

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-385
HOUSE BILL 1468**

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE CERTAIN TELECOMMUNICATION SERVICE PROVIDERS TO BE THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

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

consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

~~Each~~ Except as provided in subsections (f4) and (f5) of this section, each local exchange company shall be the universal service provider (carrier of last resort) in the area in which it is certificated to operate on July 1, 1995, until otherwise determined by the Commission, 1995. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. At a time determined by the Commission to be in the public interest, the Commission shall conduct an investigation for the purpose of adopting final rules concerning the provision of universal services, ~~the person that should be the universal service provider, services,~~ and whether universal service should be funded through interconnection rates or through some other funding mechanism. ~~mechanism, and,~~ consistent with the provisions of subsections (f4) and (f5) of this section, the person that should be the universal service provider.

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

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

"(f4) When any telecommunications service provider enters into an agreement to provide local exchange service for a subdivision or other area where access to right-of-way for the provision of local exchange service by other telecommunications service providers has not been granted coincident with any other grant of access by the property owner, the telecommunications service provider entering into the agreement shall be the universal service provider in the subdivision or other area. If the local exchange company for the franchise area or territory in which the subdivision or other area is located is not a party to the agreement, the local exchange company shall be relieved of any universal service provider obligation for that subdivision or other area. In that case, the local exchange company and all other telecommunications service providers shall retain the option, but not the obligation, to serve customers in the subdivision or other area. The local exchange company shall provide written notification to the appropriate State agency that it is no longer the universal service provider for the subdivision or other area. The appropriate State agency shall retain the right to redesignate a local exchange company or telecommunications service provider as the universal service provider in accordance with the provisions of subsection (f5) of this section.

(f5) If the appropriate State agency finds, upon hearing, that the telecommunications service provider that entered into the agreement, or its successor in interest, is no longer willing or no longer able to provide adequate services to the subdivision or other area, the appropriate State agency may redesignate the local exchange company for the franchise area or territory in which the subdivision or other area is located, or another telecommunications service provider, to be the universal service provider for the subdivision or other area. If the redesignated local exchange company is subject to price regulation or other alternative regulation under

G.S. 62-133.5, it may treat the costs incurred in extending its facilities into the subdivision or other area as exogenous to that form of regulation and may, subject to providing written notice to the Commission, adjust its rates to recover these costs on an equitable basis from its customers whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to review by the Commission in a complaint proceeding initiated by any interested party pursuant to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending its facilities into the subdivision or other area in the form of a surcharge, subject to Commission approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a), without having to file a general rate case proceeding. During the period that a telecommunications service provider is serving as a universal service provider and prior to the redesignation of a local exchange company as the universal service provider as provided for herein, for the purposes of the appropriate State agency's periodic certification to the Federal Communications Commission in matters regarding eligible telecommunications carrier status, a local company's status shall not be deemed to affect its eligibility to be an eligible telecommunications carrier, and the appropriate State agency shall so certify.

(f6) For purposes of subsections (f4) and (f5) of this section, the following definitions are applicable:

- (1) "Appropriate State agency" means the Commission for purposes of any subdivision or other area within the franchise area of a local exchange company, and the Rural Electrification Authority for the purposes of any subdivision or other area within the franchise area or territory of a telephone membership corporation.
- (2) "Local exchange company" means a local exchange company subject to price regulation, or other alternative regulation or rate base regulation by the Commission or a telephone membership corporation organized under G.S. 117-30.
- (3) "Telecommunications service provider" means a competing local provider, or any other person providing local exchange service by means of voice-over-Internet protocol, wireless, power line, satellite, or other nontraditional means, whether or not regulated by the Commission, but the term shall not include local exchange companies or telephone membership corporations."

SECTION 3. This act is effective when it becomes law. Section 2 of this act applies to agreements entered into before, on, or after the effective date.

In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:23 p.m. this 13th day of September, 2005