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AT&T
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PROJECT NO. 32182

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AT&T TEXAS RESPONSES TO STAFF INQUIRIES OF FEBRUARY 3, 2006

COMES NOW Southwestern Bell Telephone, L.P., d/b/a AT&T Texas and submits its responses to the questions in Commission Staff's letter dated February 3, 2006 in the above matter.

I. Introduction

AT&T Texas appreciates this opportunity to provide responses to the questions posed by Staff. AT&T Texas is proud of its network infrastructure and believes that it facilitates very reliable, high quality service at affordable rates. No telecommunications provider in Texas has a better, more reliable network than AT&T Texas. Nonetheless, large scale natural disasters would present any service provider with substantial challenges regardless of the technology used or how the physical network plant was deployed. Hurricane Rita was not a large scale natural disaster for the state of Texas as a whole, but all service providers in the affected areas, including AT&T Texas, were faced with substantial repair and reconstruction work as a result of damage primarily due to high winds, fallen trees and flooding associated with the hurricane. AT&T Texas believes that its network infrastructure fared quite well overall and that its workforce met the repair/reconstruction tasks that were needed in an exemplary manner, just as with prior hurricanes. However, after the storm, AT&T Texas undertook careful assessment to look for ways to improve its network and its manpower response to future hurricanes.

AT&T Texas described the “lessons learned” at the Commission’s January 17, 2006 workshop.

II. Responses

1. What are your company’s proposals for hardening the network infrastructure, and modifying utility operations to minimize outages and speed up restoration for the next 1 to 5 year time frame? Please include the applicable financial data to show how the utility intends to fund these proposals.

AT&T Texas plans, designs and places its network infrastructure pursuant to the policies and guidelines issued by the National Electric Safety Code (“NESC”) and AT&T/SBC official technical documentation, including AT&T/SBC-authored documents and vendor documentation. AT&T Texas has and will continue to utilize designs that provide highly reliable, dependable telecommunication service in an economical manner, and that take into account the safety of both customers and employees.

Examples (pertinent to this proceeding) of AT&T Texas’ current practices for planning, designing and placing its network in accordance with the above principles include the following:

- AT&T Texas will utilize aerial plant if the power and cable TV facilities in the same area are also aerial, if there will be adequate clearances, and if buried cable placement is not the least-cost placement alternative. Typically, cables are placed on poles when the area in question contains a high concentration of rock or other obstacles such as fences, paved alleys, trees, shrubbery, etc.). Aerial cable is also preferred in low-lying, swampy areas where the water table is close to the surface, or where flooding is commonplace. As AT&T Texas noted in the January workshops, aerial cable has many advantages in natural disaster situations. Not only is its deployment far less expensive vis-à-vis underground (2005 data shows that buried deployment costs about 40% more than aerial deployment, on a per foot basis), but repairs can be completed much more promptly, and at tremendous savings.
- For new distribution cable construction in residential and commercial areas, AT&T Texas will seek joint construction with other utilities where possible. For example, in those instances in which underground deployment is deemed appropriate, joint trenching (with either power or cable companies, or both) is considered as first choice in deployment.
- AT&T Texas will utilize water resistant, sealed plant (cable, terminals, and drops) for new buried cable placements. All new underground copper cables will be designed to reduce the dependency of air pressure by using bonded ASP-filled (jelly-filled) PIC cable. All splices will be encapsulated, which protects against

moisture. Sealing the plant strengthens the network against water-related outages and failures.

As noted above, AT&T Texas firmly believes that the most appropriate means of cable deployment is very often aerial, as opposed to underground. AT&T strongly cautions against the assumption that buried telecommunications cable is the panacea for all of the "ills" brought about by hurricanes. To the contrary, when all factors are considered, AT&T Texas remains convinced that aerial cable is and will continue to be a necessary deployment alternative, and in many, many cases, the very best alternative. That said, buried and underground cable does make up the large majority of deployment choices in Texas. Below is a breakdown of the type of plant placed in Texas for the year 2005:

METALLIC CABLE			FIBER CABLE		
SHEATH MILES		PERCENT	SHEATH MILES		PERCENT
AERIAL CABLE	1,374	27.47%	AERIAL CABLE	628	22.85%
AERIAL WIRE	2	0.04%	AERIAL WIRE	0	0.00%
BUILDING CABLE	5	0.10%	BUILDING CABLE	3	0.11%
BURIED CABLE	3,307	66.13%	BURIED CABLE	953	34.68%
SUBMARINE CABLE	0	0.00%	SUBMARINE CABLE	0	0.00%
UNDERGROUND CABLE	313	6.26%	UNDERGROUND CABLE	1,164	42.36%
TOTAL SHEATH MILES	5,001	100.00%	TOTAL SHEATH MILES	2,748	100.00%

As the above chart indicates, of the total amount of cable placed in Texas in 2005, 72.39% of metallic cable and 77.04% of fiber cable was placed in the buried or underground environment.

But given the fact that aerial cable is and will certainly continue to be an essential means of deployment where circumstances warrant, maintenance of reliable and safe poles is of paramount concern. The following are examples of AT&T Texas' pole inspection policy and practices:

- Before any work involving contact with poles begins, AT&T Texas will visually inspect the pole(s) in question. Technicians are responsible for the repair of all quality and safety defects within one span in all directions of their work area, including drop wire.
- The inspection will include the following testing procedures:
 - Pole Prod and Sound test (This test entails the insertion of a "pole prod" below ground at a 45 degree angle against the pole, to check for decay. It also involves using a hammer strike to the pole from the ground level to as high as can be reached. A decayed pole will have a hollow sound and relatively little hammer rebound; while a decay-free pole will have a sharp and clear sound and a more noticeable hammer rebound.)

- Hand Line test (This test – not used on poles with power attached – involves stringing a loop hand-line over a pole step, or driving a hook into the pole, about twelve feet above ground. The hand-line is placed by way of a wire raising tool. Once the line is in place, the technician will gradually apply his/her weight to the line to determine if the pole (and stand) are sound.)
- Boring test (Using a 3/8 inch wood boring bit, this test entails boring a hole in the pole at a point where internal decay is suspected. The condition of the wood can be determined by an examination of the chips or core brought out by the bit. The bit breaking through the wood reveals the presence of “hollow heart” condition. If the pole is found to be sound, then the hole must be plugged by means of a specially designed wooden plug.)
- Pike Pole test (This test – not used on poles with power attached – involves placement of a pike against the pole about twelve feet above ground level and at a 45 degree angle. The pike pole is then pushed against the pole, testing for soundness by feel as well as by visual and sound observation.)
- AT&T Texas technicians will have the authority to deem an inspected pole unsafe and will then place a warning tag on the defective pole to ensure employee and public safety. Life threatening safety issues will be referred to management for immediate action. Poles deemed defective are repaired on a timely basis.

2. What are your company's long-term plans to modify your network infrastructure to minimize outages and speed-up restoral in the areas prone to hurricane in Texas? Please provide detailed information outlining your plans for the next 5 to 10 years and 11 to 20 years and beyond. Please include financial data to show how the utility intends to fund these proposals.

AT&T Texas will continue planning, designing and placing its network infrastructure under the policies and guidelines issued by the National Electric Safety Code and AT&T/SBC official technical documentation, including SBC-authored documents and vendor documentation. While AT&T Texas has no detailed plans or financial data relative to the time parameters set forth above, it is continually looking for ways to improve its network in terms of reliability, efficiency (both technical and economic) and safety. Implementation of those improvements in the future, as has been the case throughout its history, is absolutely vital to AT&T Texas' ongoing success in the marketplace.

3. Please explain what your expectations are as to the actions of this Commission, the state and local government, the affected community and any other entity to facilitate your proposals described under items 1 and 2 above.

AT&T Texas does not believe that the Commission needs to adopt new standards or to change existing quality of service guidelines for telecommunications services providers. AT&T Texas' current policies and practices – all of which are driven by sharp competitive pressures – are sufficient to ensure that its customers are reasonably protected against severe storm service outages. In the event of a widespread outage due to a large storm, AT&T Texas' designed plant, and its storm restoration practices, provide for reasonably rapid and safe restoration of service. AT&T Texas would welcome monitoring by Commissioners and Commission Staff (and other state and local government officials or other interested community leaders) of AT&T Texas' Storm Restoration Centers ("SRCs") and field personnel to observe progress during storm restoration efforts.

