

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 161*
Committee Substitute Favorable 3/2/95

Short Title: Local Telephone Competition.

(Public)

Sponsors:

Referred to:

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

- 13 (1) To provide fair regulation of public utilities in the interest of the
14 public;
15 (2) To promote the inherent advantage of regulated public utilities;
16 (3) To promote adequate, reliable and economical utility service to all of
17 the citizens and residents of the State;
18 (3a) To assure that resources necessary to meet future growth through the
19 provision of adequate, reliable utility service include use of the

1 entire spectrum of demand-side options, including but not limited to
2 conservation, load management and efficiency programs, as
3 additional sources of energy supply and/or energy demand
4 reductions. To that end, to require energy planning and fixing of
5 rates in a manner to result in the least cost mix of generation and
6 demand-reduction measures which is achievable, including
7 consideration of appropriate rewards to utilities for efficiency and
8 conservation which decrease utility bills.

9 (4) To provide just and reasonable rates and charges for public utility
10 services without unjust discrimination, undue preferences or
11 advantages, or unfair or destructive competitive practices and
12 consistent with long-term management and conservation of energy
13 resources by avoiding wasteful, uneconomic and inefficient uses of
14 energy;

15 (4a) To assure that facilities necessary to meet future growth can be
16 financed by the utilities operating in this State on terms which are
17 reasonable and fair to both the customers and existing investors of
18 such utilities; and to that end to authorize fixing of rates in such a
19 manner as to result in lower costs of new facilities and lower rates
20 over the operating lives of such new facilities by making provisions
21 in the rate-making process for the investment of public utilities in
22 plant under construction;

23 (5) To encourage and promote harmony between public utilities, their
24 users and the environment;

25 (6) To foster the continued service of public utilities on a well-planned
26 and coordinated basis that is consistent with the level of energy
27 needed for the protection of public health and safety and for the
28 promotion of the general welfare as expressed in the State energy
29 policy;

30 (7) To seek to adjust the rate of growth of regulated energy supply
31 facilities serving the State to the policy requirements of statewide
32 development; and

33 (8) To cooperate with other states and with the federal government in
34 promoting and coordinating interstate and intrastate public utility
35 service and reliability of public utility energy supply.

36 (9) To facilitate the construction of facilities in and the extension of
37 natural gas service to unserved areas in order to promote the public
38 welfare throughout the State and to that end to authorize the creation
39 of an expansion fund for each natural gas local distribution company
40 to be administered under the supervision of the North Carolina
41 Utilities Commission.

42 To these ends, therefore, authority shall be vested in the North Carolina Utilities
43 Commission to regulate public utilities generally, their rates, services and operations, and

1 their expansion in relation to long-term energy conservation and management policies
2 and statewide development requirements, and in the manner and in accordance with the
3 policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any
4 extension of Utilities Commission regulatory jurisdiction over any industry or enterprise
5 that is not subject to the regulatory jurisdiction of said Commission.

6 Because of technological changes in the equipment and facilities now available and
7 needed to provide telephone and telecommunications services, changes in regulatory
8 policies by the federal government, and changes resulting from the court-ordered
9 divestiture of the American Telephone and Telegraph Company, competitive offerings of
10 certain types of telephone and telecommunications services may be in the public interest.
11 Consequently, authority shall be vested in the North Carolina Utilities Commission to
12 allow competitive offerings of local exchange, exchange access, and long distance
13 services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with
14 the provisions of G.S. ~~62-110.~~ 62-110, and the Commission is further authorized after
15 notice to affected parties and hearing to deregulate or to exempt from regulation under
16 any or all provisions of this Chapter: (i) a service provided by any public utility as
17 defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such
18 deregulation or exemption from regulation is in the public interest; or (ii) a public utility
19 as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a
20 finding that the service or business of such public utility is competitive and that such
21 deregulation or exemption from regulation is in the public interest.

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

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

32 Sec. 2. G.S. 62-3 is amended by adding a new subdivision to read:

33 "(7a) 'Competing local provider' means any person applying for a
34 certificate to provide local exchange or exchange access services in
35 competition with a local exchange company."

36 Sec. 3. G.S. 62-3 is amended by adding a new subdivision to read:

37 "(16a) 'Local exchange company' means a person holding, on January 1,
38 1995, a certificate to provide local exchange services or exchange
39 access services."

