

1 A bill to be entitled
2 An act relating to communications; amending s.
3 364.051, F.S., relating to price regulation;
4 allowing a telecommunications company to
5 publicly publish price lists for nonbasic
6 services; providing guidelines for such
7 publication; allowing 1 day's notice for price
8 changes to nonbasic services; deleting a
9 company's option to elect that its basic
10 services be treated as nonbasic services;
11 requiring a company to request that the Public
12 Service Commission lessen its service quality
13 regulation; providing criteria for granting a
14 petition to change regulatory treatment of
15 retail services; amending s. 364.025, F.S.;
16 providing definitions; providing that a local
17 exchange telecommunications company obligated
18 to serve as the carrier of last resort is not
19 obligated to provide basic local
20 telecommunications service to customers in a
21 multitenant business or residential property
22 under certain circumstances; requiring the
23 local exchange telecommunications company to
24 notify the Public Service Commission when it is
25 relieved of the obligation to provide service;
26 providing for the local exchange
27 telecommunications company to request a waiver
28 of its carrier of last resort obligation from
29 the commission; providing for carrier of last
30 resort obligation to apply when specified
31 conditions cease to exist; providing for effect

1 of the act on the commission's jurisdiction;
 2 amending s. 350.0611, F.S.; providing
 3 additional authority to the Public Counsel,
 4 including the authority to provide legal
 5 representation to, and to appear on behalf of,
 6 the state and its political subdivisions as
 7 consumers of communications services and
 8 utility services, to receive, investigate, and
 9 take legal action upon complaints involving
 10 communications services not within the
 11 jurisdiction of the Public Service Commission,
 12 to appear before state and federal agencies to
 13 enhance terms and conditions of utility and
 14 communications services, and to analyze and
 15 report on pending legislation relevant to
 16 utility and communications services; providing
 17 appropriations; providing an effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

21 Section 1. Subsections (5), (6), and (7) of section
 22 364.051, Florida Statutes, are amended to read:

23 364.051 Price regulation.--

24 (5) NONBASIC SERVICES.--Price regulation of nonbasic
 25 services shall consist of the following:

26 (a) Each company subject to this section shall, at its
 27 option, maintain tariffs with the commission or otherwise
 28 publicly publish ~~containing~~ the terms, conditions, and rates
 29 for each of its nonbasic services, and may set or change, on 1
 30 day's ~~15 days'~~ notice, the rate for each of its nonbasic
 31 services. For a company electing to publicly publish the

1 terms, conditions, and rates for each of its nonbasic
2 services, the commission may establish guidelines for the
3 publication. The guidelines may not require more information
4 than what is required to be filed with a tariff. The, ~~except~~
5 ~~that a~~ price increase for any nonbasic service category shall
6 not exceed 6 percent within a 12-month period until there is
7 another provider providing local telecommunications service in
8 an exchange area at which time the price for any nonbasic
9 service category may be increased in an amount not to exceed
10 20 percent within a 12-month period, and the rate shall be
11 presumptively valid. However, for purposes of this
12 subsection, the prices of:

13 1. A voice-grade, flat-rate, multi-line business local
14 exchange service, including multiple individual lines, centrex
15 lines, private branch exchange trunks, and any associated
16 hunting services, that provides dial tone and local usage
17 necessary to place a call within a local exchange calling
18 area; and

19 2. Telecommunications services provided under contract
20 service arrangements to the SUNCOM Network, as defined in
21 chapter 282,

22
23 shall be capped at the rates in effect on July 1, 1995, and
24 such rates shall not be increased prior to January 1, 2000;
25 provided, however, that a petition to increase such rates may
26 be filed pursuant to subsection (4) utilizing the standards
27 set forth therein. There shall be a flat-rate pricing option
28 for multi-line business local exchange service, and mandatory
29 measured service for multi-line business local exchange
30 service shall not be imposed. Nothing contained in this
31 section shall prevent the local exchange telecommunications

1 company from meeting offerings by any competitive provider of
2 the same, or functionally equivalent, nonbasic services in a
3 specific geographic market or to a specific customer by
4 deaveraging the price of any nonbasic service, packaging
5 nonbasic services together or with basic services, using
6 volume discounts and term discounts, and offering individual
7 contracts. However, the local exchange telecommunications
8 company shall not engage in any anticompetitive act or
9 practice, nor unreasonably discriminate among similarly
10 situated customers.

