

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 161*

Short Title: Local Telephone Competition.

(Public)

Sponsors: Representatives Dickson, Tallent, Adams, Barbee, Beall, Black, Brawley, J. Brown, W. Brown, Culp, Cunningham, Decker, Dockham, Earle, Easterling, Fitch, Gamble, Gardner, Hill, Holmes, Howard, H. Hunter, R. Hunter, Hurley, Ives, Justus, Linney, McCombs, McCrary, McLaughlin, Mercer, Miner, Mitchell, Morgan, Oldham, Ramsey, Rayfield, Redwine, Reynolds, Richardson, Robinson, Rogers, Russell, Sexton, Sharpe, Sherrill, Thompson, Wainwright, Warner, Weatherly, Wilkins, G. Wilson; Aldridge, Alexander, Allred, Arnold, Berry, Bowen, Bowie, Buchanan, Carpenter, Church, Cocklereece, Crawford, Creech, Culpepper, Cummings, Davis, Eddins, Edwards, Esposito, Fox, Grady, Gray, Hensley, Hightower, Kiser, Lee, Lemmond, Locke, McAllister, McComas, McMahan, Michaux, G. Miller, K. Miller, Nichols, Nye, Pate, Preston, Pulley, Shubert, Snowden, Sutton, Tolson, C. Wilson, Womble, Wood, Wright, and Yongue.

Referred to: Public Utilities.

February 9, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THE PUBLIC WITH ACCESS TO LOW-COST
3 TELECOMMUNICATIONS SERVICE IN A CHANGING COMPETITIVE
4 ENVIRONMENT.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 62-2 reads as rewritten:

7 "**§ 62-2. Declaration of policy.**

8 Upon investigation, it has been determined that the rates, services and operations of
9 public utilities as defined herein, are affected with the public interest and that the

1 availability of an adequate and reliable supply of electric power and natural gas to the
2 people, economy and government of North Carolina is a matter of public policy. It is
3 hereby declared to be the policy of the State of North Carolina:

- 4 (1) To provide fair regulation of public utilities in the interest of the public;
- 5 (2) To promote the inherent advantage of regulated public utilities;
- 6 (3) To promote adequate, reliable and economical utility service to all of
7 the citizens and residents of the State;
- 8 (3a) To assure that resources necessary to meet future growth through the
9 provision of adequate, reliable utility service include use of the entire
10 spectrum of demand-side options, including but not limited to
11 conservation, load management and efficiency programs, as additional
12 sources of energy supply and/or energy demand reductions. To that
13 end, to require energy planning and fixing of rates in a manner to result
14 in the least cost mix of generation and demand-reduction measures
15 which is achievable, including consideration of appropriate rewards to
16 utilities for efficiency and conservation which decrease utility bills.
- 17 (4) To provide just and reasonable rates and charges for public utility
18 services without unjust discrimination, undue preferences or advantages,
19 or unfair or destructive competitive practices and consistent with long-
20 term management and conservation of energy resources by avoiding
21 wasteful, uneconomic and inefficient uses of energy;
- 22 (4a) To assure that facilities necessary to meet future growth can be financed
23 by the utilities operating in this State on terms which are reasonable and
24 fair to both the customers and existing investors of such utilities; and to
25 that end to authorize fixing of rates in such a manner as to result in
26 lower costs of new facilities and lower rates over the operating lives of
27 such new facilities by making provisions in the rate-making process for
28 the investment of public utilities in plant under construction;
- 29 (5) To encourage and promote harmony between public utilities, their users
30 and the environment;
- 31 (6) To foster the continued service of public utilities on a well-planned and
32 coordinated basis that is consistent with the level of energy needed for
33 the protection of public health and safety and for the promotion of the
34 general welfare as expressed in the State energy policy;
- 35 (7) To seek to adjust the rate of growth of regulated energy supply facilities
36 serving the State to the policy requirements of statewide development;
37 and
- 38 (8) To cooperate with other states and with the federal government in
39 promoting and coordinating interstate and intrastate public utility
40 service and reliability of public utility energy supply.
- 41 (9) To facilitate the construction of facilities in and the extension of natural
42 gas service to unserved areas in order to promote the public welfare
43 throughout the State and to that end to authorize the creation of an

1 expansion fund for each natural gas local distribution company to be
2 administered under the supervision of the North Carolina Utilities
3 Commission.

