



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: June 6, 2003
TO: Chairman Lila A. Jaber
Commissioner J. Terry Deason
Commissioner Braulio L. Baez
Commissioner Rudolph "Rudy" Bradley
Commissioner Charles M. Davison
FROM: Division of External Affairs (Miller)
RE: Condensed Legislative Wrap-up – 2003 Session

I. TELECOMMUNICATIONS

A. Tele-Competition Innovation and Infrastructure Enhancement Act (CS/SB 654)

The 45-page bill is a comprehensive revamping of the telecommunications statutes.

Voice-Over-Internet Protocol (VOIP). The legislature finds it in the public interest for VOIP to be free of unnecessary regulation, regardless of the provider.

A later section of the bill, Section 364.164 (8) provides that if either the FCC or FPSC issues a final order determining that VOIP service or a functionally equivalent service is not subject to payment of access rates, the provisions of (2) are immediately effective so that a LEC may implement the revenue neutral mechanism on basic service and revenues and access revenues. Any LEC subject to this section shall be authorized to reduce its access rates to the company's authorized local compensation rates in a revenue-neutral manner in the shortest remaining time frame allowable under this section.

Definitions. The term "service" is amended to expressly exclude voice-over-internet protocol service for purposes of regulation by the FPSC.

Language on "alternative local exchange telecommunications company" (ALEC) is revised to refer to "competitive local exchange telecommunications companies."

Intrastate interexchange telecommunications company. An "intrastate interexchange telecommunications company" is still liable for taxes and for fees assessed by 364.025 (universal service) and 364.336 (regulatory assessment fees). The companies shall continue to be liable for taxes imposed under chapters 202, 203 and 212. Each IXC shall continue to be subject to the following: Sections 364.04, Schedules of rates, tolls, rentals, contracts, and charges; filing; public inspection; 364.10(3)(a) and (d), Undue advantage to person or locality prohibited; exception which applies to Lifeline; 364.285, Penalties; 364.163, Network access services; 364.501, Telecommunications company underground excavation damage prevention;

364.603, slamming; and 364.604, billing practices; and shall provide the Commission with such current information as the Commission deems necessary to contact and communicate with the company, shall continue to pay intrastate switched network access rates or other intercarrier compensation to the LEC or the CLEC for the origination and termination of interexchange telecom service, and shall reduce its intrastate long distance toll rates in accordance with Section 364.163(2).

Universal Service. Until January 1, 2009, each LEC shall be required to furnish basic local telecommunications service within a reasonable time period to any person requesting the service within the company's service territory.

For a transition period not to exceed January 1, 2009, the interim mechanism for maintaining universal service objectives is extended.

The date is also extended to January 1, 2009, for any party that "believes the circumstances have changed substantially to warrant a change in the interim mechanism" to petition the FPSC.

Local Government Broadband. Local governments are prohibited from regulating the terms and conditions applicable to broadband or information service. This includes, but is not limited to, the operating systems, qualifications, services, service quality, service territory, and prices.

Price Regulation. Language is changed in Section 364.051 on price regulation that the LEC may, on 30 days notice, adjust its basic service "revenues" (rather than "prices") once in any 12-month period not to exceed the change in inflation less 1 percent.

Basic Treated as Non-basic; Service Quality Requirements. A new subsection (6) provides that after a LEC with more than 1 million access lines in service has reduced its network access rates to parity, the LEC may, at the company's election, have its basic service be subject to the same regulatory treatment as its non-basic services. The company's retail service requirements that are not already equal to the service quality requirements on CLECs shall thereafter be no greater than those imposed on CLECs unless the FPSC, within 120 days after the company's election, determines otherwise. In such event, the FPSC may grant some reductions in service quality requirements in some or all of the company's local calling area. The FPSC may not impose retail service quality requirements on CLECs greater than those existing on January 1, 2003.

LEC Regulatory Treatment as CLEC. If a LEC elects to subject its retail basic local service to the same regulatory treatment as its non-basic, it may petition the FPSC for regulatory treatment of its retail services at a level no greater than that imposed by the FPSC on CLECs. Under Subsection (7), the LEC must:

- (a) show that granting the petition is in the public interest;

- (b) reduce its intrastate switched network access rates to its local reciprocal interconnection rate upon the grant of the petition.