11 (b) The commission shall have continuing regulatory
12 oversight of nonbasic services for purposes of ensuring
13 resolution of service complaints, preventing
14 cross-subsidization of nonbasic services with revenues from
15 basic services, and ensuring that all providers are treated
16 fairly in the telecommunications market. The cost standard
17 for determining cross-subsidization is whether the total
18 revenue from a nonbasic service is less than the total
19 long-run incremental cost of the service. Total long-run
20 incremental cost means service-specific volume and
21 nonvolume-sensitive costs.

22 (c) The price charged to a consumer for a nonbasic
23 service shall cover the direct costs of providing the service
24 and shall, to the extent a cost is not included in the direct
25 cost, include as an imputed cost the price charged by the
26 company to competitors for any monopoly component used by a
27 competitor in the provision of its same or functionally
28 equivalent service.

29 (6) After a local exchange telecommunications company
30 that has more than 1 million access lines in service has
31 reduced its intrastate switched network access rates to

1 parity, as defined in s. 364.164(5), the local exchange
2 telecommunications company's ~~basic local telecommunications~~
3 ~~service may, at the company's election, be subject to the same~~
4 ~~regulatory treatment as its nonbasic services. The company's~~
5 retail service quality requirements that are not already equal
6 to the service quality requirements imposed upon the
7 competitive local exchange telecommunications companies shall
8 at the company's request to the commission thereafter be no
9 greater than those imposed upon competitive local exchange
10 telecommunications companies unless the commission, within 120
11 days after the company's request election, determines
12 otherwise. In such event, the commission may grant some
13 reductions in service quality requirements in some or all of
14 the company's local calling areas. The commission may not
15 impose retail service quality requirements on competitive
16 local exchange telecommunications companies greater than those
17 existing on January 1, 2003.

18 (7) After ~~if~~ a local exchange telecommunications
19 company that has more than 1 million access lines in service
20 has reduced its intrastate switched network access rates to
21 parity, as defined in s. 364.164(5) elects, pursuant to
22 ~~subsection (6), to subject its retail basic local~~
23 ~~telecommunications services to the same regulatory treatment~~
24 ~~as its nonbasic services~~, the local exchange
25 telecommunications company may petition the commission for
26 regulatory treatment of its retail services at a level no
27 greater than that imposed by the commission upon competitive
28 local exchange telecommunications companies. The local
29 exchange telecommunications company shall:

30 (a) Show that granting the petition is in the public
31 interest;

1 (b) Demonstrate that the competition faced by the
2 company is sufficient and sustainable to allow such
3 competition to supplant regulation by the commission; and

4 ~~(c)(b)~~ Reduce its intrastate switched network access
5 rates to its local reciprocal interconnection rate upon the
6 grant of the petition.

7
8 The commission shall act upon such a petition within 9 months
9 after its filing with the commission. ~~In making its~~
10 ~~determination to either grant or deny the petition, the~~
11 ~~commission shall determine the extent to which the level of~~
12 ~~competition faced by the local exchange telecommunications~~
13 ~~company permits and will continue to permit the company to~~
14 ~~have its retail services regulated no differently than the~~
15 ~~competitive local exchange telecommunications companies are~~
16 ~~then being regulated.~~ The commission may not increase the
17 level of regulation for competitive local exchange
18 telecommunications companies to a level greater than that
19 which exists on the date the local exchange telecommunications
20 company files its petition.

21 Section 2. Subsection (6) is added to section 364.025,
22 Florida Statutes, to read:

23 364.025 Universal service.--

24 (6)(a) For purposes of this subsection:

25 1. "Owner or developer" means the owner or developer
26 of a multitenant business or residential property, any
27 condominium association or homeowners' association thereof, or
28 any other person or entity having ownership in or control over
29 the property.

