

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.)

BILL: CS/SB 1136

SPONSOR: Commerce and Economic Opportunities Committee, Senator Posey, and others

SUBJECT: Telecommunications Companies

DATE: March 22, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Birnholz	Maclure	CM	Favorable/CS
2.	_____	_____	RI	_____
3.	_____	_____	FT	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute provides legislative intent declaring that an important public purpose is served by the establishment of network access service rates that facilitate reasonably affordable and reliable high-quality telecommunications services for the residents of this state. To this end, the committee substitute requires the Public Service Commission (PSC) to provide organizational and staff support for a convening by July 1, 2001, of all appropriate representatives of the telecommunications industry for the purpose of having such representatives negotiate among themselves on appropriate levels for network access rates and to identify other solutions that promote competition in the provision of local telecommunications services. If the representatives fail to enter into such negotiations in good faith by July 15, 2001, or if they do not reach agreement within 90 days, the PSC must initiate a proceeding to determine the appropriate level of network access rates, taking into consideration several factors related to telecommunications services. The PSC must render a decision by January 1, 2002, or March 1, 2002, and, on the same date, report to the Governor and the Legislature on the proceeding and the rationale for its decision.

This committee substitute also provides that any interexchange telecommunications company whose intrastate access rate is reduced as a result of rate decreases made by a local exchange telecommunications company in accordance with this committee substitute shall decrease its intrastate long distance rates to return all of the benefits of the reduction to its Florida residential and business customers. The interexchange telecommunications company is allowed to determine the specific intrastate rates to be decreased as long as residential and business customers benefit from the rate decreases. Additionally, interexchange telecommunications companies must hold harmless any impact on the Public Education Capital Outlay and Debt Service Trust Fund caused by a reduction in intrastate access rates.

This committee substitute further provides for continuing oversight by the PSC of intrastate switched access and long distance rates and provides the PSC with ongoing authority for determining appropriate rate levels for network access services.

This committee substitute substantially rewords section 364.163, Florida Statutes.

II. Present Situation:

Key Acronyms

- “IXC”: An IXC is an interexchange, or “long distance,” telecommunications carrier such as AT&T or WorldCom.
- “LEC” (or “ILEC”): An LEC (or ILEC) is a local (or incumbent local) exchange telecommunications company certificated by the Public Service Commission to provide local exchange telecommunications service in Florida on or before June 30, 1995. There are currently 10 local exchange companies operating in Florida, including BellSouth Telecommunications, Inc. (BellSouth); Sprint-Florida, Inc. (Sprint); and Verizon Florida, Inc. (Verizon).¹
- “ALEC”: An ALEC is an alternative local exchange telecommunications company certificated by the Public Service Commission to provide local exchange telecommunications service in Florida on or after July 1, 1995, such as KMC Telecom.

Switched Access Charges

Per minute switched access charges (access charges) are the charges an IXC pays a LEC/ALEC for the use of the LEC/ALEC’s network when the LEC’s customer makes or receives a long distance call. Switched access refers to the use of the public switched telephone network (calls travel through a telephone company switch). These charges help a LEC/ALEC recover the cost associated with originating or terminating a call.

An example of how access charges work within Florida is when a Verizon customer in Tampa calls a BellSouth customer in Miami; the IXC pays access charges to Verizon on the originating end of the call (Tampa) and to BellSouth on the terminating end of the call (Miami). An interstate example (regulated by the Federal Communications Commission) is when a BellSouth customer in Jacksonville calls a BellSouth customer in Atlanta. In that case, the IXC pays access charges to BellSouth on the originating end of the call (Jacksonville) and to BellSouth on the terminating end of the call (Atlanta). In Florida, the intrastate charge is a per minute charge and the interstate charge established by the Federal Communications Commission is both a per minute charge and a per line charge.