However, in direct response to the Staff's question, AT&T would pose the following:

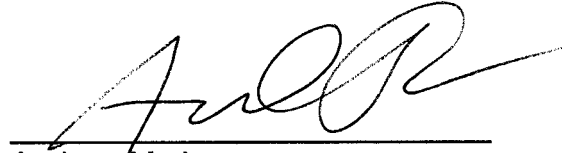
- Will the same standards, if any, adopted by the Commission apply to CLECs who are certificate holders?
- Will the same standards, if any, adopted by the Commission apply to cellular providers?
- Will the same standards, if any, adopted by the Commission apply to broadband providers, including but not limited to cable, broadband over power line (BPL) and fixed wireless providers?
- Will the same standards, if any, adopted by the Commission apply to cable company providers of telecommunications services?

AT&T Texas poses the questions because it provides telecommunications services in competition with many other providers over which the Commission has limited jurisdiction or no jurisdiction. Any measures that the Commission adopts in a rulemaking that would have the effect of increasing AT&T Texas' costs to provide service would also impact AT&T Texas' ability to effectively compete in the marketplace. One of the Texas Legislature's policies enacted into PURA is that the public interest requires that rules, policies, and principles be formulated not only to protect the public interest, but also to provide an equal opportunity to each telecommunications utility in a competitive marketplace.

Finally, AT&T Texas would note that in 2005 the Florida Legislature enacted a new law to provide a recovery mechanism (i.e., a surcharge) to fund the cost of repair/reconstruction resulting from hurricane damage. A copy of the bill is attached (Attachment A) for the Staff's convenience.

Respectfully submitted,

Joseph E. Cosgrove, Jr.
General Counsel-Austin

A handwritten signature in black ink, appearing to read 'A. Jones', written over a horizontal line.

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TEXAS

ATTACHMENT A

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2005 Legislature

CS for CS for SB 1322, 2nd Engrossed

1
2 An act relating to regulation of
3 communications; creating the Committee on
4 Public Service Commission Oversight as a
5 standing joint committee of the Legislature;
6 providing for its membership, powers, and
7 duties; amending s. 350.001, F.S.; requiring
8 that the commission perform its duties
9 independently; amending s. 350.031, F.S.;
10 authorizing the Florida Public Service
11 Commission Nominating Council to make
12 expenditures to advertise a vacancy on the
13 council or the commission; requiring that the
14 Committee on Public Service Commission
15 Oversight provide nominees for recommendation
16 to the Governor for appointment to the Public
17 Service Commission; providing procedures;
18 amending s. 350.041, F.S.; clarifying the
19 prohibition against accepting gifts with
20 respect to its application to commissioners
21 attending conferences; requiring that a penalty
22 be imposed against a person who gives a
23 commissioner a prohibited gift; requiring that
24 commissioners avoid impropriety and act in a
25 manner that promotes confidence in the
26 commission; prohibiting a commissioner from
27 soliciting any thing of value, either directly
28 or indirectly, from any public utility, its
29 affiliate, or any party; amending s. 350.042,
30 F.S.; requiring that a penalty be imposed
31 against a person involved in a prohibited ex

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2005 Legislature

CS for CS for SB 1322, 2nd Engrossed

1 parte communication with a commissioner;
2 amending s. 350.061, F.S.; requiring that the
3 Committee on Public Service Commission
4 Oversight rather than the Joint Legislative
5 Auditing Committee appoint the Public Counsel;
6 providing for biennial reconfirmation rather
7 than annual; requiring that the Public Counsel
8 perform his or her duties independently;
9 amending s. 350.0614, F.S.; requiring that the
10 Committee on Public Service Commission
11 Oversight rather than the Joint Legislative
12 Auditing Committee oversee expenditures of the
13 Public Counsel; providing definitions;
14 providing for notice of public hearings to
15 consider whether the local government will
16 provide a communications service; requiring a
17 governmental entity to take certain action
18 before a communications service is provided;
19 providing certain restrictions on revenue bonds
20 to finance provisioning of communications
21 services; requiring a local government to make
22 available a written business plan; providing
23 criteria for the business plan; setting pricing
24 standards; providing for accounting and books
25 and records; requiring the governmental entity
26 to establish an enterprise fund; requiring the
27 governmental entity to maintain separate
28 operating and capital budgets; limiting the use
29 of eminent-domain powers; requiring a
30 governmental entity to hold a public hearing to
31 consider certain factors if the business plan

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1 goals are not met; requiring compliance with
2 certain federal and state laws; requiring local
3 government to treat itself the same as it
4 treats other providers of similar
5 communications services; exempting certain
6 governmental entities from specified provisions
7 of the act; requiring a local government
8 provider of communications services to follow
9 the same prohibitions as other providers of the
10 same services; providing an exemption for
11 airports under certain conditions; recognizing
12 preemption of a charter, code, or other
13 governmental authority; providing for
14 severability; repealing s. 364.502, F.S., which
15 provides for regulation of video programming;
16 amending s. 202.19, F.S.; clarifying a
17 characterization of the local communications
18 services tax as including certain fees and
19 being in lieu of such fees; authorizing
20 municipalities or counties to use certain
21 revenues distributed to a local government for
22 certain purposes; amending s. 364.01, F.S.;
23 specifying the exclusive jurisdiction of the
24 Florida Public Service Commission to regulate
25 telecommunications companies; providing that
26 state laws governing business and consumer
27 protection be applied to communications
28 activities that are not regulated by the
29 commission; revising provisions governing the
30 exclusive jurisdiction of the commission;
31 creating s. 364.011, F.S.; specifying certain

1 services that are exempt from oversight by the
2 commission; creating s. 364.012, F.S.;
3 requiring the commission to coordinate with
4 federal agencies; providing that ch. 364, F.S.,
5 does not limit or modify certain duties of a
6 local exchange carrier; creating s. 364.013,
7 F.S.; requiring that broadband service remain
8 free of state and local regulation; requiring
9 that voice-over-Internet protocol remain free
10 of regulation, except as specifically provided
11 in ch. 364, F.S., or by federal law; amending
12 s. 364.02, F.S.; defining the terms "broadband
13 service" and "VoIP"; redefining the term
14 "service"; amending s. 364.0361, F.S.;
15 prohibiting a local government from regulating
16 voice-over-Internet protocol regardless of the
17 platform or provider; amending s. 364.10, F.S.;
18 transferring applicability from
19 telecommunications companies serving as
20 carriers of last resort to eligible
21 telecommunications carriers; defining the term
22 "eligible telecommunications carrier";
23 providing requirements for eligible
24 telecommunications carriers; requiring the
25 Public Service Commission to establish
26 procedures for notification and termination of
27 the Lifeline Assistance credit; providing
28 criteria for connection, reconnection, and
29 discontinuation of basic local
30 telecommunications service for Lifeline
31 Assistance subscribers; providing criteria for

1 blocking access to long-distance service;
2 adding the Department of Education and the
3 Office of Public Counsel to those agencies that
4 are directed to cooperate in developing
5 procedures for promoting Lifeline
6 participation; requiring the commission to
7 adopt rules; repealing s. 364.502, F.S.,
8 relating to video programming services;
9 amending s. 364.335, F.S.; increasing to \$500
10 from \$250 the maximum allowable filing fee for
11 certification of telecommunications carriers;
12 amending s. 364.336, F.S.; authorizing the
13 Public Service Commission to establish a
14 minimum fee of up to \$1,000; authorizing
15 different fees for different types of services
16 provided by telecommunications companies;
17 amending ss. 196.012, 199.183, 212.08, 290.007,
18 350.0605, 364.602, and 489.103, F.S.;
19 conforming cross-references; providing
20 clarification of rights of local governments
21 and duties of cable service providers to comply
22 with certain laws and regulations; amending s.
23 364.051, F.S.; providing that damage to the
24 equipment and facilities of a local exchange
25 telecommunications as a result of a named
26 tropical system constitutes a compelling
27 showing of changed circumstances to justify a
28 rate increase; allowing such companies to
29 petition for recovery of such costs and
30 expenses; requiring the Public Service
31 Commission to verify the intrastate costs and

1 expenses for repairing, restoring, or replacing
2 damaged lines, plants, or facilities; requiring
3 the commission to determine whether the
4 intrastate costs and expenses are reasonable;
5 requiring a company to exhaust any
6 storm-reserve funds prior to recovery from
7 customers; providing that the commission may
8 authorize adding an equal line-item charge per
9 access line for certain customers; providing
10 for a rate cap and providing the maximum number
11 of months the rate may be imposed; providing a
12 12-month limit for the application; allowing
13 recovery for more than one storm within the
14 limit; providing for severability; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Committee on Public Service Commission
20 Oversight; creation; membership; powers and duties.--

21 (1) There is created a standing joint committee of the
22 Legislature, designated the Committee on Public Service
23 Commission Oversight, and composed of twelve members appointed
24 as follows: six members of the Senate appointed by the
25 President of the Senate, two of whom must be members of the
26 minority party; and six members of the House of
27 Representatives appointed by the Speaker of the House of
28 Representatives, two of whom must be members of the minority
29 party. The terms of members shall be for 2 years and shall run
30 from the organization of one Legislature to the organization
31 of the next Legislature. The President shall appoint the chair

1 of the committee in even-numbered years and the vice chair in
2 odd-numbered years, and the Speaker of the House of
3 Representatives shall appoint the chair of the committee in
4 odd-numbered years and the vice chair in even-numbered years,
5 from among the committee membership. Vacancies shall be filled
6 in the same manner as the original appointment. Members shall
7 serve without additional compensation, but shall be reimbursed
8 for expenses.

9 (2) The committee shall be governed by joint rules of
10 the Senate and the House of Representatives which shall remain
11 in effect until repealed or amended by concurrent resolution.

12 (3) The committee shall:

13 (a) Recommend to the Governor nominees to fill a
14 vacancy on the Public Service Commission, as provided by
15 general law; and

16 (b) Appoint a Public Counsel as provided by general
17 law.

18 (4) The committee is authorized to file a complaint
19 with the Commission on Ethics alleging a violation of chapter
20 350, Florida Statutes, by a commissioner, former commissioner,
21 former commission employee, or member of the Public Service
22 Commission Nominating Council.

23 (5) The committee will not have a permanent staff, but
24 the President of the Senate and the Speaker of the House of
25 Representatives shall select staff members from among existing
26 legislative staff, when and as needed.

27 Section 2. Section 350.001, Florida Statutes, is
28 amended to read:

29 350.001 Legislative intent.--The Florida Public
30 Service Commission has been and shall continue to be an arm of
31 the legislative branch of government. The Public Service

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1 Commission shall perform its duties independently. It is the
2 desire of the Legislature that the Governor participate in the
3 appointment process of commissioners to the Public Service
4 Commission. The Legislature accordingly delegates to the
5 Governor a limited authority with respect to the Public
6 Service Commission by authorizing him or her to participate in
7 the selection of members only ~~from the list provided by the~~
8 ~~Florida Public Service Commission Nominating Council~~ in the
9 manner prescribed by s. 350.031.

10 Section 3. Section 350.031, Florida Statutes, is
11 amended to read:

12 350.031 Florida Public Service Commission Nominating
13 Council.--

14 (1) There is created a Florida Public Service
15 Commission Nominating Council consisting of nine members. At
16 least one member of the council must be 60 years of age or
17 older. Three members, including one member of the House of
18 Representatives, shall be appointed by and serve at the
19 pleasure of the Speaker of the House of Representatives; three
20 members, including one member of the Senate, shall be
21 appointed by and serve at the pleasure of the President of the
22 Senate; and three members shall be selected and appointed by a
23 majority vote of the other six members of the council. All
24 terms shall be for 4 years except those members of the House
25 and Senate, who shall serve 2-year terms concurrent with the
26 2-year elected terms of House members. Vacancies on the
27 council shall be filled for the unexpired portion of the term
28 in the same manner as original appointments to the council. A
29 member may not be reappointed to the council, except for a
30 member of the House of Representatives or the Senate who may
31

1 be appointed to two 2-year terms or a person who is appointed
2 to fill the remaining portion of an unexpired term.

3 (2) (a) No member or spouse shall be the holder of the
4 stocks or bonds of any company, other than through ownership
5 of shares in a mutual fund, regulated by the commission, or
6 any affiliated company of any company regulated by the
7 commission, or be an agent or employee of, or have any
8 interest in, any company regulated by the commission or any
9 affiliated company of any company regulated by the commission,
10 or in any firm which represents in any capacity either
11 companies which are regulated by the commission or affiliates
12 of companies regulated by the commission. As a condition of
13 appointment to the council, each appointee shall affirm to the
14 Speaker and the President his or her qualification by the
15 following certification: "I hereby certify that I am not a
16 stockholder, other than through ownership of shares in a
17 mutual fund, in any company regulated by the commission or in
18 any affiliate of a company regulated by the commission, nor in
19 any way, directly or indirectly, in the employment of, or
20 engaged in the management of any company regulated by the
21 commission or any affiliate of a company regulated by the
22 commission, or in any firm which represents in any capacity
23 either companies which are regulated by the commission or
24 affiliates of companies regulated by the commission."
25

26 This certification is made as condition to appointment to the
27 Florida Public Service Commission Nominating Council.

28 (b) A member of the council may be removed by the
29 Speaker of the House of Representatives and the President of
30 the Senate upon a finding by the Speaker and the President
31

1 that the council member has violated any provision of this
2 subsection or for other good cause.

3 (c) If a member of the council does not meet the
4 requirements of this subsection, the President of the Senate
5 or the Speaker of the House of Representatives, as
6 appropriate, shall appoint a legislative replacement.

7 (3) A majority of the membership of the council may
8 conduct any business before the council. All meetings and
9 proceedings of the council shall be staffed by the Office of
10 Legislative Services and shall be subject to the provisions of
11 ss. 119.07 and 286.011. Members of the council are entitled to
12 receive per diem and travel expenses as provided in s.
13 112.061, which shall be funded by the Florida Public Service
14 Regulatory Trust Fund. Applicants invited for interviews
15 before the council may, in the discretion of the council,
16 receive per diem and travel expenses as provided in s.
17 112.061, which shall be funded by the Florida Public Service

18 Regulatory Trust Fund. The council shall establish policies
19 and procedures to govern the process by which applicants are
20 nominated.

21 (4) The council may spend a nominal amount, not to
22 exceed \$10,000, to advertise a vacancy on the council, which
23 shall be funded by the Florida Public Service Regulatory Trust
24 Fund.

25 (5)-(4) A person may not be nominated to the Committee
26 on Public Service Commission Oversight ~~Governor~~ until the
27 council has determined that the person is competent and
28 knowledgeable in one or more fields, which shall include, but
29 not be limited to: public affairs, law, economics, accounting,
30 engineering, finance, natural resource conservation, energy,
31 or another field substantially related to the duties and

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1 functions of the commission. The commission shall fairly
2 represent the above-stated fields. Recommendations of the
3 council shall be nonpartisan.

4 ~~(6)-(5)~~ It is the responsibility of the council to
5 nominate to the Committee on Public Service Commission
6 Oversight Governor not fewer than six three persons for each
7 vacancy occurring on the Public Service Commission. The
8 council shall submit the recommendations to the committee
9 Governor by August 1 ~~October 1~~ of those years in which the
10 terms are to begin the following January, or within 60 days
11 after a vacancy occurs for any reason other than the
12 expiration of the term.

13 ~~(7)-(6)~~ The Committee on Public Service Commission
14 Oversight Governor shall select from the list of nominees
15 provided by the nominating council three nominees for
16 recommendation to the Governor for appointment to the
17 commission. The recommendations must be provided to the
18 Governor within 45 days after receipt of the list of nominees.
19 The Governor shall fill a vacancy occurring on the Public
20 Service Commission by appointment of one of the applicants
21 nominated by the committee ~~council~~ only after a background
22 investigation of such applicant has been conducted by the
23 Florida Department of Law Enforcement. If the Governor has not
24 made an appointment within 30 days after the receipt of the
25 recommendation by December 1 to fill a vacancy for a term to
26 begin the following January, then the committee council, by
27 majority vote, shall appoint, within 30 days after the
28 expiration of the Governor's time to make an appointment, by
29 ~~December 31~~ one person from the applicants previously
30 nominated to the Governor to fill the vacancy. ~~If the Governor~~
31 ~~has not made the appointment to fill a vacancy occurring for~~

1 ~~any reason other than the expiration of the term by the 60th~~
2 ~~day following receipt of the nominations of the council, the~~
3 ~~council by majority vote shall appoint within 30 days~~
4 ~~thereafter one person from the applicants previously nominated~~
5 ~~to the Governor to fill the vacancy.~~

6 ~~(8)(7)~~ Each appointment to the Public Service
7 Commission shall be subject to confirmation by the Senate
8 during the next regular session after the vacancy occurs. If
9 the Senate refuses to confirm or rejects the Governor's
10 appointment, the council shall initiate, in accordance with
11 this section, the nominating process within 30 days.

12 Section 4. Subsection (2) of section 350.041, Florida
13 Statutes, is amended to read:

14 350.041 Commissioners; standards of conduct.--

15 (2) STANDARDS OF CONDUCT.--

16 (a) A commissioner may not accept anything from any
17 business entity which, either directly or indirectly, owns or
18 controls any public utility regulated by the commission, from
19 any public utility regulated by the commission, or from any
20 business entity which, either directly or indirectly, is an
21 affiliate or subsidiary of any public utility regulated by the
22 commission. A commissioner may attend conferences and
23 associated meals and events that are generally available to
24 all conference participants without payment of any fees in
25 addition to the conference fee. Additionally, while attending
26 a conference, a commissioner may attend meetings, meals, or
27 events that are not sponsored, in whole or in part, by any
28 representative of any public utility regulated by the
29 commission and that are limited to commissioners only,
30 committee members, or speakers if the commissioner is a member
31 of a committee of the association of regulatory agencies that

1 organized the conference or is a speaker at the conference. It
2 is not a violation of this paragraph for a commissioner to
3 attend a conference for which conference participants who are
4 employed by a utility regulated by the commission have paid a
5 higher conference registration fee than the commissioner, or
6 to attend a meal or event that is generally available to all
7 conference participants without payment of any fees in
8 addition to the conference fee and that is sponsored, in whole
9 or in part, by a utility regulated by the commission. If,
10 during the course of an investigation by the Commission on
11 Ethics into an alleged violation of this paragraph,
12 allegations are made as to the identity of the person giving
13 or providing the prohibited gift, that person must be given
14 notice and an opportunity to participate in the investigation
15 and relevant proceedings to present a defense. If the
16 Commission on Ethics determines that the person gave or
17 provided a prohibited gift, the person may not appear before
18 the commission or otherwise represent anyone before the
19 commission for a period of 2 years.

20 (b) A commissioner may not accept any form of
21 employment with or engage in any business activity with any
22 business entity which, either directly or indirectly, owns or
23 controls any public utility regulated by the commission, any
24 public utility regulated by the commission, or any business
25 entity which, either directly or indirectly, is an affiliate
26 or subsidiary of any public utility regulated by the
27 commission.

28 (c) A commissioner may not have any financial
29 interest, other than shares in a mutual fund, in any public
30 utility regulated by the commission, in any business entity
31 which, either directly or indirectly, owns or controls any

1 public utility regulated by the commission, or in any business
2 entity which, either directly or indirectly, is an affiliate
3 or subsidiary of any public utility regulated by the
4 commission. If a commissioner acquires any financial interest
5 prohibited by this section during his or her term of office as
6 a result of events or actions beyond the commissioner's
7 control, he or she shall immediately sell such financial
8 interest or place such financial interest in a blind trust at
9 a financial institution. A commissioner may not attempt to
10 influence, or exercise any control over, decisions regarding
11 the blind trust.

12 (d) A commissioner may not accept anything from a
13 party in a proceeding currently pending before the commission.
14 If, during the course of an investigation by the Commission on
15 Ethics into an alleged violation of this paragraph,
16 allegations are made as to the identity of the person giving
17 or providing the prohibited gift, that person must be given
18 notice and an opportunity to participate in the investigation
19 and relevant proceedings to present a defense. If the
20 Commission on Ethics determines that the person gave or
21 provided a prohibited gift, the person may not appear before
22 the commission or otherwise represent anyone before the
23 commission for a period of 2 years.

24 (e) A commissioner may not serve as the representative
25 of any political party or on any executive committee or other
26 governing body of a political party; serve as an executive
27 officer or employee of any political party, committee,
28 organization, or association; receive remuneration for
29 activities on behalf of any candidate for public office;
30 engage on behalf of any candidate for public office in the
31 solicitation of votes or other activities on behalf of such

1 candidacy; or become a candidate for election to any public
2 office without first resigning from office.

3 (f) A commissioner, during his or her term of office,
4 may not make any public comment regarding the merits of any
5 proceeding under ss. 120.569 and 120.57 currently pending
6 before the commission.

7 (g) A commissioner may not conduct himself or herself
8 in an unprofessional manner at any time during the performance
9 of his or her official duties.

10 (h) A commissioner must avoid impropriety in all of
11 his or her activities and must act at all times in a manner
12 that promotes public confidence in the integrity and
13 impartiality of the commission.

14 (i) A commissioner may not directly or indirectly,
15 through staff or other means, solicit any thing of value from
16 any public utility regulated by the commission, or from any
17 business entity that, whether directly or indirectly, is an
18 affiliate or subsidiary of any public utility regulated by the
19 commission, or from any party appearing in a proceeding
20 considered by the commission in the last 2 years.

21 Section 5. Subsection (7) of section 350.042, Florida
22 Statutes, is amended to read:

23 350.042 Ex parte communications.--

24 (7) (a) It shall be the duty of the Commission on
25 Ethics to receive and investigate sworn complaints of
26 violations of this section pursuant to the procedures
27 contained in ss. 112.322-112.3241.

28 (b) If the Commission on Ethics finds that there has
29 been a violation of this section by a public service
30 commissioner, it shall provide the Governor and the Florida
31 Public Service Commission Nominating Council with a report of

1 its findings and recommendations. The Governor is authorized
2 to enforce the findings and recommendations of the Commission
3 on Ethics, pursuant to part III of chapter 112.

4 (c) If a commissioner fails or refuses to pay the
5 Commission on Ethics any civil penalties assessed pursuant to
6 the provisions of this section, the Commission on Ethics may
7 bring an action in any circuit court to enforce such penalty.

8 (d) If, during the course of an investigation by the
9 Commission on Ethics into an alleged violation of this
10 section, allegations are made as to the identity of the person
11 who participated in the ex parte communication, that person
12 must be given notice and an opportunity to participate in the
13 investigation and relevant proceedings to present a defense.
14 If the Commission on Ethics determines that the person
15 participated in the ex parte communication, the person may not
16 appear before the commission or otherwise represent anyone
17 before the commission for a period of 2 years.

18 Section 6. Subsection (1) of section 350.061, Florida
19 Statutes, is amended to read:

20 350.061 Public Counsel; appointment; oath;
21 restrictions on Public Counsel and his or her employees.--

22 (1) The Committee on Public Service Commission
23 ~~Oversight Joint Legislative Auditing Committee~~ shall appoint a
24 Public Counsel by majority vote of the members of the
25 committee to represent the general public of Florida before
26 the Florida Public Service Commission. The Public Counsel
27 shall be an attorney admitted to practice before the Florida
28 Supreme Court and shall serve at the pleasure of the ~~Joint~~
29 ~~Legislative Auditing Committee~~ on Public Service Commission
30 Oversight, subject to biennial ~~annual~~ reconfirmation by the
31 committee. The Public Counsel shall perform his or her duties

1 independently. Vacancies in the office shall be filled in the
2 same manner as the original appointment.

3 Section 7. Subsection (2) of section 350.0614, Florida
4 Statutes, is amended to read:

5 350.0614 Public Counsel; compensation and expenses.--

6 (2) The Legislature ~~hereby~~ declares and determines
7 that the Public Counsel is under the legislative branch of
8 government within the intention of the legislation as
9 expressed in chapter 216, and no power shall be in the
10 Executive Office of the Governor or its successor to release
11 or withhold funds appropriated to it, but the same shall be
12 available for expenditure as provided by law and the rules or
13 decisions of the ~~Joint Auditing~~ Committee on Public Service
14 Commission Oversight.

15 Section 8. Communications services offered by
16 governmental entities.--

17 (1) As used in this section, the term:

18 (a) "Advanced service" means
19 high-speed-Internet-access-service capability in excess of 200
20 kilobits per second in the upstream or the downstream
21 direction, including any service application provided over the
22 high-speed-access service or any information service as
23 defined in 47 U.S.C. s. 153(20).

24 (b) "Cable service" has the same meaning as in 47
25 U.S.C. s. 522(6).

26 (c) "Communications services" includes any "advanced
27 service," "cable service," or "telecommunications service" and
28 shall be construed in the broadest sense.

29 (d) "Enterprise fund" means a separate fund to account
30 for the operation of communications services by a local
31 government, established and maintained in accordance with

1 generally accepted accounting principles as prescribed by the
2 Governmental Accounting Standards Board.

3 (e) "Governmental entity" means any political
4 subdivision as defined in section 1.01, Florida Statutes,
5 including any county, municipality, special district, school
6 district, utility authority or other authority or any
7 instrumentality, agency, unit or department thereof. The term
8 does not include an independent special district created
9 before 1970 which has been granted express legislative
10 authority to provide a communications service and which does
11 not sell a communications service outside its district
12 boundaries.

13 (f) "Provide," "providing," "provision," or
14 "provisioning" means offering or supplying a communications
15 service for a fee or other consideration to a person,
16 including any portion of the public or private provider, but
17 does not include service by an entity to itself or to any
18 other governmental entity.

19 (g) "Subscriber" means a person who receives a
20 communications service.

21 (h) "Telecommunications services" means the
22 transmission of signs, signals, writing, images, sounds,
23 messages, data, or other information of the user's choosing,
24 by wire, radio, light waves, or other electromagnetic means,
25 without change in the form or content of the information as
26 sent and received by the user and regardless of the facilities
27 used, including, without limitation, wireless facilities.

28 (2)(a) A governmental entity that proposes to provide
29 a communications service shall hold no less than two public
30 hearings, which shall be held not less than 30 days apart. At
31 least 30 days before the first of the two public hearings, the

1 governmental entity must give notice of the hearing in the
2 predominant newspaper of general circulation in the area
3 considered for service. At least 40 days before the first
4 public hearing, the governmental entity must electronically
5 provide notice to the Department of Revenue and the Public
6 Service Commission, which shall post the notice on the
7 department's and the commission's website to be available to
8 the public. The Department of Revenue shall also send the
9 notice by United States Postal Service to the known addresses
10 for all dealers of communications services registered with the
11 department under chapter 202, Florida Statutes, or provide an
12 electronic notification, if the means are available, within 10
13 days after receiving the notice. The notice must include the
14 time and place of the hearings and must state that the purpose
15 of the hearings is to consider whether the governmental entity
16 will provide communications services. The notice must include,
17 at a minimum, the geographic areas proposed to be served by
18 the governmental entity and the services, if any, which the
19 governmental entity believes are not currently being
20 adequately provided. The notice must also state that any
21 dealer who wishes to do so may appear and be heard at the
22 public hearings.

23 (b) At a public hearing required by this subsection, a
24 governmental entity must, at a minimum, consider:

25 1. Whether the service that is proposed to be provided
26 is currently being offered in the community and, if so,
27 whether the service is generally available throughout the
28 community.

29 2. Whether a similar service is currently being
30 offered in the community and, if so, whether the service is
31 generally available throughout the community.

1 3. If the same or similar service is not currently
2 offered, whether any other service provider proposes to offer
3 the same or a similar service and, if so, what assurances that
4 service provider is willing or able to offer regarding the
5 same or similar service.

6 4. The capital investment required by the government
7 entity to provide the communications service, the estimated
8 realistic cost of operation and maintenance and, using a full
9 cost-accounting method, the estimated realistic revenues and
10 expenses of providing the service and the proposed method of
11 financing.

12 5. The private and public costs and benefits of
13 providing the service by a private entity or a governmental
14 entity, including the affect on existing and future jobs,
15 actual economic development prospects, tax-base growth,
16 education, and public health.

17 (c) At one or more of the public hearings under this
18 subsection, the governmental entity must make available to the
19 public a written business plan for the proposed communications
20 service venture containing, at a minimum:

21 1. The projected number of subscribers to be served by
22 the venture.

23 2. The geographic area to be served by the venture.

24 3. The types of communications services to be
25 provided.

26 4. A plan to ensure that revenues exceed operating
27 expenses and payment of principal and interest on debt within
28 4 years.

29 5. Estimated capital and operational costs and
30 revenues for the first 4 years.
31

1 6. Projected network modernization and technological
2 upgrade plans, including estimated costs.
3 (d) After making specific findings regarding the
4 factors in paragraphs (b) and (c), the governmental entity may
5 authorize providing a communications service by a majority
6 recorded vote and by resolution, ordinance, or other formal
7 means of adoption.
8 (e) The governing body of a governmental entity may
9 issue one or more bonds to finance the capital costs for
10 facilities to provide a communications service. However:
11 1. A governmental entity may only pledge revenues in
12 support of the issuance of any bond to finance providing a
13 communications service:
14 a. Within the county in which the governmental entity
15 is located;
16 b. Within an area in which the governmental entity
17 provides electric service outside its home county under an
18 electric service territorial agreement approved by the Public
19 Service Commission before the effective date of this act; or
20 c. If the governmental entity is a municipality or
21 special district, within its corporate limits or in an area in
22 which the municipality or special district provides water,
23 wastewater, electric, or natural gas service, or within an
24 urban service area designated in a comprehensive plan,
25 whichever is larger, unless the municipality or special
26 district obtains the consent by formal action of the
27 governmental entity within the boundaries of which the
28 municipality or special district proposes to provide service.
29 For consent to be effective, any governmental entity from
30 which consent is sought shall be located within the county in
31 which the governmental entity is located or that county.

1 2. Revenue bonds issued in order to finance providing
2 a communications service are not subject to the approval of
3 the electors if the revenue bonds mature within 15 years.
4 Revenue bonds issued to finance providing a communications
5 service that does not mature within 15 years must be approved
6 by the electors. The election must be conducted as specified
7 in chapter 100, Florida Statutes.

8 (f) A governmental entity providing a communications
9 service may not price any service below the cost of providing
10 the service by subsidizing the communications service with
11 moneys from rates paid by subscribers of a noncommunications
12 services utility or from any other revenues. The cost standard
13 for determining cross-subsidization is whether the total
14 revenue from the service is less than the total long-run
15 incremental cost of the service. Total long-run incremental
16 cost means service-specific volume and nonvolume-sensitive
17 costs.

18 (g) A governmental entity providing a communications
19 service must comply with the requirements of section 218.32,
20 Florida Statutes, and shall keep separate and accurate books
21 and records, maintained in accordance with generally accepted
22 accounting principles, of a governmental entity's
23 communication service, and they shall be made available for
24 any audits of the books and records conducted under applicable
25 law. To facilitate equitable distribution of indirect costs, a
26 local government shall develop and follow a cost-allocation
27 plan, which is a procedure for allocating direct and indirect
28 costs and which is generally developed in accordance with OMB
29 Circular A-87, Cost Principles for State, Local, and Indian
30 Tribal Government, published by the United States Office of
31 Management and Budget.

1 (h) The governmental entity shall establish an
2 enterprise fund to account for its operation of communications
3 services.

4 (i) The governmental entity shall adopt separate
5 operating and capital budgets for its communications services.

6 (j) A governmental entity may not use its powers of
7 eminent domain under chapter 73, Florida Statutes, solely or
8 primarily for the purpose of providing a communications
9 service.

10 (k) The governmental entity shall conduct an annual
11 review at a formal public meeting to consider the progress the
12 governmental entity is making toward reaching its business
13 plan goals and objectives for providing communication
14 services. At the public meeting the governmental entity shall
15 review the related revenues, operating expenses, and payment
16 of interest on debt.

17 (l) If, after 4 years following the initiation of the
18 provision of communications services by a governmental entity
19 or 4 years after the effective date of this act, whichever is
20 later, revenues do not exceed operating expenses and payment
21 of principal and interest on the debt for a governmental
22 entity's provision of communications services, no later than
23 60 days following the end of the 4-year period a governmental
24 entity shall hold a public hearing at which the governmental
25 entity shall do at least one of the following:

26 1. Approve a plan to cease providing communications
27 services;

28 2. Approve a plan to dispose of the system the
29 governmental entity is using to provide communications
30 services and, accordingly, to cease providing communications
31 services;

1 3. Approve a plan to create a partnership with a
2 private entity in order to achieve operations in which
3 revenues exceed operating expenses and payment of principal
4 and interest on debt; or

5 4. Approve the continuing provision of communications
6 services by a majority vote of the governing body of the
7 governing authority.

8 (3) (a) A governmental entity that provides a cable
9 service shall comply with the Cable Communications Policy Act
10 of 1984, 47 U.S.C. 521, et seq., the regulations issued by the
11 Federal Communications Commission under the Cable
12 Communications Policy Act of 1984, 47 U.S.C. 521, et seq., and
13 all applicable state and federal rules and regulations,
14 including, but not limited to, section 166.046, Florida
15 Statutes, and those provisions of chapters 202, 212, and 337,
16 Florida Statutes, which apply to a provider of the services.

17 (b) A governmental entity that provides a
18 telecommunications service or advanced service must comply, if
19 applicable, with chapter 364, Florida Statutes, and rules
20 adopted by the Public Service Commission; chapter 166, Florida
21 Statutes; and all applicable state and federal rules and
22 regulations, including, but not limited to, those provisions
23 of chapters 202, 212, and 337, Florida Statutes, which apply
24 to a provider of the services.

25 (c) A governmental entity may not exercise its power
26 or authority in any area, including zoning or land use
27 regulation, to require any person, including residents of a
28 particular development, to use or subscribe to any
29 communication service of a governmental entity.

30 (d) A governmental entity shall apply its ordinances,
31 rules, and policies, and exercise any authority under state or

1 federal laws, including, but not limited to, those relating to
2 the following subjects and without discrimination as to itself
3 when providing a communications service or to any private
4 provider of communications services:

5 1. Access to public rights-of-way; and
6 2. Permitting, access to, use of, and payment for use
7 of governmental entity-owned poles. The governmental entity is
8 subject to the same terms, conditions, and fees, if any, for
9 access to government-owned poles which the governmental entity
10 applies to a private provider for access.

11 (4)(a) If a governmental entity was providing, as of
12 April 1, 2005, advanced services, cable services, or
13 telecommunications services, then it is not required to comply
14 with paragraph (2)(a), paragraph (2)(b), paragraph (2)(c),
15 paragraph (2)(d), sub-subparagraph (2)(e)1.c., paragraph
16 (2)(f), or paragraph (2)(k) in order to continue to provide
17 advanced services, cable services, or telecommunications
18 services, respectively, but it must comply with and be subject
19 to all other provisions of this section.

20 (b) If a governmental entity, as of April 1, 2005, had
21 issued debt pledging revenues from an advanced service, cable
22 service, or telecommunications service, then it is not
23 required to comply with paragraph (2)(a), paragraph (2)(b),
24 paragraph (2)(c), paragraph (2)(d), sub-subparagraph
25 (2)(e)1.c., paragraph (2)(f), or paragraph (2)(k) in order to
26 provide advanced services, cable services, or
27 telecommunications services, respectively, but it must comply
28 with and be subject to all other provisions of this section.

29 (c) If a governmental entity, as of April 1, 2005, has
30 purchased equipment specifically for the provisioning of
31 advanced service, cable service, or telecommunication service,

1 and, as of May 6, 2005, has a population of less than 7500,
2 and has authorized by formal action the providing of an
3 advanced service, cable service, or telecommunication service,
4 then it is not required to comply with paragraph (2)(a),
5 paragraph (2)(b), paragraph (2)(c), paragraph (2)(d),
6 sub-subparagraph (2)(e)1.c., paragraph (2)(f), or paragraph
7 (2)(k) in order to provide advanced service, cable service, or
8 telecommunication service, respectively, but it must comply
9 with and be subject to all other provisions of this section.
10
11 This subsection does not relieve a governmental entity from
12 complying with subsection (5).
13 (5) Notwithstanding section 542.235, Florida Statutes,
14 or any other law, a governmental entity that provides a
15 communications service is subject to the same prohibitions
16 applicable to private providers under sections 542.18 and
17 542.19, Florida Statutes, as it relates to providing a
18 communications service. This section does not limit the
19 availability to any party of any remedy or defense under state
20 or federal anti-trust laws.
21 (6) To ensure the safe and secure transportation of
22 passengers and freight through an airport facility, as defined
23 in section 159.27(17), Florida Statutes, an airport authority
24 or other governmental entity that provides or is proposing to
25 provide communications services only within the boundaries of
26 its airport layout plan, as defined in section 333.01(6),
27 Florida Statutes, to subscribers which are integral and
28 essential to the safe and secure transportation of passengers
29 and freight through the airport facility, is exempt from this
30 section. An airport authority or other governmental entity
31 that provides or is proposing to provide shared-tenant service

1 under section 364.339, Florida Statutes, but not dial tone
2 enabling subscribers to complete calls outside the airport
3 layout plan, to one or more subscribers within its airport
4 layout plan which are not integral and essential to the safe
5 and secure transportation of passengers and freight through
6 the airport facility is exempt from this section. An airport
7 authority or other governmental entity that provides or is
8 proposing to provide communications services to one or more
9 subscribers within its airport layout plan which are not
10 integral and essential to the safe and secure transportation
11 of passengers and freight through the airport facility, or to
12 one or more subscribers outside its airport layout plan, is
13 not exempt from this section. By way of example and not
14 limitation, the integral, essential subscribers may include
15 airlines and emergency service entities, and the nonintegral,
16 nonessential subscribers may include retail shops,
17 restaurants, hotels, or rental car companies.

18 (7) This section does not alter or affect any
19 provision in the charter, code, or other governing authority
20 of a governmental entity that impose additional or different
21 requirements on provision of communications service by a
22 governmental entity. Any such provisions shall apply in
23 addition to the applicable provisions in this section.

24 Section 9. Paragraph (a) of subsection (3) and
25 subsection (9) of section 202.19, Florida Statutes, are
26 amended to read:

27 202.19 Authorization to impose local communications
28 services tax.--

29 (3) (a) The tax authorized under this section includes
30 and is in lieu of any fee or other consideration, including,
31 but not limited to, application fees, transfer fees, renewal

1 fees, or claims for related costs, to which the municipality
2 or county is otherwise entitled for granting permission to
3 dealers of communications services, including, but not limited
4 to, providers of cable television services, as authorized in
5 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way
6 for the placement, construction, and maintenance of poles,
7 wires, and other fixtures used in the provision of
8 communications services.

9 (9) The revenues raised by any tax imposed under
10 subsection (1) or s. 202.20(1), or distributed to a local
11 government pursuant to s. 202.18, may be used by a
12 municipality or county for any public purpose, including, but
13 not limited to, pledging such revenues for the repayment of
14 current or future bonded indebtedness. Revenues raised by a
15 tax imposed under subsection (5) shall be used for the same
16 purposes as the underlying discretionary sales surtax imposed
17 by the county or school board under s. 212.055.

18 Section 10. Section 364.01, Florida Statutes, is
19 amended to read:

20 364.01 Powers of commission, legislative intent.--

21 (1) The Florida Public Service Commission shall
22 exercise over and in relation to telecommunications companies
23 the powers conferred by this chapter.

24 (2) It is the legislative intent to give exclusive
25 jurisdiction in all matters set forth in this chapter to the
26 Florida Public Service Commission in regulating
27 telecommunications companies, and such preemption shall
28 supersede any local or special act or municipal charter where
29 any conflict of authority may exist. However, the provisions
30 of this chapter shall not affect the authority and powers
31 granted in s. 166.231(9) or s. 337.401.

1 (3) Communications activities that are not regulated
2 by the Florida Public Service Commission, including, but not
3 limited to, VoIP, wireless, and broadband, are subject to this
4 state's generally applicable business regulation and deceptive
5 trade practices and consumer protection laws, as enforced by
6 the appropriate state authority or through actions in the
7 judicial system. This chapter does not limit the availability
8 to any party of any remedy or defense under state or federal
9 antitrust laws. The Legislature finds that the competitive
10 provision of telecommunications services, including local
11 exchange telecommunications service, is in the public interest
12 and will provide customers with freedom of choice, encourage
13 the introduction of new telecommunications service, encourage
14 technological innovation, and encourage investment in
15 telecommunications infrastructure. The Legislature further
16 finds that the transition from the monopoly provision of local
17 exchange service to the competitive provision thereof will
18 require appropriate regulatory oversight to protect consumers
19 and provide for the development of fair and effective
20 competition, but nothing in this chapter shall limit the
21 availability to any party of any remedy under state or federal
22 antitrust laws. The Legislature further finds that changes in
23 regulations allowing increased competition in
24 telecommunications services could provide the occasion for
25 increases in the telecommunications workforce; therefore, it
26 is in the public interest that competition in
27 telecommunications services lead to a situation that enhances
28 the high-technological skills and the economic status of the
29 telecommunications workforce. The Legislature further finds
30 that the provision of voice-over-Internet protocol (VOIP) free
31

1 of unnecessary regulation, regardless of the provider, is in
2 the public interest.

3 (4) The commission shall exercise its exclusive
4 jurisdiction in order to:

5 (a) Protect the public health, safety, and welfare by
6 ensuring that basic local telecommunications services are
7 available to all consumers in the state at reasonable and
8 affordable prices.

9 (b) Encourage competition through flexible regulatory
10 treatment among providers of telecommunications services in
11 order to ensure the availability of the widest possible range
12 of consumer choice in the provision of all telecommunications
13 services.

