

STORAGE NAME: h0611a.utco.doc
DATE: March 19, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND TELECOMMUNICATIONS
ANALYSIS**

BILL #: HB 611
RELATING TO: Telecommunications Network Access Services
SPONSOR(S): Representative(s) Haridopolos and Ritter
TIED BILL(S): None

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

- (1) UTILITIES AND TELECOMMUNICATIONS (RIC)
 - (2) AGRICULTURE & CONSUMER AFFAIRS (CCC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4) COUNCIL FOR READY INFRASTRUCTURE
 - (5)
-

I. SUMMARY:

Section 364.163, Florida Statutes, provides for network access services. Under this section "network access service" means "any service provided by a local exchange telecommunications company to a telecommunications company certificated under chapter 364 by the Public Service Commission (PSC) or licensed by the Federal Communications Commission (FCC)." Switched access rates refer to the charges for network access that are paid by providers of long distance telephone service (interexchange carriers or IXC's) to the local exchange telecommunications companies (LECs) for connection to their network and facilities. The charges are for originating a call and terminating a call for both intrastate and interstate calls. The FCC has jurisdiction over interstate calls and the PSC has jurisdiction over intrastate calls.

This bill would require any LEC with more than 100,000, but less than 3 million access lines on July 1, 1995 (Verizon and Sprint) to reduce its intrastate switched access rates to the level of the largest LEC operating in this state (BellSouth) on October 1, 2001. It allows an IXC to petition the PSC to reduce the intrastate switched access rates of any local exchange telecommunications company on or after November 1, 2001.

Any IXC whose intrastate switched access rates are reduced by the bill is required to reduce its intrastate long distance rates to return all of the benefits to its customers. The IXC may determine the specific rates to be reduced if residential and business customers benefit. On or after November 1, 2001, any LEC, except one whose rates are capped by section 364.163(1), F.S., may petition the PSC to increase its network access rates.

The Revenue Impact Conference estimates that the bill would reduce revenues to the state (annualized) for FY01-02 of \$7.56 million and for FY02-03 of \$7.86 million for the gross receipts and sales tax. The impact on local governments would be a annualized reduction of \$4.18 million in FY01-02 and \$4.34 million in FY02-03 in revenues from the public service tax. The impact on revenues from these charges would be reduced \$44.24 million for Verizon and \$25.33 million for Sprint in FY01-02 and \$34.04 million and \$45.59 million for FY02-03 respectively. The reduction in PECO appropriation would be \$7.74 million in FY01-02 and \$13.01 million in FY02-03 (including cash and bonding). The revenue from the public service tax is bonded by local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

In 1995, the Legislature enacted chapter 95-402, Laws of Florida, that opened up the local monopoly telecommunications market to competition by allowing competing telephone companies, called alternative local exchange companies, to operate in Florida. Prior to that time the local exchange telecommunications companies were rate of return regulated companies that had a telecommunications monopoly within established service areas. Under the 1995 revisions, the rates for basic local service were capped at the rates in effect on July 1, 1995 until January 1, 2000 for all companies except BellSouth and until January 1, 2001 for BellSouth.

Section 364.163, Florida Statutes, provides for network access services. Under this section "network access service" means "any service provided by a local exchange telecommunications company to a telecommunications company certificated under chapter 364 or licensed by the Federal Communications Commission." It does not include local interconnection arrangements, provided in section 364.16, Florida Statutes, or the resale arrangements provided in section 364.161, Florida Statutes. Each local exchange telecommunications company subject to section 364.051, Florida Statutes, (price regulation) is required to maintain tariffs with the Public Service Commission that contain the terms, conditions, and rates for each of its network access services.

A "local exchange telecommunications company" is defined by section 364.02(6), Florida Statutes, as "any company certificated by the [Public Service Commission] to provide local exchange telecommunications service in this state before June 30, 1995."

A "telecommunications company" is defined by section 364.02(12), Florida Statutes, as

every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility.

Companies that provide telecommunications facilities exclusively to certificated telecommunications companies and companies excluded from the definition of telecommunications companies are not included in this definition. Companies specifically excluded from the definition include: commercial mobile radio service providers, facsimile transmission services, private computer data networks not

offering services to the public for hire, and cable television companies providing cable service as defined in 47 U.S.C. section 522.

Switched access rates refer to the charges for network access that are paid by providers of long distance telephone service (interexchange carriers) to the local exchange companies for connection to their network and facilities. The charges are for originating a call and terminating a call for both intrastate and interstate calls. The Federal Communications Commission has jurisdiction over interstate telecommunication services and the Florida Public Service Commission has jurisdiction over intrastate telecommunication services. 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.