The FPSC must act upon the petition within 9 months after its filing. In making its determination to either grant or deny the petition the FPSC must determine the extent to which the level of competition faced by the LEC permits, and will continue to permit, the company to have its retail service regulated no differently than the CLECs are being regulated. (The FPSC may not increase the level of regulation for CLECs to a level greater than that which exists on the date the LEC files its petition.

The provisions in (6) and (7) above shall apply to LECs with 1 million or less lines in service that have reduced their intrastate switched network access rates to a level equal to the company's interstate access rates in effect January 1, 2003.

Limited Proceedings. Section 364.058 on Limited Proceedings is created. The FPSC must implement an expedited process to facilitate the quick resolution of disputes between telecommunications companies. The process must, to the greatest extent feasible, minimize the time necessary to reach a decision on a dispute. The FPSC may limit the use of the expedited process based on the number of parties, the number of issues, or the complexity of the issues. For any proceeding conducted pursuant to the expedited process, the FPSC must make its determination within 120 days after a petition is filed or a motion made. The FPSC must adopt rules to implement this section.

Stay for Anticompetitive Price Reduction. Section 364.059 creates a process for a substantially interested party to file a petition at the FPSC against a LEC, seeking a stay of the effective date of a price reduction for basic service. This would involve an allegation of an anti-competitive price reduction. The FPSC must resolve the matter within 45 days after the filing of the petition.

The FPSC must establish an objective benchmark such as a price or cost floor, by which the FPSC may determine whether a requested stay of a price reduction is warranted. The benchmark must be based on generally accepted economic costing and pricing principles and judicial or regulatory costing and pricing precedent.

The FPSC must also establish the criteria for determining on the merits whether the basic local telecommunications service price reduction is in fact anticompetitive. Such criteria must be based on generally accepted economic competitive costing and pricing principles and judicial or regulatory precedent for detecting the presence of anticompetitive pricing. However, the FPSC may not establish benchmarks or criteria that are inconsistent with or interfere with the competitive pricing conduct permitted by existing law. The FPSC must establish the benchmark and criteria by rule, with the rule adoption proceeding beginning no earlier than January 1, 2005, and a final order shall issue within 120 days. Such benchmarks and criteria must be available when the above provisions become effective. If subsection 364.164(8), for small LECs becomes operative, the FPSC shall immediately begin establishment of the benchmark and criteria required for the procedures here and above, but

nothing here will prevent or delay a LEC from making and implementing the election in Section 364.051(6).

Lifeline. New language is added to Section 364.10 on Lifeline. Effective September 1, 2003, each LEC authorized by the FPSC to reduce its switched network access rate must have tariffed and must provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 125 percent or less of the federal poverty income guidelines for Lifeline customers. This test augments, rather than replaces, the eligibility standards established by federal law and based on participation in certain low-income assistance programs.

Each IXC must, effective September 1, 2003, file a tariff providing at a minimum the IXC's current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test. The Office of Public Counsel must certify and maintain claims submitted by a customer for eligibility under the income test.

Each LEC subject to this section (authorized to reduce switched network access rates) shall provide to each state and federal agency providing benefits to persons eligible for Lifeline applications, brochures, pamphlets, or other materials that inform such persons of their eligibility for Lifeline, and each state agency providing such benefits shall furnish the materials to affected persons at the time they apply for benefits.

A LEC customer receiving Lifeline benefits shall not be subject to any residential basic rate increase authorized by section 364.164 until the LEC reaches parity or until the customer no longer qualifies for Lifeline, or unless otherwise determined by the Commission upon a LEC petition.

By December 31, 2003, each state agency that provides benefits to persons eligible for Lifeline shall undertake, in cooperation with the Department of Children and Family Services, the Commission, and telecommunications companies providing Lifeline, the development of procedures to promote Lifeline participation.

The Commission shall report to the Governor, the Senate President, and the House Speaker by December 31 each year on the number of customers subscribing to Lifeline, and the effectiveness of any procedure to promote participation.

