amount of high cost universal service support that is necessary.
- Payment of universal support by all telecommunications carriers based on specified categories of each carrier's intrastate revenues (there is an exemption for companies that would owe less than \$10,000 per year).
- A gradual rebalancing of rates including three broad categories:
 - increased local rates paid by residential, (and, in some instances, small business) customers;
 - decreased intrastate switched access rates paid by long distance carriers to local providers; and
 - decreased intrastate long distance rates.
- Repeal of the current universal service statute.
- Linkage between all of the foregoing concepts such that if any is found to be invalid, all must necessarily be invalid.

The current system of implicit universal service support is complicated; thus, dismantling and replacing the system is necessarily a complicated undertaking. Please see the section-by-section analysis for a more detailed explanation.

ACCESS TO TENANTS (Section 6)

Subject to a reasonableness standard, tenants with a lease of one year or more will have a right to obtain the service of the certificated telecommunications carrier of their choice.

Landlords will be prohibited from charging telecommunications providers for the *privilege* of having access to tenants.

If the landlord is a certificated telecommunications provider, the bill prohibits discrimination in rental charges based on whether the tenant is a subscriber to the landlord's services or to those of another provider.

Landlords will not be prohibited from requiring the certificated telecommunications provider to bear all costs associated with reaching tenants. (e.g., installation or removal of facilities and damage to property).

Landlords will be entitled to reasonable, non-discriminatory compensation or indemnity for the cost of occupying or damaging property.

Landlords will be prohibited from discriminating between telecommunications carriers and will be required to provide access to internal wiring at the building's central point of interface.

"GLITCHES" REMAINING FROM THE 1995, REWRITE OF CHAPTER 364 (Sections 7-12, 15)

The statutory changes correct minor problems with the 1995, amendments to chapter 364, Florida Statutes, and conform to changes anticipated by the current bill.

CONSUMER PROTECTION (Sections 13-14)

The bill requires that a consumer information program be implemented by local telecommunications companies. The PSC is to expand its current consumer information program to inform consumers of their rights and to assist customers in resolving any billing and service disputes. The PSC is authorized to specify, by rule, information to be provided to customers by companies, and also how such information is to be provided.

Creates part III of chapter 364, Florida Statutes, (new sections 364.601, 364.602, 364.603, 364.604, 364.605, Florida Statutes) which may be cited as the "Telecommunications Consumer Protection Act." In part III the bill also does the following:

- Provides definitions.
- Establishes approved methodologies for changing a customer's telecommunications provider.
- Provides remedies for violation of carrier change requirements.

- Establishes billing practice standards.

EFFECTIVE DATE (Section 16)

Except as otherwise provided, the act will take effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The PSC is given rule making authority to implement the provisions of the bill.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill provides for a third party administrator to operate an intrastate universal service fund.

(3) any entitlement to a government service or benefit?

No. The bill reshapes existing subsidy mechanisms.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

- (3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No. The bill reshapes existing universal service funding mechanisms to be consistent with the 1996 Federal Telecommunications Act.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No. It reshapes a subsidy program.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No. The bill reshapes existing subsidies.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
No.
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?
No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:
 - (1) Who evaluates the family's needs?
N/A.
 - (2) Who makes the decisions?
N/A.
 - (3) Are private alternatives permitted?
N/A.
 - (4) Are families required to participate in a program?
N/A.
 - (5) Are families penalized for not participating in a program?
N/A.
- b. Does the bill directly affect the legal rights and obligations between family members?
No.
- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Sections 166.231; 203.01; 364.02; 364.025; 364.026; 364.053; 364.163; 364.336; 364.337; 364.339; 364.601; 364.602; 364.603; 364.604; 364.605, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

UNIVERSAL SERVICE, INTRASTATE SWITCHED ACCESS CHARGES, AND RATES FOR BASIC LOCAL TELECOMMUNICATIONS SERVICE (Sections 1-6)

Section 1 creates section 364.026, Florida Statutes, which does the following:

(1) Establishes legislative intent referencing requirements of the Federal Act; directs the PSC to establish and make effective by June 30, 1999, an intrastate universal service support mechanism to assure affordable local service for customers in high cost areas and for low income customers.

(a) Upon notice and an opportunity for hearing, the PSC is to determine the amount of support that is necessary and establish that amount as the explicit universal service support requirement. The PSC is prohibited from considering rate-of-return or earnings concepts in this process.