¹ The following are the numbers of basic local telecommunications service access lines for the Florida local exchange companies as of December 2000: BellSouth (6,617,173), Verizon (2,443,575), Sprint (1,710,409), ALLTEL (82,719), GT Com (49,020), Vista-United (18,706), TDS/Quincy (13,623), NE Florida (9,280), Frontier (4,537), and ITS (3,705).

Florida Law Regarding Switched Access Charges

Section 364.163, F.S., provides for network access services. Under this section, “network access service” means any service provided by a local exchange telecommunications company (LEC) to a telecommunications company certificated under ch. 364, F.S., or licensed by the Federal Communications Commission to access the local exchange telecommunications network. The term “network access service” does not include local interconnection arrangements provided in s. 364.16, F.S., or the resale arrangements provided in s. 364.161, F.S. Each LEC subject to s. 364.051, F.S., (price regulation) is required to maintain tariffs with the Public Service Commission (PSC) containing the terms, conditions, and rates for each of its network access services.

Subsection (1) of s. 364.163, F.S., provides that the rates for switched network access services for each LEC shall be capped at the rates in effect on January 1, 1999, and shall remain capped until January 1, 2001. Upon the date of filing its election under this section (for price regulation under s. 364.051, F.S.), the access rates are capped at the rates in effect on that date and remain capped for five years. According to the PSC, all LECs except Frontier Communications of the South, Inc., have elected price regulation.

After termination of the caps imposed by subsection (1) and after the LEC’s intrastate switched access rates reach parity with its interstate switched access rates, a LEC may annually adjust any network access service rate by the cumulative change in inflation, but by no more than 3 percent annually. The LEC must give 30 days’ notice of the adjustment. [s. 364.163(2), F.S.] Moreover, after termination of the caps, s. 364.163(3), F.S., allows a LEC to petition the PSC to recover the cost of governmentally mandated projects or programs or an increase in federal or state income tax incurred after that date.

Section 364.163(4), F.S., provides that a LEC may choose to implement all or a portion of a rate increase allowed for network access service under subsections (1), (2), or (3). It also provides that, notwithstanding those subsections, a LEC may decrease its network services rates at any time and the new rates will become effective upon seven days’ notice.

Section 364.163(5), F.S., provides that LEC-proposed changes made in the terms and conditions for existing network access rates pursuant to subsections (1)-(4) are presumed valid and become effective upon 15 days’ notice. LEC-proposed rate decreases become effective upon seven days’ notice. Rate increases made by a LEC are presumed valid and become effective on the date the tariff is filed. The PSC is given continuing regulatory oversight of LEC-provided network access services for purposes of determining the correctness of any price increase resulting from the application of the inflation index and making any necessary adjustments, establishing reasonable service quality criteria, and assuring resolution of service complaints. No later than 30 days after the tariff is filed, the PSC may determine if the price increase is correct and order the LEC to hold all the revenues collected under the increase to refund to its customers. The PSC must make a determination, within 60 days of the order, whether to compel a full or partial refund or release the revenues.

Section 364.163(6), F.S., was amended by ch. 98-277, L.O.F., to require any LEC with more than 100,000, but fewer than three million, basic local telecommunications service access lines in

service on July 1, 1995, to reduce its intrastate switched access rates by 5 percent on July 1, 1998, and by 10 percent on October 1, 1998.² Any interexchange telecommunications company (IXC) whose intrastate switched access rates were reduced as a result of these rate decreases was required to reduce its intrastate long distance rates by the “amount necessary to return the benefits of such reduction to its customers.” Furthermore, the IXC could not reduce its per minute intraLATA toll rates by a percentage greater than the per minute intrastate switched access rate reduction.³ The IXC could determine the specific intrastate rates to be decreased, provided that residential and business customers benefited from the reductions.⁴

Section 364.163(7), F.S., currently provides that reductions for intrastate switched access rates and customer long distance rates shall become effective on October 1 of each relevant year. Any rate decreases proposed in tariff revisions filed with the PSC by the telecommunications companies are presumed valid and become effective October 1 of each relevant year.

Section 364.163(8), F.S., provides that, no later than 30 days after the tariff is filed, the PSC may determine if the rate decrease is correct and order the telecommunications company to hold all intrastate switched access or customer long distance rate revenues collected after the decrease to refund to its customers. The PSC must make a determination, within 60 days of the order, whether to compel a full or partial refund or release the revenues.

Section 364.163(9), F.S., gives the PSC continuing regulatory oversight of intrastate and customer long distance rates for the purpose of “determining the correctness of any rate decrease by a telecommunications company resulting from the application of this section and making any necessary adjustments to those rates, establishing reasonable service quality criteria, and assuring resolution of service complaints.”

Discussion of Some Key Switched Access Charge Issues

The portion of the actual cost of local network facilities that should be assigned to long distance customers is a point of contention between LECs and long distance companies (IXCs). Although the incremental cost for use of the local network by long distance customers may be low, these customers receive a substantial direct benefit from the existence of the local network; without it, no long distance call could be completed.

The LECs assert that intrastate switched access rates were set well above the incremental cost of providing the service in order to keep rates for basic local telecommunications service as low as possible. Cost studies presented by BellSouth and Sprint to the PSC in 1999 indicate that the revenues generated by basic local service are 60 percent less (for BellSouth) or 43 percent less

² This provision reduced switched access charge-related revenues of Verizon (then GTE-Florida) and Sprint by an approximate total of \$50 million annually.

³ The term “IntraLATA” refers to telecommunications services that originate and terminate in the same geographic area in which BellSouth and Verizon have been permitted to carry telephone calls (loosely based on metropolitan statistical areas).

⁴ Prior to the changes in 1998, s. 364.163(6), F.S., provided that any LEC whose current intrastate switched access rates were higher than its interstate switched access rates in effect on December 31, 1994, shall reduce its intrastate switched access rates by 5 percent each year beginning October 1, 1996. A LEC was relieved of this requirement if it reduced its rates by a greater percentage by the relevant dates or earlier. The reductions were made pursuant to PSC Order No. PSC 94-0172-FOF-TL.

(for Sprint) than the associated costs.⁵ The LECs also maintain that reductions in access charges may put them at a competitive disadvantage relative to long distance companies with regard to intraLATA toll rates; intraLATA toll charges are one mechanism used by LECs to support low-cost basic service.

The IXC's disagree with the LECs' arguments on three main fronts.

- The IXC's question the model used by the LECs to calculate the cost of providing basic local service. While the IXC's think that models used to determine costs should be forward-looking only and based on incremental cost, the LECs assert that historic or embedded costs should be included in the model and that the model should consider the actual cost incurred by a particular company. These issues concerning what elements go into a calculation of the cost of local service have complicated the understanding of the true relationship between access charges and the rates for basic local telecommunications service. As a result, IXC's argue that access charges are higher than needed to support low basic local rates and, therefore, are providing excessive profits to the LECs.⁶
- The IXC's assert that any difference between revenues and costs associated with the provision of basic local service is made-up for by profits generated by other services such as call waiting and caller identification.
- The IXC's claim that "high" access charges distort competitive effects in the long distance market and restrict competition in a variety of ways on the local level.

Taxes Potentially Affected by Reducing Switched Access Charges

Business telecommunication services, which include access charges, are subject to the sales and use tax under s. 212.05(1)(e), F.S., and are taxed at 7 percent. Local government local option sales taxes are levied on the same tax base as the state tax. Local governments also receive telecommunications service-related revenues under the public service tax pursuant to s. 166.231, F.S.