4 To these ends, therefore, authority shall be vested in the North Carolina Utilities
5 Commission to regulate public utilities generally, their rates, services and operations, and
6 their expansion in relation to long-term energy conservation and management policies
7 and statewide development requirements, and in the manner and in accordance with the
8 policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any
9 extension of Utilities Commission regulatory jurisdiction over any industry or enterprise
10 that is not subject to the regulatory jurisdiction of said Commission.

11 Because of technological changes in the equipment and facilities now available and
12 needed to provide telephone and telecommunications services, changes in regulatory
13 policies by the federal government, and changes resulting from the court-ordered
14 divestiture of the American Telephone and Telegraph Company, competitive offerings of
15 certain types of telephone and telecommunications services may be in the public interest.
16 Consequently, authority shall be vested in the North Carolina Utilities Commission to
17 allow competitive offerings of local exchange, exchange access, and long distance
18 services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with
19 the provisions of G.S. 62-110.

20 The policy and authority stated in this section shall be applicable to common carriers
21 of passengers by motor vehicle and their regulation by the North Carolina Utilities
22 Commission only to the extent that they are consistent with the provisions of the Bus
23 Regulatory Reform Act of 1985.

24 The North Carolina Utilities Commission may develop regulatory policies to govern
25 the provision of telecommunications services to the public which promote efficiency,
26 technological innovation, economic growth, and permit telecommunications utilities a
27 reasonable opportunity to compete in an emerging competitive environment, giving due
28 regard to consumers, stockholders, and maintenance of reasonably affordable local
29 exchange service and long distance service."

30 Sec. 2. G.S. 62-110 is amended by adding three new subsections to read:

31 "(f1) Except as provided in subsection (f2) of this section, the Commission is
32 authorized, following notice and an opportunity for interested parties to be heard, to issue
33 a certificate to any person applying to provide local exchange or exchange access
34 services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether
35 local telephone service is already being provided in the territory for which the certificate
36 is sought, provided that the person seeking to provide the service makes a satisfactory
37 showing to the Commission that (i) the person is fit, capable, and financially able to
38 render such service; (ii) the service to be provided will reasonably meet the service
39 standards adopted by the Commission for similar services provided by other local
40 exchange and access service providers; (iii) the provision of the service will not adversely
41 impact the availability of reasonably affordable local exchange service; (iv) the person, to
42 the extent it may be required to do so by the Commission, will participate in the support
43 of universally available telephone service at affordable rates; and (v) the provision of the

1 service does not otherwise adversely impact the public interest. In its application for
2 certification, the person seeking to provide the service shall set forth with particularity the
3 proposed geographic territory to be served and the types of local exchange and exchange
4 access services to be provided. Any person receiving a certificate under this section shall
5 file and maintain with the Commission a complete list of the local exchange and
6 exchange access services to be provided and the prices charged for those services and
7 shall be subject to the same taxation and reporting requirements as any other provider of
8 the same service.

9 Any certificate issued by the Commission pursuant to this subsection shall not permit
10 the provision of the local exchange or exchange access service until July 1, 1996.

11 The Commission is authorized to adopt rules it finds necessary (i) to provide for
12 the reasonable interconnection of facilities between all providers of telecommunications
13 services; (ii) to determine when necessary the rates for such interconnection; (iii) to
14 provide for the reasonable unbundling of essential facilities where technically and
15 economically feasible; (iv) to provide for the transfer of telephone numbers between
16 providers in a manner that is technically and economically reasonable; (v) to provide for
17 the continued development and encouragement of universally available telephone service
18 at reasonably affordable rates; and (vi) to carry out the provisions of this section in a
19 manner consistent with the public interest.