(b) The PSC is to determine support for high cost areas by establishing forward looking costs based on specified criteria. To this end, the PSC is to adopt, after an opportunity for hearing, a cost proxy model that addresses additional specified criteria.

Available high cost support for a given geographic area is the difference between the cost as established by the PSC (using the proxy model) and the maximum rate that may be charged by the local exchange company including a subscriber line charge. The maximum rate is established by section 364.053, Florida Statutes. The rate for single line business is the rate in effect on January 1, 1999, or the rate for single line business authorized by section 364.053, Florida Statutes, whichever is higher. In determining the intrastate high cost support amount, the PSC is to deduct from the total high cost support amount any explicit federal universal service support.

A local exchange company is required to offer service at a thirty percent discount for customers leaving Lifeline Service. This discount is to be available for a period of one year. The requirement that a local exchange company offer this discount does not preclude such a company offering other discounted services.

(c) Small local exchange companies (serving less than 100,000 lines) are not required to use a cost proxy model until federal proxy models are developed; in no event will they be required to use a cost proxy model prior to January 1, 2001. In the interim, small companies can elect to establish universal service support based on the PSC proxy model or by calculating embedded costs according to specified criteria.

(d) The PSC also is to determine the amount of support necessary to provide basic local telecommunications service to low income customers and to include that amount in the universal service support fund. Only customers who qualify for Lifeline service are considered low-income. The universal service amount for low income customers will be the maximum intrastate matching funds for low-income customers required to enable Lifeline customers to qualify for maximum matching federal support (currently \$3.50).

(e) The intrastate universal service support requirement is to be assessed on a monthly basis to each telecommunications carrier providing retail intrastate telecommunications service and placed in the Florida Universal Service Support Trust Fund (fund). The fund is to be administered by an independent third party administrator. The administrator is to be selected by the commission in accordance with chapter 287, Florida Statutes, and specific criteria set forth in the bill. The PSC is to establish procedures to oversee the third party administrator according to criteria specified in the bill. The third party administrator will have authority necessary to operate the fund and to ensure collection of payments to the fund.

(f) Assessments by the third party administrator will be based on each provider's relative share of all intrastate retail end user telecommunications revenues generated by, or billed to, end users in the state. Wireless contributions are to be based only on revenues from a monthly basic service charge and from intrastate calls originated on the wireless provider's network.

(g) Amounts in the fund will be disbursed to local exchange telecommunications companies, or other eligible carriers providing basic local telecommunications service, based upon criteria to be established by the PSC in accordance with standards set forth in the bill. Such criteria must not be based on a means, earnings, or rate of return test.

(h) A local exchange company receiving support from the fund shall reduce the prices of its intrastate switched access services by the net amount received from the universal service support fund.

(i) If contributions or assessments made by a telephone company to universal service support exceed the amount of benefits received by that company from the universal service fund, that company may recover the amount by which its

contributions exceed the amounts or benefits received from the fund from its retail end user customers, except Lifeline customers. Such recovery is to be done in a manner to be approved by the PSC resulting in revenue neutrality for the telecommunications company and equitable treatment of classes of customers.

(2) The Legislature finds that intrastate switched access charges are a significant source of implicit universal service support and (except for reductions required by section 364.163(6), Florida Statutes) such rates are not to be reduced until a universal service fund is fully functional and rates are rebalanced in accordance with section 364.053, Florida Statutes. [See note in comment section].

Effective January 1, 1999, each local exchange company is to reduce its intrastate switched access charges by the net amount of funding received from the universal service support fund and the amount received from rate rebalancing in accordance with section 364.053, Florida Statutes, as may be necessary to bring the company's intrastate switched access rates to the level of company's January 1, 1999, interstate switched access charges per minute of use.

However, if the net amount of funding received from the universal service fund and the amount of rate rebalancing implemented on January 1, 1999, for any local exchange company, is less than the reduction in switched access charges needed to bring the company's level to its January 1, 1999, interstate level, the company will do the following:

(a) Reduce intrastate switched access rates by the amount received from rate rebalancing and the net amount of universal service funding; and

(b) Continue such reductions on January 1, of subsequent years until interstate rate parity is reached.