Network Access Services. Section 364.163 is revised by striking the caps established back in the 1995 legislation. After a LEC's network access rates are reduced to or below parity, the company's intrastate switched network access rates shall be capped for 3 years.

Any IXC whose intrastate switched network access rate is reduced as a result of the rate adjustments made by a LEC in accordance with Section 364.164 shall decrease its intrastate long distance revenues by the amount necessary to return the benefits of such reduction to both its residential and business customers. The intrastate IXC may determine the specific intrastate rates to be decreased, provided that the residential and business customers benefit from the rate decreases.

Any in-state connection fee or similarly named fee must be eliminated by July 1, 2006, provided that the timetable determined pursuant to section 364.164(1) reduces intrastate switched network access rates in an amount that results in the elimination of such fee in a revenue-neutral manner. The tariff changes, if any, made by the intrastate IXC to carry out the requirements of this subsection shall be presumed valid and become effective on 1 day's notice (previous language about the FPSC compelling a refund is stricken).

The FPSC will have continuing regulatory oversight of intrastate switched network access 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 Section 364.164 (Competitive Market Enhancement) and making any necessary adjustments to those rates. (Language is stricken about establishing reasonable service criteria, and assuring resolution of service complaints.)

Competitive Market Enhancement. Section 364.164 is created. Each LEC, after July 1, 2003, may petition the FPSC to reduce its intrastate switched network access rate in a revenue-neutral manner. The FPSC must issue its final order granting or denying the petition within 90 days. The FPSC shall consider whether granting the petition will:

- (a) Remove current support for basic local telecommunications services that prevents the creation of a more attractive competitive local exchange market for the benefit of residential consumers.
- (b) Induce enhanced market entry.
- (c) Require intrastate switched network access rate reductions to parity over a period of not less than 2 years or more than 4 years.
- (d) Be revenue neutral as defined in subsection (7) within the revenue category defined in subsection (2).

If the commission grants the petition, the LEC is authorized to immediately implement a revenue category mechanism consisting of basic local telecommunications service revenues and intrastate switched network access revenues to achieve revenue neutrality. (This is notwithstanding the requirements of s. 364.051(3) on adjustments based on inflation.) The LEC shall thereafter, on 45 days' notice, adjust the various prices and rates of the services within its revenue category authorized herein once in any 12-month period in a revenue-neutral manner. An adjustment in rates may not be offset entirely by the company's basic monthly recurring rate. All annual rate adjustments within the revenue category established herein must be implemented simultaneously and must be revenue neutral. The FPSC shall, within 45 days after the rate adjustment filing, issue a final order confirming compliance with this section, and such an order shall be final.

Any filing under this section must be based on the company's most recent 12 months' pricing units in accordance with subsection (7) for any service included in the revenue category established under this section. The FPSC shall have the authority only to verify the

pricing units for the purpose of ensuring that the company's specific adjustments, make the revenue category revenue neutral for each filing. Any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the FPSC's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing.

This section does not affect the LEC's exemptions pursuant to s. 364.051(1)(c) or authorize any LEC to increase the cost of local exchange services to any person providing services under s. 364.3375 (pay telephone service providers).

As used in this section, the term "parity" means that the LEC's intrastate switched network access rate is equal to its interstate access rate in effect January 1, 2003, if the company has more than 1 million access lines in service. If the company has 1 million or less access lines, the term "parity" means that the company's intrastate access rate is equal to 8 cents per minute. This section does not prevent the company from making further reductions in its intrastate access rate, within the revenue category, below parity on a revenue-neutral basis, or from making other revenue-neutral rate adjustments within this category.

"Intrastate switched network access rate" means the composite of the originating and terminating network access rate for carrier common line, local channel/entrance facility, switched common transport, access tandem switching, interconnection charge, signaling, information surcharge, and local switching.

"Revenue neutral" means that the total revenue within the category remains the same before and after the LEC implements any rate adjustments. Details are set forth for calculations. Billing units associated with pay telephone access lines and Lifeline service may not be included in the calculation.

Section 364.3376 on Operator Services is amended to state that the section does not apply to operator services provided by a LEC or an intrastate exchange company.

The Act was approved by the Governor and took effect upon becoming law (May 23, 2003). Laws of Florida Chapter 2003-32.

B. Digital Divide Trust Fund (SB 2178)

The Digital Divide Trust Fund is created in the State Technology Office to receive and disburse funds for programs using information technology to educate and train members of economically disadvantaged families to become qualified for high-skill employment opportunities. Funds may come from the state and from private persons and entities.

C. Emergency Communications (HB 1307)

The Board of Directors of the Wireless 911 Board is given additional duties. Co-location among wireless providers is encouraged. Local governments' authority over the providers is somewhat curtailed.

If a subcommittee is established, it must include representatives from the Florida Telecommunications Industry Association, the Florida Association of Counties, and the Florida League of Cities.

Compliance with federal E 911 requirements is addressed.

D. Transportation/511 (SB 676)

A major 113-page Transportation bill includes language about 511 services (on page 85 of the bill). “511 services” is defined as a 3-digit telecommunications dialing to access interactive voice response telephone traveler information services provided in the state as defined by the FCC. The Department of Transportation is given authority to provide oversight of traveler information systems that may include the provision of interactive voice response telephone systems accessible via the 511 number as assigned by the FCC for traveler information systems. The Department of Transportation is the state’s lead agency for implementing 511 services and is the state’s point of contact on it.

E. Military Affairs (CS/SB 1098)

A new Section 364.195 on Termination of Telecommunications Services contract by a servicemember is created. It sets forth criteria and provides for the servicemember to more easily terminate a service contract. The bill provides a number of ways to assist servicemembers. The bill was approved by the Governor on June 2, 2003, and takes effect July 1, 2003. Laws of Florida Chapter 2003-72.

F. Communications Services (HB 79)

Section 812.15 on Unauthorized Reception of Communications Services is revised. A person may not knowingly intercept, receive, decrypt, disrupt, transmit, retransmit or acquire access to any communications service without the express authorization of the cable operator or other communications service provider, as stated in a contract, or otherwise, with the intent to defraud the cable operator or communications service provider, or to knowingly assist others in doing these acts with the intent to defraud the cable operator or other communications provider. Criminal penalties are set out.

II. WATER

A. Chapter 163 Separate Legal Entities (CS/CS/SBs 140, 998, and 1060)

A new statutory framework is developed. A separate legal entity is not subject to FPSC jurisdiction, except when a host government specifically requests binding arbitration services through the FPSC, pursuant to the bill.

A major “host government” role is created. “Host government” is defined as either the governing board of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the

governing body of a municipality, if the largest number of equivalent residential connections is located within the municipality's boundaries.

A separate legal entity must notify the host government about a contemplated acquisition. The host government may adopt a resolution to become a member of the separate legal entity; or may prohibit the acquisition if it determines it is not in the public interest. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility. **In utility acquisitions involving two or more host governments, the FPSC must consider whether the sale, assignment or transfer of the utility is in the public interest pursuant to section 367.071(1), F.S.**

The host government has a right to review as fair and reasonable, the rates, charges, classifications, and terms of service that will be in place at the time of acquisition, and approve any later charges.

The separate legal entity has to notify the host government about proposed changes at least 90 days in advance. If after review, the host government believes the proposed changes are in the public interest, it may pass a resolution approving them. Otherwise, the host government may enter into negotiations with the entity to resolve the concerns. **If no agreement is reached within 30 days after the host government's determination that the proposed changes are not in the public interest, the host government may request and shall receive binding arbitration services through the FPSC to resolve the dispute with the separate legal entity. The FPSC shall develop and adopt administrative rules governing the arbitration process and establishing fees for this dispute resolution service.**

The host government may acquire any utility that it hosts owned by the separate legal entity. **When the separate legal entity and the host government cannot agree on the terms and conditions of the acquisition, the host government shall receive binding arbitration services through the FPSC to resolve the disputed acquisition terms. The FPSC must develop and adopt administrative rules governing the arbitration process and establishing the fees for these services.**

In developing and adopting its rules governing the acquisition price for a given host government to acquire the utility or system located within its jurisdiction, the FPSC shall, to the greatest extent possible, base the acquisition price on the same percentage to the total bonded indebtedness of the entity upon acquiring the utility as the acquired system's rate base was to the utility's total rate base at the time transferred from a regulated utility to the separate legal entity.