Furthermore, both residential and business telecommunication services are subject to the state gross receipts tax under s. 203.01(1)(b), F.S., and are taxed at an effective rate of 2.5 percent of the gross charges to the customer on the telephone bill. The Public Education Capital Outlay (PECO) program uses these gross receipts tax revenues to finance the sale of bonds for school construction.⁷

⁵ *Report of the Florida Public Service Commission on the Relationships Among the Costs and Charges Associated With Providing Basic Local Service, Intrastate Access, and Other Services Provided by Local Exchange Companies, in Compliance With Chapter 98-277, Section 2(1), Laws of Florida and the Conclusions of the Florida Public Service Commission as to the Fair and Reasonable Florida Residential Basic Local Telecommunications Service Rate, in Compliance With Chapter 98-277, Section 2(2)(A), Laws of Florida*, Volume I, Florida Public Service Commission, February 15, 1999, p. 9.

⁶ Embedded cost analyses presented to the PSC in 1999 showed that the 1997 intrastate regulated return on equity for Southern Bell, Verizon (formerly GTE-Florida), and Sprint was 20.3 percent, 18.8 percent, and 13.4 percent, respectively. (*See Id.*, p. 10)

⁷ The revenue from the gross receipts tax is deposited in the Public Education Capital Outlay and Debt Service Trust Fund pursuant to Article XII, section 9(a)(2) of the Florida Constitution and is bonded by the state.

Public Counsel

The Public Counsel provides legal representation for the people of the state in proceedings before the Public Service Commission (PSC) and in proceedings before counties pursuant to s. 367.171(8), F.S. (s. 350.0611, F.S.) The Public Counsel powers include:

- recommending to the PSC the commencement of any proceeding or action and urging therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the PSC;
- appearing before the PSC, in the name of the state or its citizens, in any proceeding or action and urging therein any position which he or she deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the PSC;
- in any proceeding in which he or she has participated as a party, seeking review of any determination, finding, or order of the PSC, or of any hearing examiner designated by the PSC, in the name of the state or its citizens;
- preparing and issuing reports, recommendations, and proposed orders to the PSC, the Governor, and the Legislature on any matter or subject within the jurisdiction of the PSC, and making such recommendations as he or she deems appropriate for legislation relative to PSC procedures, rules, jurisdiction, personnel, and functions; and
- appearing before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the PSC, in the name of the state or its citizens.

III. Effect of Proposed Changes:

This committee substitute substantially rewords s. 364.163, F.S., regarding network access services. In doing so, this committee substitute provides legislative intent regarding the establishment of network access service rates and requires proceedings for establishing appropriate rates. This committee substitute also provides that any interexchange telecommunications company whose intrastate access rate is reduced as a result of rate decreases made by a local exchange telecommunications company in accordance with this committee substitute shall decrease its intrastate long distance rates to return all of the benefits of the reduction to its Florida residential and business customers and shall hold harmless any impact on the Public Education Capital Outlay and Debt Service Trust Fund caused by a reduction in intrastate access rates. Additionally, this committee substitute contains provisions for continuing oversight by the PSC of intrastate switched access and long distance rates and for providing the PSC with ongoing authority for determining appropriate rate levels for network access services. Specifically, this committee substitute amends s. 364.163, F.S., in the following ways:

- It strikes the current provisions in subsection (1) of s. 364.163, F.S., and amends the subsection to provide legislative intent regarding the establishment of network access service rates.
- It strikes the current provisions in subsection (2) of s. 364.163, F.S., and amends the subsection to include a definition of “network access service” that is provided within the current introductory language to s. 364.163, F.S.

- It renumbers, as subsection (3), the current subsection (9) of s. 364.163, F.S., which gives the Public Service Commission (PSC) continuing regulatory oversight of intrastate switched access and customer long distance rates.
- It strikes the current provisions in subsection (4) of s. 364.163, F.S., and amends the subsection to provide that, by July 1, 2001, the PSC shall initiate a proceeding to determine the appropriate level of network access rates. In making this determination, the PSC must consider multiple factors, including:
 - the effect on competition;
 - the costs of access;
 - the costs of basic local service;⁸
 - the costs of vertical services;⁹
 - the impact on continued provision of universal service;¹⁰
 - the affordability of basic local service and long distance service to customers;
 - the network access rates in other states and factors affecting such rates; and
 - the effect of alternative technologies on telecommunications services.