20 Incumbent local exchange companies and other telecommunications companies shall
21 negotiate the rates for interconnection. In the event, however, that the parties are unable
22 to agree within 90 days upon appropriate rates for interconnection, either party may
23 petition the Commission for determination of the appropriate rates for interconnection.

24 The incumbent local exchange company shall be the universal service provider in the
25 area in which it is certificated to operate on July 1, 1995, until otherwise determined by
26 the Commission. In continuing this State's commitment to universal service, the
27 Commission shall by July 1, 1996, complete an investigation to determine the person that
28 should be the universal service provider and to determine whether universal service
29 should be funded through interconnection rates or through some other funding
30 mechanism.

31 The Commission shall make the determination required pursuant to this subsection in
32 a manner that furthers this State's policy favoring universally available telephone service
33 at reasonable rates.

34 (f2) The provisions of subsection (f1) of this section shall not be applicable to
35 franchised areas within the State that are being served by incumbent local exchange
36 companies with 200,000 access lines or less located within the State, and it is further
37 provided that such incumbent local exchange company providing service to 200,000
38 access lines or less shall not be subject to the regulatory reform procedures outlined under
39 the terms of G.S. 62-133.5(a) or permitted to compete in territory outside of its franchised
40 area for local exchange and access services until such time as the franchised area is
41 opened to competing providers as provided for in this subsection. Upon the filing of an
42 application by an incumbent local exchange company with 200,000 access lines or less
43 for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the

1 provisions of that section to such incumbent local exchange company, but only upon the
2 condition that the provisions of subsection (f1) of this section are to be applicable to the
3 franchised area and local exchange and exchange access services offered by such a local
4 exchange company.

5 (f3) The provisions of subsection (f1) of this section shall not be applicable to areas
6 served by telephone membership corporations formed and existing under Article 4 of
7 Chapter 117 of the General Statutes and exempt from regulation as public utilities, as
8 defined under Chapter 62 of the General Statutes, pursuant to G.S. 62-3(23)d. and G.S.
9 117-35."

10 Sec. 3. G.S. 62-133.3 is repealed.

11 Sec. 4. Article 7 of Chapter 62 is amended by adding a new section to read:

12 **"§ 62-133.5. Alternative regulation, tariffing and deregulation of**
13 **telecommunications utilities.**

14 (a) Any local exchange company subject to the provisions of G.S. 62-110(f1) that
15 is subject to rate of return regulation or a form of alternative regulation authorized by this
16 Chapter may elect to have the rates, terms, and conditions of its services determined
17 pursuant to a form of price regulation set forth in this subsection, rather than rate of
18 return or other form of earnings regulation. Upon application, the Commission shall
19 approve such price regulation, which may differ from company to company, upon finding
20 that the plan as proposed (i) protects the affordability of basic local exchange service, as
21 such service is defined by the Commission; (ii) reasonably assures the continuation of
22 basic local exchange service that meets reasonable service standards established by the
23 Commission; (iii) will not unreasonably prejudice any class of telephone customers,
24 including telecommunications companies; and (iv) is otherwise consistent with the public
25 interest. Upon approval, and except as provided in subsection (c) of this section, price
26 regulation shall thereafter be the sole form of regulation imposed upon the electing local
27 exchange company, and the Commission shall thenceforth regulate the electing local
28 exchange company's prices, rather than its earnings, and shall permit the electing local
29 exchange company to determine and set its own depreciation rates, rebalance rates, and
30 adjust its prices in the aggregate based upon changes in generally accepted indices of
31 prices. The Commission shall issue an order denying or approving the proposed plan for
32 price regulation, with or without modification, not more than 90 days from the filing of
33 the application. However, the Commission may extend the time period for an additional
34 60 days at the discretion of the Commission. If the Commission approves the application
35 with modifications, the local exchange company subject to such approval may accept the
36 modifications and implement the proposed plans as modified, or may, at its option, (i)
37 withdraw its application and continue to be regulated under the form of regulation that
38 existed immediately prior to the filing of the application; (ii) file another proposed plan
39 for price regulation; or (iii) file an application for a form of alternative regulation under
40 subsection (b).