30 2. "Communications service provider" means any person
31 or entity providing communications services, any person or

1 entity allowing another person or entity to use its
2 communications facilities to provide communications services,
3 or any person or entity securing rights to select
4 communications service providers for a property owner or
5 developer.

6 3. "Communications service" means voice service or
7 voice replacement service through the use of any technology.

8 (b) A local exchange telecommunications company
9 obligated by this section to serve as the carrier of last
10 resort is not obligated to provide basic local
11 telecommunications service to any customers in a multitenant
12 business or residential property, including, but not limited
13 to, apartments, condominiums, subdivisions, office buildings,
14 or office parks, when the owner or developer thereof:

15 1. Permits only one communications service provider to
16 install its communications service-related facilities or
17 equipment, to the exclusion of the local exchange
18 telecommunications company, during the construction phase of
19 the property;

20 2. Accepts or agrees to accept incentives or rewards
21 from a communications service provider that are contingent
22 upon the provision of any or all communications services by
23 one or more communications service providers to the exclusion
24 of the local exchange telecommunications company;

25 3. Collects from the occupants or residents of the
26 property charges for the provision of any communications
27 service, provided by a communications service provider other
28 than the local exchange telecommunications company, to the
29 occupants or residents in any manner, including, but not
30 limited to, collection through rent, fees, or dues; or

31

1 4. Enters into an agreement with the communications
2 service provider which grants incentives or rewards to such
3 owner or developer contingent upon restriction or limitation
4 of the local exchange telecommunications company's access to
5 the property.

6 (c) The local exchange telecommunications company
7 relieved of its carrier-of-last-resort obligation to provide
8 basic local telecommunications service to the occupants or
9 residents of a multitenant business or residential property
10 pursuant to paragraph (b) shall notify the commission of that
11 fact in a timely manner.

12 (d) A local exchange telecommunications company that
13 is not automatically relieved of its carrier-of-last-resort
14 obligation pursuant to subparagraphs (b)1.-4. may seek a
15 waiver of its carrier-of-last-resort obligation from the
16 commission for good cause shown based on the facts and
17 circumstances of provision of service to the multitenant
18 business or residential property. Upon petition for such
19 relief, notice shall be given by the company at the same time
20 to the relevant building owner or developer. The commission
21 shall have 90 days to act on the petition. The commission
22 shall implement this paragraph through rulemaking.

23 (e) If all conditions described in subparagraphs
24 (b)1.-4. cease to exist at a property, the owner or developer
25 requests in writing that the local exchange telecommunications
26 company make service available to customers at the property
27 and confirms in writing that all conditions described in
28 subparagraphs (b)1.-4. have ceased to exist at the property
29 and the owner or developer has not arranged and does not
30 intend to arrange with another communications service provider
31 to make communications service available to customers at the

1 property, the carrier-of-last-resort obligation under this
 2 section shall again apply to the local exchange
 3 telecommunications company at the property; however, the local
 4 exchange telecommunications company may require that the owner
 5 or developer pay to the company in advance a reasonable fee to
 6 recover costs that exceed the costs that would have been
 7 incurred to construct or acquire facilities to serve customers
 8 at the property initially, and the company shall have a
 9 reasonable period of time following the request from the owner
 10 or developer to make arrangements for service availability. If
 11 any conditions described in subparagraphs (b)1.-4. again exist
 12 at the property, paragraph (b) shall again apply.

13 (f) This subsection does not affect the limitations on
 14 the jurisdiction of the commission imposed by s. 364.011 or s.
 15 364.013.