The PSC must render a decision by January 1, 2002. This decision must provide a timetable for any actions considered necessary to reach the level of network access rates determined appropriate in this proceeding for the affected companies. On the same date the PSC renders its decision, it must report to the Governor and the Legislature on the proceeding and the rationale for its decision.

- It strikes the current provisions in subsection (5) of s. 364.163, F.S., and amends the subsection to provide that any interexchange telecommunications company whose intrastate access rate is reduced as a result of rate decreases made by a local exchange telecommunications company in accordance with this section shall decrease its intrastate long distance rates to return all of the benefits of the reduction to its Florida residential and business customers. The interexchange telecommunications company is allowed to determine the specific intrastate rates to be decreased as long as residential and business customers benefit from the rate decreases.

⁸ As defined in s. 364.02, F.S., “basic local telecommunications service” means voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as “911,” all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing.

⁹ The term “vertical services” includes services such as 3-Way Calling, Call Waiting, Call Forwarding Busy Line, Call Forwarding Don’t Answer, Call Return, Repeat Dialing, Call Selector, Preferred Call Forwarding, Caller ID Deluxe, and Custom Code Restrictions. [See *Report of the Florida Public Service Commission on the Relationships Among the Costs and Charges Associated With Providing Basic Local Service, Intrastate Access, and Other Services Provided by Local Exchange Companies, in Compliance With Chapter 98-277, Section 2(1), Laws of Florida and the Conclusions of the Florida Public Service Commission as to the Fair and Reasonable Florida Residential Basic Local Telecommunications Service Rate, in Compliance With Chapter 98-277, Section 2(2)(A), Laws of Florida*, Volume I, Florida Public Service Commission, February 15, 1999, p. 37.]

¹⁰ As defined in s. 364.025, F.S., “universal service” means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the Public Service Commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas.

Rate decreases, however, shall be offset by the amount of revenues lost from the gross receipts tax to hold harmless the impact on the Public Education Capital Outlay and Debt Service Trust Fund. The interexchange telecommunications company whose intrastate access rates are reduced must pay into the treasury an amount equal to its “pro rata share” of the loss of gross receipts tax revenues from such reductions. This committee substitute does not specify, though, how a company’s “pro rata share” of lost gross receipts tax revenues would be determined. It is also unclear as to how the timing of a payment made by an interexchange telecommunications company to the treasury would affect the Public Education Capital Outlay program bonding process.

- It strikes the current provisions in subsection (6) of s. 364.163, F.S., and amends the subsection to provide that, upon petition by a provider or purchaser of network access services or upon its own motion, the PSC may review the level of network access rates for the provider cited in the petition or motion and make any necessary adjustments, after notice and opportunity for hearing, consistent with this section. The PSC must make its decision within 180 days after notice of the hearing.
- It strikes the current provisions in subsection (7) of s. 364.163, F.S., and amends the subsection to provide that the PSC shall have ongoing authority for determining the appropriate rate levels for network access services. Moreover, affected providers and purchasers of network access services must provide data that the PSC considers necessary to implement this section.
- It strikes the current provisions in subsection (8) of s. 364.163, F.S., and amends the subsection to provide the PSC with rulemaking authority necessary to implement this section.
- It strikes the current provisions in subsection (9) of s. 364.163, F.S., and amends the subsection to provide that, notwithstanding the time periods specified in subsection (4) as amended, the PSC shall provide organizational and staff support for a convening by July 1, 2001, of all “appropriate representatives” of the telecommunications industry for the purpose of having such representatives negotiate among themselves on appropriate levels for network access rates and to identify other solutions that promote competition in the provision of local telecommunications services. This committee substitute, however, does not specify a method for selecting “appropriate representatives.”