(3) Requires long distance carriers whose intrastate switched access rates have been reduced as a result of this section or section 364.053, Florida Statutes, to reduce intrastate long distance rates by the amount necessary to return the benefits of such reduction to its customers. Long distance carriers are not to reduce per minute intraLATA toll rates by a percentage greater than the per minute switched access rate reductions required by the bill. The amount of the long distance rate reduction will be net of that company's universal support assessment. The specific rates to be reduced will be within the discretion of each long distance company.

(4) Defines the following for purposes of the section:

(a) "Universal service" is defined to be consistent with FCC rules.

(b) "Telecommunications carrier" is defined to include any provider of telecommunications services except-- consistent with FCC rules-- "call aggregators" [A hotel is an example of a call aggregator].

(c) "Eligible telecommunications carrier" means a carrier that does the following:

(1) meets the requirements of the Federal Act at 47 U.S.C. 214(e) [describing the requirements of an eligible telecommunications carrier]. Such requirements can be met without regard to the technology used by the carrier; and

(2) offers primary residential basic local telecommunications service at an affordable rate, as provided in section 364.053(2)(a), Florida Statutes, to all customers throughout a specified area. Mobile radio service providers operating under authority of the FCC are exempt from subparagraph (2).

(d) "Telecommunications service" is defined to be consistent with the Federal Act.

(e) "Net amount of funding received" or "net of the universal support assessment" means the amount of benefit received by a company from the universal service support fund less the assessment or contribution made by that company to the fund. If the amount of the assessment or contribution made by a company to the universal service support fund is greater than the amount or benefit received by that company from the fund, there is no "net".

Section 2 creates section 364.053, Florida Statutes, which provides the following regarding rate rebalancing:

The Legislature finds that residential basic local telecommunications rates are:

--- on average, priced below cost:

--- a barrier to the development of residential basic local telecommunications service competition;

--- being supported with revenue contributions from other local exchange company provided services, and;

--- can no longer be supported with interservice revenue contributions.

Therefore, rates must be rebalanced, subject to PSC oversight, in a revenue neutral manner according to the following:

(1) Notwithstanding price caps, a local exchange company shall increase its intrastate monthly rates for residential basic local service. This rate increase shall include any rate increases authorized by section 364.026(2), Florida Statutes. In no exchange will single line business basic local rates be less than comparable residential rates; the rate for single line business service will be increased where necessary to effectuate this purpose. Rate increases will be effective January 1, 1999, unless the increase is more than \$2.00 per month per line in which event the increase will take place over a multi-year period at a rate of \$2.00 per month per year the first two years (a total of \$24.00 a year) and one dollar per month per year thereafter (a total of \$12.00 per year).

(2) Increases in basic local rates will:

--- not result in unaffordable rates. Affordable means that the monthly rate, including the subscriber line charge, is no greater than 1/12th of one percent of the median household income for Florida established in a specified publication of the University of Florida and available on January 1, 1998.

--- not result in an increase in Lifeline rates beyond the January 1, 1998, level.

--- not be larger in dollar amount for any of a local exchange company's rate groups than the increases permitted for its largest rate group.

---apply only to the first or primary line of a residential customer. The rate for a customer's second line is not constrained except that the rate for the second line-- including the subscriber line charge--is not to exceed the rate for the first line by more than 50%.

(3) A local exchange company that increases its basic residential rates in accordance with the foregoing must decrease rates for other regulated services in order to achieve revenue neutrality. Once switched access reductions are met as required by section 364.026, Florida Statutes, the local exchange company has discretion to reduce other rates in accordance with specified criteria. Such rate reductions shall not:

---reduce the price of non-basic service below its total service long run incremental cost as defined by section 364.051(6)(b), Florida Statutes;

---reduce non-recurring charges associated with the installation of primary residential basic local telecommunications service below cost;

---reduce per-minute intraLATA toll rates by a percentage greater than the per-minute intrastate switched access reductions required by the bill.

Reductions in non-basic service rates resulting from rate rebalancing are presumptively valid on 15 days notice absent a request for verification that rates cover costs in accordance with enumerated standards. Rate decreases must be timed to be revenue neutral.

(4) If BellSouth reaches its targeted switched access charge level by January 1, 2000, the Legislature shall, during the year 2000 Regular Session, review the necessity of further intrastate switched access reductions and determine whether additional rate rebalancing should be canceled.