41 (b) Any local exchange company that is subject to rate of return regulation and
42 which elects not to file for price regulation under the provisions of subsection (a) above
43 may file an application with the Commission for forms of alternative regulation, which

1 may differ between companies and may include, but are not limited to, ranges of
2 authorized returns, categories of services, and price indexing. Upon application, the
3 Commission shall approve such alternative regulatory plan upon finding that the plan as
4 proposed (i) protects the affordability of basic local exchange service, as such service is
5 defined by the Commission; (ii) reasonably assures the continuation of basic local
6 exchange service that meets reasonable service standards established by the Commission;
7 (iii) will not unreasonably prejudice any class of telephone customers, including
8 telecommunications companies; and (iv) is otherwise consistent with the public interest.
9 The Commission shall issue an order denying or approving the proposed plan with or
10 without modification, not more than 90 days from the filing of the application. However,
11 the Commission may extend the time period for an additional 60 days at the discretion of
12 the Commission. If the Commission approves the application with modifications, the
13 local exchange company subject to such approval may, at its option, accept the
14 modifications and implement the proposed plan as modified or may, at its option, (i)
15 withdraw its application and continue to be regulated under the form of regulation that
16 existed at the time of filing the application; or (ii) file an application for another form of
17 alternative regulation.

18 (c) Any local exchange company subject to price regulation under the provisions
19 of subsection (a) of this section may file an application with the Commission to modify
20 such form of price regulation or for other forms of regulation. Upon application, the
21 Commission shall approve such other form of regulation upon finding that the plan as
22 proposed (i) protects the affordability of basic local exchange service, as such service is
23 defined by the Commission; (ii) reasonably assures the continuation of basic local
24 exchange service that meets reasonable service standards established by the Commission;
25 (iii) will not unreasonably prejudice any class of telephone customers, including
26 telecommunications companies; and (iv) is otherwise consistent with the public interest.

27 (d) After notice to affected parties and hearing, the Commission is authorized to
28 determine whether any service provided by any telecommunications provider, including a
29 local exchange company, is subject to competition and to provide, either by rule or on a
30 case-by-case basis, for detariffing or deregulation of such services, or both. The
31 Commission may determine a service to be competitive when it finds that competition or
32 the potential for competition is an effective regulator of price for the service.

33 (e) Any local exchange company subject to price regulation under the provisions
34 of subsection (a) or other alternative regulation under subsection (b) of this section shall
35 file tariffs for basic local exchange service and toll switched access services stating the
36 terms and conditions of the services and the applicable rates. Any tariff filing changing
37 the terms and conditions of such services or increasing the rates for such services shall be
38 presumed valid and shall become effective upon 14 days' notice. Any tariff reducing
39 rates for basic local exchange service or toll switched access service shall be presumed
40 valid and become effective upon seven days' notice. Any local exchange company
41 subject to price regulation under the provisions of subsection (a) of this section or other
42 alternative regulation under subsection (b) of this section may file tariffs for services
43 other than basic local exchange services and toll switched access services. Any tariff

1 changing the terms and conditions, of such services or increasing the rates for an existing
2 service or establishing the terms, conditions or rates for a new service shall be presumed
3 valid and shall become effective upon 14 days' notice. Any tariff reducing the rates for
4 such services shall be presumed valid and shall become effective upon seven days' notice.

5 (f) Notwithstanding the provisions of G.S. 62-140, any local exchange company
6 may offer competitive services with flexible pricing arrangements to business customers
7 pursuant to contract and may utilize other flexible pricing options.

8 (g) The following sections of Chapter 62 of the General Statutes shall not apply to
9 local exchange companies subject to price regulation under the terms of subsection (a) of
10 this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-
11 133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

12 Sec. 5. This act becomes effective July 1, 1995.