14 (c) Protect the public health, safety, and welfare by
15 ensuring that monopoly services provided by telecommunications
16 companies continue to be subject to effective price, rate, and
17 service regulation.

18 (d) Promote competition by encouraging innovation and
19 investment in new entrants into telecommunications markets and
20 by allowing a transitional period in which new and emerging
21 technologies entrants are subject to a reduced lesser level of
22 regulatory oversight ~~than local exchange telecommunications~~
23 ~~companies~~.

24 (e) Encourage all providers of telecommunications
25 services to introduce new or experimental telecommunications
26 services free of unnecessary regulatory restraints.

27 (f) Eliminate any rules or ~~and/or~~ regulations which
28 will delay or impair the transition to competition.

29 (g) Ensure that all providers of telecommunications
30 services are treated fairly, by preventing anticompetitive
31 behavior and eliminating unnecessary regulatory restraint.

1 (h) Recognize the continuing emergence of a
2 competitive telecommunications environment through the
3 flexible regulatory treatment of competitive
4 telecommunications services, where appropriate, if doing so
5 does not reduce the availability of adequate basic local
6 telecommunications service to all citizens of the state at
7 reasonable and affordable prices, if competitive
8 telecommunications services are not subsidized by monopoly
9 telecommunications services, and if all monopoly services are
10 available to all competitors on a nondiscriminatory basis.

11 (i) Continue its historical role as a surrogate for
12 competition for monopoly services provided by local exchange
13 telecommunications companies.

14 Section 11. Section 364.011, Florida Statutes, is
15 created to read:

16 364.011 Exemptions from commission jurisdiction.--The
17 following services are exempt from oversight by the
18 commission, except to the extent delineated in this chapter or
19 specifically authorized by federal law:

20 (1) Intrastate interexchange telecommunications
21 services.

22 (2) Broadband services, regardless of the provider,
23 platform, or protocol.

24 (3) VoIP.

25 (4) Wireless telecommunications, including commercial
26 mobile radio service providers.

27 Section 12. Section 364.012, Florida Statutes, is
28 created to read:

29 364.012 Consistency with federal law.--

30 (1) In order to promote commission coordination with
31 federal policymakers and regulatory agencies, the commission

1 shall maintain continuous liaisons with appropriate federal
2 agencies whose policy decisions and rulemaking authority
3 affect those telecommunications companies over which the
4 commission has jurisdiction. The commission is encouraged to
5 participate in the proceedings of federal agencies in cases in
6 which the state's consumers may be affected and to convey the
7 commission's policy positions and information requirements in
8 order to achieve greater efficiency in regulation.

9 (2) This chapter does not limit or modify the duties
10 of a local exchange carrier to provide unbundled access to
11 network elements or the commission's authority to arbitrate
12 and enforce interconnection agreements to the extent that
13 those elements are required under 47 U.S.C. ss. 251 and 252,
14 and under any regulations issued by the Federal Communications
15 Commission at rates determined in accordance with the
16 standards established by the Federal Communications Commission
17 pursuant to 47 C.F.R. ss. 51.503-51.513, inclusive of any
18 successor regulation or successor forbearance of regulation.

19 Section 13. Section 364.013, Florida Statutes, is
20 created to read:

21 364.013 Emerging and advanced services.--Broadband
22 service and the provision of voice-over-Internet-protocol
23 (VoIP) shall be free of state regulation, except as delineated
24 in this chapter or as specifically authorized by federal law,
25 regardless of the provider, platform, or protocol.

26 Section 14. Section 364.02, Florida Statutes, is
27 amended to read:

28 364.02 Definitions.--As used in this chapter:

29 (1) "Basic local telecommunications service" means
30 voice-grade, flat-rate residential, and flat-rate single-line
31 business local exchange services which provide dial tone,

1 local usage necessary to place unlimited calls within a local
2 exchange area, dual tone multifrequency dialing, and access to
3 the following: emergency services such as "911," all locally
4 available interexchange companies, directory assistance,
5 operator services, relay services, and an alphabetical
6 directory listing. For a local exchange telecommunications
7 company, ~~the such~~ term shall include any extended area service
8 routes, and extended calling service in existence or ordered
9 by the commission on or before July 1, 1995.

10 (2) "Broadband service" means any service that
11 consists of or includes the offering of the capability to
12 transmit or receive information at a rate that is not less
13 than 200 kilobits per second and either:

14 (a) Is used to provide access to the Internet; or

15 (b) Provides computer processing, information storage,
16 information content, or protocol conversion in combination
17 with the service.

18
19 The definition of broadband service does not include any
20 intrastate telecommunications services that have been tariffed
21 with the commission on or before January 1, 2005.

22 (3)-(2) "Commercial mobile radio service provider"
23 means a commercial mobile radio service provider as defined by
24 and pursuant to 47 U.S.C. ss. 153(n) and 332(d).

25 (4)-(3) "Commission" means the Florida Public Service
26 Commission.

27 (5)-(4) "Competitive local exchange telecommunications
28 company" means any company certificated by the commission to
29 provide local exchange telecommunications services in this
30 state on or after July 1, 1995.

31

1 ~~(6)-(5)~~ "Corporation" includes a corporation, company,
2 association, or joint stock association.

3 ~~(7)-(6)~~ "Intrastate interexchange telecommunications
4 company" means any entity that provides intrastate
5 interexchange telecommunications services.

6 ~~(8)-(7)~~ "Local exchange telecommunications company"
7 means any company certificated by the commission to provide
8 local exchange telecommunications service in this state on or
9 before June 30, 1995.

10 ~~(9)-(8)~~ "Monopoly service" means a telecommunications
11 service for which there is no effective competition, either in
12 fact or by operation of law.

13 ~~(10)-(9)~~ "Nonbasic service" means any
14 telecommunications service provided by a local exchange
15 telecommunications company other than a basic local
16 telecommunications service, a local interconnection
17 arrangement described in s. 364.16, or a network access
18 service described in s. 364.163.

19 ~~(11)-(10)~~ "Operator service" includes, but is not
20 limited to, billing or completion of third-party,
21 person-to-person, collect, or calling card or credit card
22 calls through the use of a live operator or automated
23 equipment.

24 ~~(12)-(11)~~ "Operator service provider" means a person
25 who furnishes operator service through a call aggregator.

26 ~~(13)-(12)~~ "Service" is to be construed in its broadest
27 and most inclusive sense. The term "service" does not include
28 broadband service or voice-over-Internet protocol service for
29 purposes of regulation by the commission. Nothing herein shall
30 affect the rights and obligations of any entity related to the
31 payment of switched network access rates or other intercarrier

1 compensation, if any, related to voice-over-Internet protocol
2 service. Notwithstanding s. 364.013, and the exemption of
3 services pursuant to this subsection, the commission may
4 arbitrate, enforce, or approve interconnection agreements, and
5 resolve disputes as provided by 47 U.S.C. ss. 251 and 252, or
6 any other applicable federal law or regulation. With respect
7 to the services exempted in this subsection, regardless of the
8 technology, the duties of a local exchange telecommunications
9 company are only those that the company is obligated to extend
10 or provide under applicable federal law and regulations.

11 ~~(14)-(13)~~ "Telecommunications company" includes every
12 corporation, partnership, and person and their lessees,
13 trustees, or receivers appointed by any court whatsoever, and
14 every political subdivision in the state, offering two-way
15 telecommunications service to the public for hire within this
16 state by the use of a telecommunications facility. The term
17 "telecommunications company" does not include:

18 (a) An entity which provides a telecommunications
19 facility exclusively to a certificated telecommunications
20 company;

21 (b) An entity which provides a telecommunications
22 facility exclusively to a company which is excluded from the
23 definition of a telecommunications company under this
24 subsection;

25 (c) A commercial mobile radio service provider;

26 (d) A facsimile transmission service;

27 (e) A private computer data network company not
28 offering service to the public for hire;

29 (f) A cable television company providing cable service
30 as defined in 47 U.S.C. s. 522; or
31

1 (g) An intrastate interexchange telecommunications
2 company.
3
4 However, each commercial mobile radio service provider and
5 each intrastate interexchange telecommunications company shall
6 continue to be liable for any taxes imposed under ~~pursuant to~~
7 chapters 202, 203, and 212 and any fees assessed under
8 ~~pursuant to~~ ss. 364.025 and 364.336. Each intrastate
9 interexchange telecommunications company shall continue to be
10 subject to ss. 364.04, 364.10(3)(a) and (d), 364.163, 364.285,
11 364.501, 364.603, and 364.604, shall provide the commission
12 with such current information as the commission deems
13 necessary to contact and communicate with the company, shall
14 continue to pay intrastate switched network access rates or
15 other intercarrier compensation to the local exchange
16 telecommunications company or the competitive local exchange
17 telecommunications company for the origination and termination
18 of interexchange telecommunications service, and shall reduce
19 its intrastate long distance toll rates in accordance with s.
20 364.163(2).