40 Sec. 4. G.S. 62-110 is amended by adding three new subsections to read:

41 "(f1) Except as provided in subsection (f2) of this section, the Commission is
42 authorized, following notice and an opportunity for interested parties to be heard, to issue
43 a certificate to any person applying to provide local exchange or exchange access

1 services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether
2 local telephone service is already being provided in the territory for which the certificate
3 is sought, provided that the person seeking to provide the service makes a satisfactory
4 showing to the Commission that (i) the person is fit, capable, and financially able to
5 render such service; (ii) the service to be provided will reasonably meet the service
6 standards that the Commission may adopt; (iii) the provision of the service will not
7 adversely impact the availability of reasonably affordable local exchange service; (iv) the
8 person, to the extent it may be required to do so by the Commission, will participate in
9 the support of universally available telephone service at affordable rates; and (v) the
10 provision of the service does not otherwise adversely impact the public interest. In its
11 application for certification, the person seeking to provide the service shall set forth with
12 particularity the proposed geographic territory to be served and the types of local
13 exchange and exchange access services to be provided. Except as provided in G.S. 62-
14 133.5(e), any person receiving a certificate under this section shall, until otherwise
15 determined by the Commission, file and maintain with the Commission a complete list of
16 the local exchange and exchange access services to be provided and the prices charged
17 for those services, and shall be subject to such reporting requirements as the Commission
18 may require.

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

21 The Commission is authorized to adopt rules it finds necessary (i) to provide for
22 the reasonable interconnection of facilities between all providers of telecommunications
23 services; (ii) to determine when necessary the rates for such interconnection; (iii) to
24 provide for the reasonable unbundling of essential facilities where technically and
25 economically feasible; (iv) to provide for the transfer of telephone numbers between
26 providers in a manner that is technically and economically reasonable; (v) to provide for
27 the continued development and encouragement of universally available telephone service
28 at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a
29 manner consistent with the public interest.

30 Local exchange companies and competing local providers shall negotiate the rates for
31 local interconnection. In the event that the parties are unable to agree within 90 days of a
32 bona fide request for interconnection on appropriate rates for interconnection, either party
33 may petition the Commission for determination of the appropriate rates for
34 interconnection.

35 Each local exchange company shall be the universal service provider in the area in
36 which it is certificated to operate on July 1, 1995, until otherwise determined by the
37 Commission. In continuing this State's commitment to universal service, the
38 Commission shall, by December 31, 1996, adopt interim rules that designate the person
39 that should be the universal service provider and to determine whether universal service
40 should be funded through interconnection rates or through some other funding
41 mechanism. By July 1, 1998, the Commission shall complete an investigation and adopt
42 final rules concerning the provision of universal services, the person that should be the

1 universal service provider, and whether universal service should be funded through
2 interconnection rates or through some other funding mechanism.

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

6 (f2) The provisions of subsection (f1) of this section shall not be applicable to
7 franchised areas within the State that are being served by local exchange companies with
8 200,000 access lines or less located within the State, and it is further provided that such
9 local exchange company providing service to 200,000 access lines or less shall not be
10 subject to the regulatory reform procedures outlined under the terms of G.S. 62-133.5(a)
11 or permitted to compete in territory outside of its franchised area for local exchange and
12 exchange access services until such time as the franchised area is opened to competing
13 local providers as provided for in this subsection. Upon the filing of an application by a
14 local exchange company with 200,000 access lines or less for regulation under the
15 provisions of G.S. 62-133.5(a), the Commission shall apply the provisions of that section
16 to such local exchange company, but only upon the condition that the provisions of
17 subsection (f1) of this section are to be applicable to the franchised area and local
18 exchange and exchange access services offered by such a local exchange company.

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

23 Sec. 5. G.S. 62-133.3 is repealed.

24 Sec. 6. Article 7 of Chapter 62 is amended by adding a new section to read:

25 "**§ 62-133.5. Alternative regulation, tariffing, and deregulation of**
26 **telecommunications utilities.**

27 (a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that
28 is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative
29 regulation authorized by subsection (b) of this section may elect to have the rates, terms,
30 and conditions of its services determined pursuant to a form of price regulation, rather
31 than rate of return or other form of earnings regulation. Under this form of price
32 regulation, the Commission shall, among other things, permit the local exchange
33 company to determine and set its own depreciation rates, to rebalance its rates, and to
34 adjust its prices in the aggregate, or to adjust its prices for various aggregated categories
35 of services, based upon changes in generally accepted indices of prices. Upon
36 application, the Commission shall approve such price regulation, which may differ
37 between local exchange companies, upon finding that the plan as proposed (i) protects the
38 affordability of basic local exchange service, as such service is defined by the
39 Commission; (ii) reasonably assures the continuation of basic local exchange service that
40 meets reasonable service standards that the Commission may adopt; (iii) will not
41 unreasonably prejudice any class of telephone customers, including telecommunications
42 companies; and (iv) is otherwise consistent with the public interest. Upon approval, and
43 except as provided in subsection (c) of this section, price regulation shall thereafter be the