The separate legal entity is made subject to Chapter 120 Administrative Procedure Act requirements.

Section 367.021 is revised to expressly exclude separate legal entities from the "governmental authority" definition. This results in the entity being subject to Section 367.071 on sale, assignment, or transfer of certificate of authorization, facilities or control. Thus, the FPSC must review the proposed sale, assignment and make a determination

that it is in the public interest and that the buyer, assignee or transferee will fulfill the commitments, obligations and representations of the utility. **Language is stricken that allowed a sale, assignment or transfer to occur prior to FPSC approval if it was made contingent on FPSC approval.**

Except as otherwise provided, the Act takes effect upon becoming law and applies to all contracts pending on that date.

B. Tohopekaliga Water Authority Act (HB 1265)

This bill creates an independent special district in Osceola County to take responsibility for the provision of potable and non-potable water and wastewater service in conformance with Chapter 189, Florida Statutes. The district's boundaries includes all of Osceola County, and the City of Kissimmee, less and except, the Reedy Creek Improvement District and the City of St. Cloud. The five member Board will be appointed by the City of Kissimmee and the Osceola County Commission. The 44-page Act outlines the powers and duties of the board, discusses how the Board will operate and acquire utilities and facilities in the District. The provisions of Chapter 120 Florida Statutes do not apply to the District. The rate setting process is outlined. The District is authorized to assess ad valorem taxes at a rate not to exceed 1 mill. The District is also authorized to issue bonds. The District is exempt from all taxes.

C. Collier County Water-Sewer District (HB 849)

This act constitutes the codification of all special acts relating to the Collier County Water-Sewer District, an independent special district and public corporation of the state, pursuant to section 189.429, Florida Statutes. It is the intent of the Legislature to provide a single, comprehensive special act charter for the District, including all current legislative authority granted to the District by its several legislative enactments and any additional authority granted by the act. Ten different Chapters, starting in 1973 through 1996 are repealed and replaced by this act.

The Board of County Commissioners of Collier County shall be the Governing Board of the District. The Board is exempt from the provisions of Chapter 120, Florida Statutes. The boundaries of the District are described in a legal description, with some less and excepts, that include The City of Naples, all lands in the PSC certificate granted to Marco Island Utilities, and Marco Shore Utilities, lands known as the City of Golden Gate, Everglades City, and the Immokalee Water and Sewer District. The act describes in detail the Districts' authority to issue bonds, acquire new facilities, set rates and charges, and operate the utility.

III. ENERGY

A. Manufactured Gas (SB 1430)

The sale of manufactured gas to a public or private utility, either for resale or for use as a fuel in the generation of electricity, is exempt from tax on gross receipts in Chapter 203 and

from the public service tax in Chapter 166. The bill was approved by the Governor May 21, 2003, and took effect that date. Laws of Florida Chapter 2003-17.

IV. OTHER MATTERS

A. Administrative Procedure Act (CS/CS/SB 1584)

The Act further defines when an agency rule is an “invalid exercise of delegated legislative authority.” A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational. Language is stricken that requires a rule to be supported by competent substantial evidence.

When an agency adopts a rule of the DEP or a water management district by incorporating it for reference in the other agency’s rule to implement Part IV of Chapter 373, the agency must notify the Joint Administrative Procedure Committee and Department of State and publish a notice of its intent in the Florida Administrative Weekly. A substantially affected person may, within 14 days after the date of publication, file an objection to the rulemaking. The agency shall not have authority under this subparagraph to adopt the portions of the rule specified in the objection. A notice of the objection has to be published in the next available Florida Administrative Weekly.

The provision on uniform rules is amended. A protest must include an explanation of how the alleged facts relate to the specific rules or statutes, when a petitioner urges reversal or modification of an agency’s proposed actions.