16 Section 3. Section 350.0611, Florida Statutes, is
 17 amended to read:

18 350.0611 Public Counsel; duties and powers.--It shall
 19 be the duty of the Public Counsel to provide legal
 20 representation for the people of the state in proceedings
 21 before the commission and in proceedings before counties
 22 pursuant to s. 367.171(8) and to provide legal representation
 23 to the State of Florida and its political subdivisions in
 24 their capacity as consumers of communications services and
 25 utility services. The Public Counsel shall have such powers as
 26 are necessary to carry out the duties of his or her office,
 27 including, but not limited to, the following specific powers:

28 (1) To recommend to the commission or the counties, by
 29 petition, the commencement of any proceeding or action or to
 30 appear, in the name of the state or its citizens, in any
 31 proceeding or action before the commission or the counties and

1 | urge therein any position which he or she deems to be in the
2 | public interest, whether consistent or inconsistent with
3 | positions previously adopted by the commission or the
4 | counties, and utilize therein all forms of discovery available
5 | to attorneys in civil actions generally, subject to protective
6 | orders of the commission or the counties which shall be
7 | reviewable by summary procedure in the circuit courts of this
8 | state.†

9 | (2) To have access to and use of all files, records,
10 | and data of the commission or the counties available to any
11 | other attorney representing parties in a proceeding before the
12 | commission or the counties.†

13 | (3) In any proceeding in which he or she has
14 | participated as a party, to seek review of any determination,
15 | finding, or order of the commission or the counties, or of any
16 | hearing examiner designated by the commission or the counties,
17 | in the name of the state or its citizens.†

18 | (4) To prepare and issue reports, recommendations, and
19 | proposed orders to the commission, the Governor, and the
20 | Legislature on any matter or subject within the jurisdiction
21 | of the commission, and to make such recommendations as he or
22 | she deems appropriate for legislation relative to commission
23 | procedures, rules, jurisdiction, personnel, and functions.†

24 | ~~and~~

25 | (5) To appear before other state agencies, federal
26 | agencies, and state and federal courts in connection with
27 | matters under the jurisdiction of the commission, in the name
28 | of the state or its citizens, and on behalf of the State of
29 | Florida and its political subdivisions in their capacity as
30 | consumers of communications services and utility services.

31 |

1 (6) To receive and investigate complaints that involve
2 communications services, as that term is defined in s.
3 202.11(2), and that are not within the jurisdiction of the
4 Public Service Commission. If the Public Counsel believes the
5 practice forming the basis of a complaint constitutes an
6 unfair or deceptive trade practice or other unlawful practice
7 as defined in s. 501.204, either standing on its own or when
8 considered with other similar, actual practices or potentially
9 systemic practices, the Public Counsel may appear in the name
10 of the residents of the State of Florida to petition the
11 Circuit Court of Leon County, or any other circuit court of
12 the state in which the practice was identified, to enjoin the
13 practice as an unfair and deceptive trade practice, and to
14 petition for a judgment for actual damages for aggrieved
15 consumers, for civil penalties of not more than \$10,000 for
16 each willful unfair and deceptive trade practice or not more
17 than \$15,000 for each willful unfair and deceptive trade
18 practice that meets the criteria of s. 501.2077, and to
19 recover attorney's fees and costs of investigation and court
20 costs. Any moneys collected under this subsection, other than
21 moneys recovered for consumer damages, shall be deposited as
22 received into the General Revenue Fund unallocated.

23 (7) To appear before state and federal agencies,
24 including, but not limited to, the Florida Public Service
25 Commission, the Department of Environmental Protection, the
26 Department of Community Affairs, the Federal Energy Regulatory
27 Commission, the Federal Communications Commission, and the
28 Federal Trade Commission, in the name of the state or its
29 residents, and on behalf of the State of Florida and its
30 political subdivisions in their capacity as consumers of
31 communications services and utility services, for any purpose

1 that in the discretion of the Public Counsel would enhance
2 terms and conditions of utility and communications services
3 afforded to the residents of the State of Florida or to the
4 state or its political subdivisions as consumers or would lead
5 to more affordable rates charged by utility and communications
6 providers. The Public Counsel may also challenge any fee, tax,
7 or other assessment levied by any state or federal authority
8 which the Public Counsel believes will have a substantial
9 detrimental effect on the utility or communications services
10 provided or on the price charged to Florida residents or to
11 the State of Florida as a consumer.

12 Section 4. The sum of \$800,000 of recurring funds from
13 the General Revenue Fund is appropriated to the Office of
14 Public Counsel for the 2006-2007 fiscal year.

15 Section 5. This act shall take effect upon becoming a
16 law.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31