There are currently 10 local exchange companies operating in Florida. They are: BellSouth Telecommunications, Inc., Verizon (merger of GTE and Bell Atlantic), Sprint-Florida Inc., ALLTEL Florida, Inc., GT Com (formerly St. Joseph Telephone & Telegraph Company, Florala Telephone Company, Inc., and Gulf Telephone Company), TDS/Quincy Telephone Company, Vista-United Telecommunications, Northeast Florida Telephone Company, Inc., Frontier Communications of the South, Inc., and ITS Telecommunications Systems, Inc. (formerly Indiantown Telephone System, Inc.).

The following is the number of basic local telecommunications service access lines for the Florida local exchange companies as of December 2000:

BellSouth	6,617,173	Vista-United	18,706
Verizon	2,443,575	TDS/Quincy	13,623
Sprint	1,710,409	NE Florida	9,280
ALLTEL	82,719	Frontier	4,537
GT Com	49,020	ITS	3,705

Subsection (1) of section 364.163, Florida Statutes, provides that the rates for switched network access services for each local exchange company shall be capped at the rates in effect on July 1, 1999 and shall remain capped until January 1, 2001. Upon the date of filing its election under this section (for price regulation under section 364.051, Florida Statutes), the access rates are capped at the rates in effect on that date and remain capped for five years. According to the Public Service Commission, all local exchange companies except Frontier Communications of the South, Inc., have elected price regulation.

After termination of the caps imposed by subsection (1) and after the local exchange company's intrastate switched access rates reach parity with its interstate switched access rates, a company may annually adjust any network access service rate by the cumulative change in inflation, but no more than three percent annually. The company must give 30 days' notice of the adjustment. See section 364.163(2), Florida Statutes. Also, after termination of the caps, subsection (3) of this section allows a company to petition the Public Service Commission 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), Florida Statutes, provides that a company 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 company may decrease its network services rates at any time and the new rates will become effective upon seven days' notice.

Subsection (5) of this section provides that company-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. Company-proposed rate decreases become effective upon seven days' notice. Rate increases made by a local exchange telecommunications company are presumed valid and become effective on the date the tariff is filed. The Public Service Commission is given

continuing regulatory oversight of local exchange telecommunications company-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 commission may determine if the price increase is correct and order the local exchange company to hold all the revenues collected under the increase to refund to its customers. The commission must make a determination, within 60 days of the order, whether to order a full or partial refund or release the revenues.

Chapter 98-277, Laws of Florida amended subsection (6) of section 364.163, Florida Statutes, to its present form and required any local exchange telecommunications company with more than 100,000, but fewer than 3 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. This reduction affected Verizon (then GTE-Florida) and Sprint-Florida. Any interexchange telecommunications company 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 ...". The interexchange company could not reduce its per minute interLATA toll rates by a percentage greater than the per minute intrastate switched access rate reduction. The interexchange telecommunications company could determine the specific intrastate rates to be decreased, provided that residential and business customers benefited from the reductions.

Prior to the changes in 1998, subsection (6) of section 364.163, Florida Statutes, provided that any local exchange telecommunications company 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 local exchange telecommunications company 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 the Public Service Commission Order No. PSC 94-0172-FOF-TL. This order provided, among other things, that BellSouth reduce its access rates.

Section 364.163 (7), Florida Statutes, 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 commission by the telecommunications companies is presumed valid and becomes effective October 1 of each relevant year.

Subsection (8) provides that no later than 30 days after the tariff is filed, the commission 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 commission must make a determination, within 60 days of the order, whether to order a full or partial refund or release the revenues.

Subsection (9) of section 364.163, Florida Statutes, gives the Public Service Commission 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."

The following is a comparison of switched access charges for intrastate and interstate rates. It includes one minute of originating and one minute of terminating switched access and assumes common transport.

	Intrastate Rate	Interstate Rate
BellSouth	\$0.0485	\$0.0160
Verizon	\$0.0982	\$0.0228
Sprint	\$0.1027	\$0.0185
ALLTEL	\$0.1132	\$0.0500
GT Com		
(Floral) (Floral)	\$0.1253	\$0.0542
(Gulf)	\$0.0945	\$0.0542
(St. Joseph)	\$0.1037	\$0.0542
Vista-United	\$0.1426	\$0.0393
TDS/Quincy	\$0.1295	\$0.0554
NE Florida	\$0.1126	\$0.0674
Frontier	\$0.1040	\$0.0627
ITS	\$0.1128	\$0.0814

According to the Public Service Commission intrastate network access service 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 and to encourage subscribership. The Federal Communications Commission has addressed the issue of access charges by reducing the per minute charge and establishing line item flat charges on the telephone bill.