Challenges to rules, pursuant to Section 120.56, will be “de novo” in nature. The standard of proof will be the preponderance of the evidence.

In challenges to existing rules, the petitioner has a burden of proving by a preponderance of the evidence that the existing rule is an invalid exercise of delegated legislative authority.

New provisions are added to the section on “Challenging Agency Statements Defined as Rules,” in Section 120.56. In certain situations, presumptions are created that the agency is acting expeditiously and in good faith to adopt rules that address the statement. The administrative law judge must place a case in abeyance if the agency is moving forward within 30 days with a published proposed rule. If the proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority, the agency must discontinue reliance on the statement.

In Section 120.569 proceedings, the Administrative Law Judge must enter an initial scheduling order to facilitate the just, speedy and inexpensive determination of the proceeding. An agency need not rule on an exception to a recommended order (from Division of Administrative Hearings) that does not identify the disputed portion of the order, the legal basis for the exception, or include appropriate and specific citations to the record.

Attorney's fees are also addressed. "Improper purpose" includes the purpose of needlessly increasing the cost of litigation.

Judicial review, under Section 120.68, will be available for challenging an agency's findings of immediate danger, necessity, and procedural fairness prerequisite to the adoption of an emergency rule.

Section 57.105 on Attorney's fees is amended. In administrative proceedings under Chapter 120, an administrative law judge shall award a reasonable attorney's fee and damages to be paid to the prevailing party in equal amounts by the losing party and a losing party's attorney or qualified representative. Such award is a final order subject to judicial review. If the losing party is an agency, the award shall be paid by the agency. A voluntary dismissal does not divest the administrative law judge of jurisdiction to make the award.

An award of Attorney's Fees and Costs for an action initiated by a state agency shall not exceed \$50,000 (as compared with \$15,000 previously).

The Act was signed by the Governor on June 4, 2003 and took on that date. Laws of Florida Chapter 2003-94.

B. Administrative Procedures/Internet (CS/SB 1374)

This bill started off with a major change to the *Florida Administrative Weekly* (FAW) publication, but ended up a bill addressing only DEP and the Internal Improvement Trust Fund. DEP will continue a website that will allow Internet publication of FAW notices for DEP. The notices must be published on the same day as the FAW is published.

C. Obsolete References (SB 588)

Language is deleted in Section 350.115 relating to the FPSC use of accounts established by the Interstate Commerce Commission for railroads. The bill was signed by the Governor April 1, 2003, and took effect on that date. Laws of Florida Chapter 2003-5.

CBM:tf

cc: Mary Andrews Bane	Bev DeMello	Blanca Bayo
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2003 BILLS THAT PASSED

Bill # & Subject	Governor Action & Date	Effective Date	Laws of Florida Ch. No.
Telecommunications and Information Technology			
SB 654 - Tele-Competition Innovation & Infrastructure	5/23/2003	5/23/2003	2003-32
HB 79 - Unauthorized Reception of Communications Services	6/24/2003	10/1/2003	2003-186
HB 1307 - Wireless Emergency Communications / E911	6/23/2003	7/1/2003	2003-182
SB 676 - DOT 511 Services	7/14/2003	7/14/2003	2003-286
SB 1098 - Military Affairs / Termination of Telecommunications Services	6/2/2003	7/1/2003	2003-72
SB 2178 - Digital Divide Trust Fund	VETOED 6/20/2003	---	---
Electricity/Energy			
SB 1430 - Gross Receipts Tax / Manufactured Gas	5/21/2003	5/21/2003	2003-17
Water/Wastewater			
HB 849 - Collier County Water-Sewer District	6/26/2003	6/26/2003	2003-353
HB 1265 - Tohopekaliga Water Authority	6/26/2003	6/26/2003	2003-368
SB 140 - Utilities / Separate Legal Entities	VETOED 7/15/2003	---	---
Administrative/Legal/Cross-Cutting			
SB 1374 - Administrative Procedures / Allowing DEP to Publish Florida Administrative Weekly Notices on Internet	6/12/2003	6/12/2003	2003-145
SB 1584 - Administrative Procedures	6/4/2003	6/4/2003	2003-94

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