1 sole form of regulation imposed upon the electing local exchange company, and the
2 Commission shall thenceforth regulate the electing local exchange company's prices,
3 rather than its earnings. The Commission shall issue an order denying or approving the
4 proposed plan for price regulation, with or without modification, not more than 90 days
5 from the filing of the application. However, the Commission may extend the time period
6 for an additional 60 days at the discretion of the Commission. If the Commission
7 approves the application with modifications, the local exchange company subject to such
8 approval may accept the modifications and implement the proposed plans as modified, or
9 may, at its option, (i) withdraw its application and continue to be regulated under the
10 form of regulation that existed immediately prior to the filing of the application; (ii) file
11 another proposed plan for price regulation; or (iii) file an application for a form of
12 alternative regulation under subsection (b) of this section.

13 (b) Any local exchange company that is subject to rate of return regulation
14 pursuant to G.S. 62-133 and which elects not to file for price regulation under the
15 provisions of subsection (a) above may file an application with the Commission for forms
16 of alternative regulation, which may differ between companies and may include, but are
17 not limited to, ranges of authorized returns, categories of services, and price indexing.
18 Upon application, the Commission shall approve such alternative regulatory plan upon
19 finding that the plan as proposed (i) protects the affordability of basic local exchange
20 service, as such service is defined by the Commission; (ii) reasonably assures the
21 continuation of basic local exchange service that meets reasonable service standards
22 established by the Commission; (iii) will not unreasonably prejudice any class of
23 telephone customers, including telecommunications companies; and (iv) is otherwise
24 consistent with the public interest. The Commission shall issue an order denying or
25 approving the proposed plan with or without modification, not more than 90 days from
26 the filing of the application. However, the Commission may extend the time period for
27 an additional 60 days at the discretion of the Commission. If the Commission approves
28 the application with modifications, the local exchange company subject to such approval
29 may, at its option, accept the modifications and implement the proposed plan as modified
30 or may, at its option, (i) withdraw its application and continue to be regulated under the
31 form of regulation that existed at the time of filing the application; or (ii) file an
32 application for another form of alternative regulation.

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

42 (d) Any local exchange company subject to price regulation under the provisions
43 of subsection (a) of this section or other alternative regulation under subsection (b) of this

1 section shall file tariffs for basic local exchange service and toll switched access services
2 stating the terms and conditions of the services and the applicable rates. The filing of any
3 tariff changing the terms and conditions of such services or increasing the rates for such
4 services shall be presumed valid and shall become effective, unless otherwise suspended
5 by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff
6 reducing rates for basic local exchange service or toll switched access service shall be
7 presumed valid and shall become effective, unless otherwise suspended by the
8 Commission for a term not to exceed 45 days, seven days after filing. Any local
9 exchange company subject to price regulation under the provisions of subsection (a) of
10 this section or other alternative regulation under subsection (b) of this section may file
11 tariffs for services other than basic local exchange services and toll switched access
12 services. Any tariff changing the terms and conditions of such services or increasing the
13 rates for an existing service or establishing the terms, conditions, or rates for a new
14 service shall be presumed valid and shall become effective, unless otherwise suspended
15 by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff
16 reducing the rates for such services shall be presumed valid and shall become effective,
17 unless otherwise suspended by the Commission for a term not to exceed 45 days, seven
18 days after filing. In the event of a complaint with regard to a tariff filing under this
19 subsection, the Commission may take such steps as it deems appropriate to assure that
20 such tariff filing is consistent with the plan previously adopted pursuant to subsection (a)
21 of this section or subsection (b) of this section.

22 (e) Any allegation of anticompetitive activity by a competing local provider or a
23 local exchange company shall be raised in a complaint proceeding pursuant to G.S. 62-
24 73.

25 (f) Notwithstanding the provisions of G.S. 62-140, the Commission shall permit a
26 local exchange company or a competing local provider to offer competitive services with
27 flexible pricing arrangements to business customers pursuant to contract and shall permit
28 other flexible pricing options.

29 (g) The following sections of Chapter 62 of the General Statutes shall not apply to
30 local exchange companies subject to price regulation under the terms of subsection (a) of
31 this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-
32 133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

33 Sec. 7. This act becomes effective July 1, 1995.