The committee substitute further provides that representatives shall have 90 days within which to negotiate under this subsection. If the representatives reach an agreement, they shall stipulate to such agreement in writing and submit it to the PSC. The PSC shall have 30 days to approve or disapprove the agreement, using the standards provided in this section. If the representatives enter into the negotiations under this subsection, or if the PSC disapproves the agreement negotiated by the representatives, the proceeding required under the amended subsection (4) shall be delayed until October 1, 2001, and the decision required in the amended subsection (4) as shall be delayed until March 1, 2002. If the representatives fail to enter into such negotiations in good faith by July 15, 2001, the PSC shall immediately commence the proceeding under the amended subsection (4), in accordance with the time periods specified in that subsection. The Public Counsel shall participate in the negotiations conducted under this subsection. All parties, including the Public Counsel, must stipulate to the agreement before it is submitted to the PSC.

This committee substitute will take effect 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:

This committee substitute has not been reviewed by the Revenue Estimating Conference. It should be noted, though, that a reduction of network access rates would reduce the amount of tax collected and remitted to the state for the sales and use tax and the gross receipts tax and to local governments for the public service tax pursuant to s. 166.231, F.S. The loss of gross receipts tax revenue would also have an impact on the Public Education Capital Outlay (PECO) program which uses these tax revenues to finance the sale of bonds for school construction, although this committee substitute provides that interexchange telecommunications companies must hold harmless any impact on the Public Education Capital Outlay and Debt Service Trust Fund caused by a reduction in intrastate access rates.¹¹

This committee substitute, however, requires any interexchange telecommunications company whose intrastate switched access rate is reduced as a result of rate decreases made by a local exchange telecommunications company to decrease its long distance rates to return all of the benefits of the reduction to its Florida residential and business customers. It is usually assumed that reducing long distance service rates would increase the demand for long distance services, thus limiting the loss of tax revenue.

B. Private Sector Impact:

This committee substitute provides for a convening by July 1, 2001, of all appropriate representatives of the telecommunications industry for the purpose of having such representatives negotiate among themselves on appropriate levels for network access rates and to identify other solutions that promote competition in the provision of local

¹¹ The revenue from the gross receipts tax is deposited in the Public Education Capital Outlay and Debt Service Trust Fund pursuant to Article XII, section 9(a)(2) of the Florida Constitution and is bonded by the state.

telecommunications services. A reduction in switched network access charges would reduce the revenues of certain local exchange telecommunications companies.

This committee substitute would also require that an interexchange telecommunications (long distance) company that has a reduction in its intrastate access rate decrease its intrastate long distance rates in order to return all of the benefits of the reduction to its customers. Furthermore, the interexchange telecommunications company whose intrastate access rates are reduced must pay into the treasury an amount equal to its pro rata share of the loss of gross receipts tax revenues from such reductions.

This committee substitute further provides that the Public Service Commission (PSC) shall have ongoing authority for determining the appropriate rate levels for network access services. Affected providers and purchasers of network access services must provide data that the PSC considers necessary to implement this section.

C. Government Sector Impact:

This committee substitute contains several provisions regarding the Public Service Commission (PSC):

- By July 1, 2001, the PSC shall initiate a proceeding to determine the appropriate level of network access rates. The PSC must render a decision by January 1, 2002. On the same date the PSC renders its decision, it must report to the Governor and the Legislature on the proceeding and the rationale for its decision. Notwithstanding these provisions, the PSC shall provide organizational and staff support for a convening by July 1, 2001, of all appropriate representatives of the telecommunications industry for the purpose of having such representatives negotiate among themselves on appropriate levels for network access rates and to identify other solutions that promote competition in the provision of local telecommunications services. Depending upon the negotiation process, the respective dates for PSC action relating to its proceeding may change to October 1, 2001, and March 1, 2002.
- Upon petition by a provider or purchaser of network access services or upon its own motion, the PSC may review the level of network access rates for the provider cited in the petition or motion and make any necessary adjustments, after notice and opportunity for hearing, consistent with this section. The PSC must make its decision within 180 days after notice of the hearing.
- The PSC shall have ongoing authority for determining the appropriate rate levels for network access services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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