Basic local telecommunications service is defined by section 364.02(2), Florida Statutes, as:

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. For a local exchange telecommunications company, such term shall include any

extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

The rates for basic local telecommunications service in Florida are as follows:

BellSouth \$10.65

Verizon \$11.81

Sprint \$ 9.65

Basic local telecommunication service is subject to price regulation to the extent provided in section 364.051, Florida Statutes. Section 364.051(1), Florida Statutes, allows local exchange companies to choose "price regulation" instead of "rate base, rate of return" regulation. Subsection (1)(c) provides that each company subject to this section is exempt from rate base, rate of return regulation and the requirements of several sections dealing with rates and revenues. The rates for basic local telecommunications service are capped for local exchange companies that choose price regulation under this section. The rates were capped at the rates in effect on July 1, 1995 and they could not be increased before January 1, 1999, except for BellSouth. The rates for BellSouth could not be increased before January 1, 2001. Verizon and BellSouth have applied to the Public Service Commission for a rate increase under this section.

Subsection (5) of section 364.051, Florida Statutes, allows any local exchange telecommunications company that believes circumstances have changed substantially enough to justify a rate increase to petition the commission for an increase. The commission can grant the petition only after an opportunity for a hearing and a compelling showing of changed circumstances.

Section 364.025, Florida Statutes, provides for universal service and carrier of last resort requirements. Universal service is a concept that basic telephone service should be available to everyone that desires the service at affordable prices. Subsection (1) defines "universal service" as an "evolving level of access to telecommunications services that, taking into 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." The carrier of last resort provision requires the local exchange telecommunications company to "furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory." This requirement expires on January 1, 2004.

C. EFFECT OF PROPOSED CHANGES:

This bill would remove the caps on the rates for switched network access charges that expire on January 1, 2001 for companies subject to section 364.163, Florida Statutes. It would maintain the caps on the rates on the date that a company elected to become subject to this section for 5 years from the date of the election.

The provisions in subsection (2), (3), (4), and (5) of section 364.163, Florida Statutes, would be stricken. Subsection (2) provides for adjustment of rates after the termination of the caps in subsection (1) and the parity of intrastate rates with interstate rates. Subsection (3) provides that a company may petition the commission for a rate change to recover costs of government-mandated programs or federal or state income taxes. Subsection (4) provides for implementation of rate increases. Subsection (5) provides for effective dates for increases. Subsection (5) also provides for the oversight of the Public Service Commission of the rate increases, for establishing

reasonable service quality, and resolution of complaints; it also includes the authority of the Public Service Commission to determine the correctness of the those rate increases.

Subsection (6) of section 364.163, Florida Statutes, would be renumbered as a new subsection (2) and amended to require Verizon and Sprint-Florida, to reduce their intrastate switched access rates to the level of the largest local exchange company operating in this state (BellSouth) on October 1, 2001. This would reduce Verizon's intrastate switched access rate of \$0.0982 per minute and Sprint-Florida's intrastate switched access rate of \$0.1027 per minute to the BellSouth rate of \$0.0485.

Subsection (7) is amended and renumbered as a new subsection (3) and allows an interexchange carrier, effective November 1, 2001, to petition the Public Service Commission to reduce the intrastate switched access rates of any local exchange telecommunications company. It requires the commission to render its decision in 180 days after the date of the petition. It strikes the existing provisions regarding when the reductions will become effective.

Subsection (8) of section 364.163, Florida Statutes, is amended and renumbered as a new subsection (4) and requires any interexchange telecommunications company whose intrastate switched access rate is reduced by the provisions of this bill, shall decrease its long distance rates to return all of the benefits of the reduction to its customers. The interexchange telecommunications carrier is allowed to determine the specific intrastate rates to be decreased as long as residential and business customers benefit from the rate decrease. It strikes the provisions allowing the Public Service Commission the authority to determine the correctness of the rate decrease and to order the holding of the revenues subject to refund.

Subsection (9) is amended and renumbered as a new subsection (5) and provides that effective November 1, 2001, any local exchange telecommunications company, except one whose rates are capped pursuant to subsection (1), may petition the commission to increase its network access rates. The commission has 180 days from the date of the petition to render its decision. It strikes the provisions granting the commission continuing regulatory oversight of intrastate switched access and customer long distance rates to determine "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."