21 ~~(15)-(14)~~ "Telecommunications facility" includes real
22 estate, easements, apparatus, property, and routes used and
23 operated to provide two-way telecommunications service to the
24 public for hire within this state.

25 ~~(16)~~ "VoIP" means the voice-over-Internet protocol as
26 that term is defined in federal law.

27 Section 15. Section 364.0361, Florida Statutes, is
28 amended to read:

29 364.0361 Local government authority; nondiscriminatory
30 exercise.--A local government shall treat each
31 telecommunications company in a nondiscriminatory manner when

1 exercising its authority to grant franchises to a
2 telecommunications company or to otherwise establish
3 conditions or compensation for the use of rights-of-way or
4 other public property by a telecommunications company. A local
5 government may not directly or indirectly regulate the terms
6 and conditions, including, but not limited to, the operating
7 systems, qualifications, services, service quality, service
8 territory, and prices, applicable to or in connection with the
9 provision of any voice-over-Internet protocol, regardless of
10 the platform, provider, or protocol, broadband or information
11 service. This section does not relieve a provider from any
12 obligations under s. 166.046 or s. 337.401.

13 Section 16. Section 364.10, Florida Statutes, is
14 amended to read:

15 364.10 Undue advantage to person or locality
16 prohibited; Lifeline service.--

17 (1) A telecommunications company may not make or give
18 any undue or unreasonable preference or advantage to any
19 person or locality or subject any particular person or
20 locality to any undue or unreasonable prejudice or
21 disadvantage in any respect whatsoever.

22 (2) (a) The prohibitions of subsection (1)
23 notwithstanding, an eligible telecommunications carrier ~~a~~
24 ~~telecommunications company serving as carrier of last resort~~
25 shall provide a Lifeline Assistance Plan to qualified
26 residential subscribers, as defined in a commission-approved
27 tariff or price list, and a preferential rate to eligible
28 facilities as provided for in part II. For the purposes of
29 this section, the term "eligible telecommunications carrier"
30 means a telecommunications company, as defined by s. 364.02,
31

1 which is designated as an eligible telecommunications carrier
2 by the commission pursuant to 47 C.F.R. s. 54.201.

3 (b) An eligible telecommunications carrier shall offer
4 a consumer who applies for or receives Lifeline service the
5 option of blocking all toll calls or, if technically capable,
6 placing a limit on the number of toll calls a consumer can
7 make. The eligible telecommunications carrier may not charge
8 the consumer an administrative charge or other additional fee
9 for blocking the service.

10 (c) An eligible telecommunications carrier may not
11 collect a service deposit in order to initiate Lifeline
12 service if the qualifying low-income consumer voluntarily
13 elects toll blocking or toll limitation. If the qualifying
14 low-income consumer elects not to place toll blocking on the
15 line, an eligible telecommunications carrier may charge a
16 service deposit.

17 (d) An eligible telecommunications carrier may not
18 charge Lifeline subscribers a monthly number-portability
19 charge.

20 (e)1. An eligible telecommunications carrier must
21 notify a Lifeline subscriber of impending termination of
22 Lifeline service if the company has a reasonable basis for
23 believing that the subscriber no longer qualifies.
24 Notification of pending termination must be in the form of a
25 letter that is separate from the subscriber's bill.

26 2. An eligible telecommunications carrier shall allow
27 a subscriber 60 days following the date of the pending
28 termination letter to demonstrate continued eligibility. The
29 subscriber must present proof of continued eligibility. An
30 eligible telecommunications carrier may transfer a subscriber
31

1 off of Lifeline service, pursuant to its tariff, if the
2 subscriber fails to demonstrate continued eligibility.

3 3. The commission shall establish procedures for such
4 notification and termination.

5 (f) An eligible telecommunications carrier shall
6 timely credit a consumer's bill with the Lifeline Assistance
7 credit as soon as practicable, but no later than 60 days
8 following receipt of notice of eligibility from the Office of
9 Public Counsel or proof of eligibility from the consumer.

10 (3) (a) Effective September 1, 2003, any local exchange
11 telecommunications company authorized by the commission to
12 reduce its switched network access rate pursuant to s. 364.164
13 shall have tariffed and shall provide Lifeline service to any
14 otherwise eligible customer or potential customer who meets an
15 income eligibility test at 135 ~~125~~ percent or less of the
16 federal poverty income guidelines for Lifeline customers. Such
17 a test for eligibility must augment, rather than replace, the
18 eligibility standards established by federal law and based on
19 participation in certain low-income assistance programs. Each
20 intrastate interexchange telecommunications company shall,
21 effective September 1, 2003, file a tariff providing at a
22 minimum the intrastate interexchange telecommunications
23 carrier's current Lifeline benefits and exemptions to Lifeline
24 customers who meet the income eligibility test set forth in
25 this subsection. The Office of Public Counsel shall certify
26 and maintain claims submitted by a customer for eligibility
27 under the income test authorized by this subsection.

28 (b) Each eligible telecommunications carrier ~~local~~
29 ~~exchange telecommunications company~~ subject to this subsection
30 shall provide to each state and federal agency providing
31 benefits to persons eligible for Lifeline service

1 applications, brochures, pamphlets, or other materials that
2 inform ~~the such~~ persons of their eligibility for Lifeline, and
3 each state agency providing ~~the such~~ benefits shall furnish
4 the materials to affected persons at the time they apply for
5 benefits.

6 (c) Any local exchange telecommunications company
7 customer receiving Lifeline benefits shall not be subject to
8 any residential basic local telecommunications service rate
9 increases authorized by s. 364.164 until the local exchange
10 telecommunications company reaches parity as defined in s.
11 364.164(5) or until the customer no longer qualifies for the
12 Lifeline benefits established by this section or s. 364.105,
13 or unless otherwise determined by the commission upon petition
14 by a local exchange telecommunications company.

15 (d) An eligible telecommunications carrier may not
16 discontinue basic local exchange telephone service to a
17 subscriber who receives Lifeline service because of nonpayment
18 by the subscriber of charges for nonbasic services billed by
19 the telecommunications company, including long-distance
20 service. A subscriber who receives Lifeline service shall be
21 required to pay all applicable basic local exchange service
22 fees, including the subscriber line charge, E-911, telephone
23 relay system charges, and applicable state and federal taxes.

24 (e) An eligible telecommunications carrier may not
25 refuse to connect, reconnect, or provide Lifeline service
26 because of unpaid toll charges or nonbasic charges other than
27 basic local exchange service.

28 (f) An eligible telecommunications carrier may require
29 that payment arrangements be made for outstanding debt
30 associated with basic local exchange service, subscriber line
31

1 charges, E-911, telephone relay system charges, and applicable
2 state and federal taxes.

3 (g) An eligible telecommunications carrier may block a
4 Lifeline service subscriber's access to all long-distance
5 service, except for toll-free numbers, and may block the
6 ability to accept collect calls when the subscriber owes an
7 outstanding amount for long-distance service or amounts
8 resulting from collect calls. However, the eligible
9 telecommunications carrier may not impose a charge for
10 blocking long-distance service. The eligible
11 telecommunications carrier shall remove the block at the
12 request of the subscriber without additional cost to the
13 subscriber upon payment of the outstanding amount. An eligible
14 telecommunications carrier may charge a service deposit before
15 removing the block.

16 (h)-(d) By December 31, 2003, each state agency that
17 provides benefits to persons eligible for Lifeline service
18 shall undertake, in cooperation with the Department of
19 Children and Family Services, the Department of Education, the
20 commission, the Office of Public Counsel, and
21 telecommunications companies providing Lifeline services, the
22 development of procedures to promote Lifeline participation.

23 (i)-(e) The commission shall report to the Governor,
24 the President of the Senate, and the Speaker of the House of
25 Representatives by December 31 each year on the number of
26 customers who are subscribing to Lifeline service and the
27 effectiveness of any procedures to promote participation.

28 (j) The commission shall adopt rules to administer
29 this section.

30 Section 17. Section 364.502, Florida Statutes, is
31 repealed.