Section 3 amends sections 364.163 (1) and (6), Florida Statutes, to provide that, effective January 1, 1999, rates for switched network access services are capped until January 1, 2001. GTE and Sprint must reduce switched access charges by 5% on July 1, 1998 and by 10% on October 1, 1998. Further reductions in intrastate switched access rates after October 1, 1998, are to be solely in accordance with section 364.026(2), Florida Statutes, (universal service funding language) or section 364.053(3), Florida Statutes, (rate rebalancing language).

Any long distance carrier who benefits from these reductions is to decrease intrastate long distance rates in an amount that returns the benefits of the reduction to the long distance carrier's customers. However, long distance carriers are prohibited from reducing per minute intraLATA toll rates by a percentage greater than the per minute switched access rate reductions required by the bill.

Section 4 repeals section 364.025, Florida Statutes, which addresses universal service in the current statutes. The statutory language found at section 364.025, Florida Statutes, will not be needed given the new statutory language included in at sections 1-3 of the bill.

Section 5 provides legislative intent that sections 1-4 of the bill are to be implemented as a whole and comprise a comprehensive plan of interrelated actions. If any provision of sections 1-4, or their application, are found to be invalid all provisions of sections 1-4 will become invalid.

ACCESS TO TENANTS (Section 6)

Section 6 provides the following:

(1) The Legislature finds an important public purpose is achieved in providing access to the premises of residential and nonresidential tenants by certificated telecommunications companies seeking to promote competition and choice in the delivery of telecommunications services in the state.

(2) Subject to a reasonableness standard, tenants with a lease of one year or more will have a right to obtain the service of the certificated telecommunications carrier of their choice.

(3) Except in instances in which the landlord is a certificated telecommunications provider, landlords will be prohibited from charging telecommunications providers for the *privilege* of having access to tenants. Unless a landlord is a certificated telecommunications provider it cannot charge a tenant for access to telecommunications services. If the landlord is a certificated telecommunications provider, it cannot discriminate in rental charges based on whether the tenant is a subscriber to its services or to those of another provider. However, marketing agreements between landlords and telecommunications providers are not prohibited.

(4) Landlords are not prohibited from requiring a certificated telecommunications provider to bear all costs associated with reaching tenants. (e.g., installation or removal of facilities and damage to property). Landlords are entitled to reasonable, non-discriminatory compensation (or indemnity) for the cost of occupying or damaging property.

(5) Landlords are not to discriminate between telecommunications carriers in granting access to tenants and are to provide such carriers with access to internal wiring at the building's central point of interface.

“GLITCHES” (Sections 7-12, 15)

Sections 7 & 8 amend, with identical language, section 166.231(9)(f)3, Florida Statutes, and section 203.01(9)(c), Florida Statutes. Both sections currently require the PSC to publish statewide average tariff rates annually. A literal reading of the existing language would require the PSC to publish average rates for all tariffs on file at the commission. The revisions will add the words "for commonly used services." This will clarify that the PSC is to publish statewide tariff rates for only the rates that are likely to be provided by an alternative local exchange company (ALEC) on a bundled basis. If the PSC strictly construes the existing statutory language it will be required to publish the statewide average rates for hundreds of tariffs; pursuant to the revision the commission will be required to publish statewide averages for fewer than one hundred rates.

Section 9 amends section 364.02(12), Florida Statutes. Telecommunications companies must be certificated by the PSC. Under the current language of section 364.02(12), Florida Statutes, the definition of a "telecommunications company" does not extend to entities providing telecommunications facilities solely to a certificated telecommunications company (e.g., an electric company does not become a telecommunications company by providing fiber facilities to a local exchange company). The revision extends this "exemption" from the definition of a telecommunications company to entities that provide telecommunications facilities to those entities that are specifically excluded in section 364.02(12), Florida Statutes, from the definition of a telecommunications company (e.g., an electric company would not become a telecommunications company by providing fiber facilities to a cellular company). The same rationale that supports the existing "exemption" to PSC certification extends to the revision; namely, PSC certification is intended to protect end-user consumers and is generally unnecessary in the context of an arm's length offering of telecommunications facilities to members of the telecommunications industry. A statutory cross-reference to universal service provisions is updated in light of the anticipated repeal of section 364.025, Florida Statutes, and implementation of section 364.026, Florida Statutes.

Section 10 amends section 364.336, Florida Statutes, to clarify how regulatory assessment fees (RAFs) are to be computed. With the advent of competition, it is anticipated that telecommunications services will be provided over a "network of networks" with companies compensating one another for the use of network facilities and services that are necessary to complete calls. In recognition of the changed environment, the commission has suggested that companies should be allowed to set-off such payments when calculating the basis for the commission's regulatory assessment fees.

Section 11 amends sections 364.337(2) and (4), Florida Statutes, to make clear that alternative local exchange companies (ALECs) must provide "911" service at a level equivalent to that required of local exchange companies (LECs). The bill also deletes the interexchange telecommunications companies' (IXCs) exemption from the PSC authority to demand records of any telecommunications company pursuant to section 364.183(1), Florida Statutes. This revision ensures that the PSC has the authority to obtain necessary documents from an IXC during an investigation.

Section 12 amends section 364.339, Florida Statutes, to prohibit the offering of shared tenant services (STS) from interfering with or precluding a residential tenant from obtaining direct access to the lines and services of competitive providers. Similar language previously applied to only commercial tenants. The revision is necessary because the rewrite of chapter 364, Florida Statutes, opened the residential STS market. Additionally, this section corrects a typographical error in section 364.339(3)(b), Florida Statutes, in which a reference to subsection (3) should be made, instead, to subsection (4). The words "serving local exchange" are deleted leaving simply the words "telecommunications company" in the statute. This broadens the language to reflect the evolving competitive environment.

Section 15 repeals section 364.337(7), Florida Statutes. The change in Section 11, above, establishes how RAFs are to be computed for all telecommunications companies. Therefore, the current language in section 364.337(7), Florida Statutes, addressing the computation of RAFs for IXC's and pay telephone providers is unnecessary and may create confusion.

CONSUMER PROTECTION (Sections 13-14)

Section 13 requires that a consumer information program be implemented--subject to specified standards--by each local exchange telecommunications company to inform consumers about the act. The PSC is to expand its existing consumer information program and to assist consumers in resolving billing disputes with telecommunications companies. The PSC is authorized to specify information to be provided by companies to customers and also the manner of distribution of such information.

Section 14 creates part III of chapter 364, Florida Statutes, consisting of new sections 364.601, 364.602, 364.603, 364.604, and 364.605, Florida Statutes.

Creates section 364.601, Florida Statutes, which provides that part III of chapter 364, Florida Statutes, may be cited as the "Telecommunications Consumer Protection Act.

Creates section 364.602, Florida Statutes, which defines the following for purposes of Part III: (1) "billing party" (2) "commission" (3) "customer" and (4) "originating party".

Creates section 364.603, Florida Statutes, which establishes approved methodologies for changing a customer's telecommunications providers.

(1) Three options are specified for telecommunications companies submitting a billing party change order to a local exchange company for a customer's primary interexchange carrier generated by outbound telemarketing:

(a) Customer's written authorization;

(b) Customer's electronic authorization subject to specified verification procedures;

- (c) Independent third party verification including specified verification data.
- (2) Letters of agency, recordings or other evidence of change orders are to be maintained for at least six months from the date a customer's service is switched.
- (3) Telemarketer's must make specified disclosures as follows:
 - (a) Identify company soliciting the change;
 - (b) Identify that the purpose of the call is to solicit a change in the customer's telecommunications provider;
 - (c) Describe charges that may be imposed for changing service.
- (4) Customer requests for other services such as travel calling card or prepaid calling card services do not constitute a change in provider.
- (5) Companies may employ a letter of agency authorization provided it conforms with the requirements of this section.
- (6) A letter of agency is to be a separate document containing specified language.
- (7) A letter of agency is not to be combined with any inducements on the same document.
- (8) Notwithstanding (6) and (7), the letter of agency may be combined with checks if consistent with specified standards.
- (9) A letter of agency must be easily read and confirm specified information about the transaction.
- (10) If any portion of the letter of agency is translated into another language the entire document is to be so translated. The letter of agency is to be translated into the same language as supporting promotional materials.

Section 364.604, Florida Statutes, is created to provide remedies for violations of section 364.603, Florida Statutes. For unauthorized changes to a customer's provider, the telecommunications company is to refund the difference between the customer's presubscribed rate and the higher rate of the unauthorized provider. The customer is to be changed back to the original presubscribed company at no charge. In addition to other penalties available pursuant to chapter 364, Florida Statutes, the entire amount of the carrier's charge is to be assessed by the commission and used for consumer education.

Section 364.605, Florida Statutes, is created to address billing practices as follows:

(1) Standards for items that must be included on a bill and requires that answers to consumer inquiries must be provided within 24 hours. Telecommunications carriers are given until June 30, 1999 to comply with this section.

(2) Customers are not liable for any charges for telecommunications service which the customer did not order or which were not provided to the customer.

(3) Every billing party is to have free blocking for 900 or 976 calls.

(4) The commission may, by rule, require that a customer's Lifeline local service not be disconnected provided the charges, taxes, and fees applicable to basic local service are paid.

EFFECTIVE DATE (Section 16)

Section 16 provides that, except as otherwise provided, the act is to take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

The bill represents another step towards the evolution of a competitive local market.

3. Effects on Competition, Private Enterprise and Employment Markets:

The regulatory policy will be more favorable to competition.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The PSC technical staff has been very helpful in providing technical assistance regarding the anticipated operation of the procedures put in place by the bill and in clarifying statutory descriptions of the new funding mechanism. The PSC staff assisted at the request of Chairman Arnall.

Cost versus Price of Residential Basic Local Service

People may disagree about how the cost of local service should be calculated. However, there appear to be only two competing cost proxy models being considered at the national level. These are the Hatfield and BCPM models. Following are the proxy costs generated by these models compared to averaged basic local service price information supplied by the PSC:

The statewide averaged price of basic residential local exchange service is \$10.16 plus a subscriber line charge of \$3.50 for a total of \$13.66.

Monthly costs per line results using default inputs:

| | <u>Hatfield 5.0 model</u> | <u>BCPM 3.0</u> |
|---------------|---------------------------|-----------------|
| GTE Florida | \$15.08 | \$29.42 |
| Sprint-United | \$18.72 | \$35.81 |
| Sprint-Centel | \$22.68 | \$39.00 |
| BellSouth | \$15.40 | \$28.70 |

Cost information is unavailable for small local exchange companies.

Lifeline

--There appear to be two challenges regarding "Lifeline." One is to ensure that qualification standards accurately reflect those in need of assistance. Another is to ensure that qualification standards do not create a new bureaucracy.

--Consumer qualification for Lifeline is set forth at 47 C.F.R. 54.409, which provides the following:

- (a) To qualify to receive Lifeline service in states that provide state Lifeline service support, a consumer must meet the criteria established by the state commission. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income.

(b) To qualify to receive Lifeline support in states that do not provide state Lifeline support, a consumer must participate in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program. In states not providing Lifeline support, each carrier offering Lifeline service to a consumer must obtain that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs mentioned in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

--The PSC has adopted a Lifeline program qualification standard that includes participants in "Programs funded under Temporary Aid for Needy Families" (TANF) in addition to the programs described under federal standard at subsection (b) (immediately above). This distinction is the result of the PSC adopting qualification standards before the federal government adopted its standards.

Median Florida Household Income

The median household income (reported at table 5.48 of the most recent Florida Statistical Abstract is \$28,230).

Access to Tenants

The bill does not mandate how charges for a telecommunications provider to occupy a landlord's property are to be established. The Florida Cable Telecommunications Association indicates that such charges would simply be negotiated between the carrier and the landlord.

Public Comment

Taylor & Company, a Sarasota based telecommunications consulting firm marketing competitive telecommunications services, has suggested that incumbent providers should be required to inform customers that competitive alternatives are available before they are allowed to enter into long term contracts with business customers.

The Telecommunications Workers of America, AFL-CIO has suggested that there are significant problems related to telecommunications billing that are a direct result of the new competitive environment; the union believes that related consumer issues need to be addressed by the Legislature.

Florida Legal Services, Inc. (Legal Services) has suggested that there is not adequate linkage between rebalanced residential rates, lowering of intrastate switched access charges, and the mandated "flow-through" of savings by long distance carriers. Legal Services believes that the lowering of long distance rates should be required, as closely as possible, to benefit the same classes of customers whose local rates are being raised.

Legal Services has also suggested that the Legislature might wish to expand the definition of those qualifying for "Lifeline" assistance; otherwise, Legal Services opposes the local service rate increases anticipated by rate rebalancing. Legal Services suggested that the "slamming" language would limit the PSC in its ongoing rulemaking proceeding addressing that issue.

AARP has suggested that when the 1995, Florida Act was passed, people were promised competition, better service, and lower rates. AARP believes that this bill would do just the opposite. AARP strongly opposes this bill. AARP argues that other states have rejected rate rebalancing because it is detrimental to both residential and small business consumers.

The Building Owners and Managers Association (BOMA) opposes provisions ensuring access of telecommunications providers to tenants.

Brief Descriptions of Operative Changes in the Telecommunications Subsidy Structure

Initial Access Reductions

**Access charges for GTE and Sprint will be reduced by 5% on July 1, 1998, and by an additional 10 % on October 1, 1998.

**These savings are to be "flowed-through" to long distance customers.

Universal Service Funding

**The PSC is to determine the amount of support needed to provide affordable basic local telephone service for customers in high cost areas and low income customers as follows:

--The PSC will determine cost by a proxy model created according to criteria specified in the statute. (Small companies --those with less than 100,000 access lines-- can elect to have the PSC employ either the cost proxy model or actual embedded costs.

--High cost support will be the cost for a geographic area determined by the proxy model (or embedded costs if elected by a small company) minus the maximum rate for local service.

The maximum rate for residential basic local service is that authorized by new section 364.053(2)(a), Florida Statutes.

The maximum rate for Lifeline customers is the flat rate residential basic local service in effect on January 1, 1998.

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The maximum rate for single-line business basic local service is the higher of the following:

the rate in effect on January 1, 1999 ,or

the rate for single-line business authorized by section 364.053(1), Florida Statutes.

--Low income support will be calculated based on the number of customers who qualify for Lifeline support multiplied by the maximum intrastate matching funds for low-income customers required to qualify for the maximum matching level of federal support funds (currently \$3.50).

--Needed high cost support will be added to needed low cost support to yield the needed intrastate universal service support amount. To avoid double recovery, the amount of any explicit federal universal service funding is subtracted from the difference between cost and the maximum local rate described above.

**The needed intrastate universal service support amount will be assessed on telecommunications companies based on each provider's relative share of intrastate retail, end-user telecommunications revenues generated, or billed to, end users in Florida.

--Exceptions:

--Providers who would be required to contribute less than \$10 ,000 per year are not required to contribute.

--Wireless providers are assessed based on revenues from the monthly basic service charge and from intrastate calls originated on the wireless provider's network.

**Local exchange companies receiving universal service funding must reduce the price of switched access by the net amount of funds received from the fund. Long distance providers are to pass these savings -- net of any contributions made by the long distance carrier to the universal service fund-- on to consumers.

Rate Rebalancing

**Rate rebalancing is to be revenue neutral for each local exchange telecommunications company. Rate rebalancing will be done as follows:

Rate Increases

--Local residential rates will increase on January 1, 1999.

* Monthly rates for first-line residential service are to increase by no more than \$2.00 per year for two years and \$1.00 per year thereafter.

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* Monthly rates for second-line residential service (including the subscriber line charge) is capped at a rate of not more than 150% of the first line rate.

* The residential rate for Lifeline subscribers is capped at its January 1, 1998, level.

* The maximum first line rate is one-twelfth of one percent of the annual median household income.

(\$28,230 median income x.01 = \$282.30 x 1/12 = \$23.50 per month cap)

--Single-line business rates will be increased, if needed, to equal single line residential rates.

Rate Decreases

--Local exchange telecommunications company rates must be decreased to achieve revenue neutrality with the foregoing rate increases as follows:

* reduce intrastate switched access rates to January 1, 1999, intrastate levels.

* after the switched access target is met, reduce rates for other non-basic services.

**Long distance providers are required to "flow-through" to customers the intrastate switched access charge reduction savings resulting from rate rebalancing.

Summary of Long Distance Rate Reductions

* Net benefit of universal service fund "flow-through."

* Switched access charge reduction "flow-through" resulting from rate rebalancing.

* Switched access charge reduction "flow-through" resulting from the 1998, Sprint and GTE access reductions (15% total).

Section 364.026(2)

The bill was amended to extend until June 30, 1999, the time for the PSC to establish a universal service fund. Rate rebalancing, including switched access charge reductions, is to occur on January 1, 1999. However, at section 364.026(2), Florida Statutes, the bill prohibits such access charge reductions prior to the establishment of a universal service fund. Thus, there appears to be a minor substantive "glitch" in the bill.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The bill was substantially amended in the House Utilities and Communications Committee on February 17, 1998. The committee adopted an amendment that removed everything after the enacting clause. The committee also adopted 13 amendments to the main amendment.

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VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Charles Murphy

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