D. SECTION-BY-SECTION ANALYSIS:

Please see Present Situation and Effect of Proposed Changes sections.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill would reduce the amount of tax collected and remitted to the state for sales tax and gross receipts tax. Business telecommunication services, which include access charges, are subject to the sales and use tax under section 212.05(1)(e), Florida Statutes, and are taxed at 7%. Both residential and business telecommunication services are subject to the state gross receipts tax under section 203.01(1)(b), Florida Statutes, and are taxed at an effective rate of 2.56% of the gross charges to the customer on the telephone bill.

Gross Receipts Tax

FY 2001-02 – Cash (Est. .025 x ½year)	(\$ 553,015)
FY 2001-02 – Annualized impact	(\$1,990,853)
FY 2002-03 – Growth @ 4%	(\$2,070,487)

Sales and Use Tax

FY 2001-02 – Cash (Est. .07 x ½year)	(\$1,548,441)
FY 2001-02 – Annualized Impact	(\$5,574,388)
FY 2002-03 – Growth @ 4%	(\$5,797,363)

Assumptions:

1. An own-price elasticity of demand of –.5% for network access is applied as an offset to estimating the fiscal impact.
2. The wholesale rate reduction will impact retail rates. Fifty-percent (50%) will flow through in FY 2001-02 and 90% will flow through in FY 2002-03
3. Growth in revenues for long distance is estimated at 4%.

Public Education Capital Outlay Program (PECO)

The reduction in gross receipts tax revenue would have an impact on the Public Education Capital Outlay Program (PECO), which uses these tax revenues to finance the sale of bonds for school construction pursuant to Article XII, section 9(a)(2) of the Florida Constitution. A substantial portion of the tax revenues can be bonded under this program. The following impact has been rounded. The PECO estimates are for the next six years.

FY 2001-02 - the reduction in gross receipts tax revenue would be for the cash of \$0.55 million and there would be no bonding implications.

FY 2002-03 - the reduction of \$2.07 million in gross receipts tax revenue would result in a reduction in bond sale proceeds of \$6.6 million and a reduction in cash funds of \$1.14 million for a total reduction in appropriation of \$7.7 million.

FY 2003-04 – the reduction of \$2.07 million in gross receipts tax revenue would result in a reduction in bond sale proceeds of \$12.8 million and a reduction in cash funds of \$0.21 million for a total reduction in appropriation of \$13.01 million.

FY 2004-05 – the reduction of \$2.07 million in gross receipts tax revenue would result in a reduction in the bond sale proceeds of \$6.30 million and a reduction in cash funds of \$0.21 million for a total reduction in appropriation of \$6.51 million.

FY 2005-06 – the reduction of \$2.07 million in gross receipts tax revenue would result in no reduction in the bond sale proceeds and a reduction in cash funds of \$0.21 million for a total reduction in appropriation of \$0.21 million.

FY 2006-07 – the reduction of \$2.07 million in gross receipts tax revenue would result in no reduction in the bond sale proceeds and a reduction in cash funds of \$0.21 million for a total reduction in appropriation of \$0.21 million.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill would reduce the amount of tax revenue received by local governments under the local option sales and use tax under chapter 212, Florida Statutes, and the public service tax under section 166.231, Florida Statutes. Local governments are able to bond the proceeds from public service tax.

Public Service Tax

FY 2001-02 – Cash (Est. .07 x ½year local share)	(\$1,161,331)
FY 2001-02 – Annualized Impact	(\$4,180,791)
FY 2002-03 – Growth @ 4%	(\$4,348,022)

Assumptions:

This estimate assumes a 7% public service tax rate and a 75% sales and use tax as the share of the public service tax obtained by jurisdictions that have a broad base.

Local governments are able to bond part of the proceeds from the public service tax. These estimates do not include the proceeds from those bonds.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Revenue Impact Conference estimated that this bill would reduce the revenues from switched access charges with own-price elasticity for each local exchange company:

Revenue Change Reflecting Flow through to Retail of 50% in FY 2001-02 and 90% in FY 2002-03

	<u>FY01-02</u>	<u>FY02-03</u>
Verizon	\$18,909,172	\$34,036,509
Sprint-Florida.	\$25,332,000	\$45,597,600
TOTAL	\$44,241,171	\$79,634,109

This bill would require that an interexchange (long distance) company that has a reduction in its intrastate switched access rate "shall decrease its intrastate long distance rates in order to return all of the benefits of such reduction to its customers."

D. FISCAL COMMENTS:

The impact conference met on March 16, 2001 and the estimates in this analysis are from that conference.

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 funds 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof