

**GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 383*

Short Title: Communications Regulatory Reform. (Public)

Sponsors: Representatives Brubaker, McComas, Wainwright, and Tolson (Primary Sponsors).

For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

March 17, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE COMMUNICATIONS REGULATORY REFORM AND INVESTMENT ACT OF 2011.

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



1 reasonable unbundling of essential facilities where technically and economically feasible; (iv)
2 to provide for the transfer of telephone numbers between providers in a manner that is
3 technically and economically reasonable; (v) to provide for the continued development and
4 encouragement of universally available telephone service at reasonably affordable rates; and
5 (vi) to carry out the provisions of this subsection in a manner consistent with the public interest,
6 which will include a consideration of whether and to what extent resale should be permitted. In
7 adopting rules to establish an appropriate definition of universal service, the Commission shall
8 consider evolving trends in telecommunications services and the need for consumers to have
9 access to high-speed communications networks, the Internet, and other services to the extent
10 that those services provide social benefits to the public at a reasonable cost.

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

17 Except as provided in subsections (f4) and (f5) of this section, each local exchange
18 company shall be the universal service provider (carrier of last resort) in the area in which it is
19 certificated to operate on July 1, 1995. Each local exchange company or telecommunications
20 service provider with carrier of last resort responsibility may satisfy its carrier of last resort
21 obligation by using any available technology. In continuing this State's commitment to
22 universal service, the Commission shall, by December 31, 1996, adopt interim rules that
23 designate the person that should be the universal service provider and to determine whether
24 universal service should be funded through interconnection rates or through some other funding
25 mechanism. At a time determined by the Commission to be in the public interest, the
26 Commission shall conduct an investigation for the purpose of adopting final rules concerning
27 the provision of universal services, and whether universal service should be funded through
28 interconnection rates or through some other funding mechanism, and, consistent with the
29 provisions of subsections (f4) and (f5) of this section, the person that should be the universal
30 service provider. A local exchange company that has elected to be subject to alternative
31 regulation under G.S. 62-133.5(l) does not have any carrier of last resort obligations.

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

35 **SECTION 2.** G.S. 62-302(b)(4)b. reads as rewritten:

36 "(b) Public Utility Rate. –

37 ...

38 (4) As used in this section, the term "North Carolina jurisdictional revenues"
39 means:

40 ...

41 b. All revenues derived from retail services no longer otherwise
42 regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(l) for
43 a local exchange company or competing local provider that has
44 elected to be regulated under ~~that subsection~~ those subsections."

45 **SECTION 3.** G.S. 62-133.5 reads as rewritten:

46 "**§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications**
47 **utilities.**

48 ...

49 (g) The following sections of Chapter 62 of the General Statutes shall not apply to local
50 exchange companies subject to price regulation under the terms of subsection (a) of this section
51 or electing companies subject to alternative regulation under the terms of ~~subsection~~

1 ~~(h)~~subsections (h) or (l) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130,
2 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153.

3 ...

4 (i) A competing local provider authorized by the Commission to do business under the
5 provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its
6 services determined pursuant to the ~~plan plans~~ described in ~~subsection (h)~~subsections (h) or (l)
7 of this section. However, it is provided further that any provisions of subsection (h) of this
8 section requiring the provision of a specific retail service or impacting the pricing of such
9 service, including stand-alone residence service, shall not apply to competing local providers.

10 ...

11 (k) To evaluate the affordability and quality of local exchange service provided to
12 consumers in this State, a local exchange company or competing local provider offering basic
13 local residential exchange service that elects to have its rates, terms, and conditions for its
14 services determined pursuant to the ~~plan plans~~ described in ~~subsection (h)~~subsections (h) or (l)
15 of this section shall make an annual report to the General Assembly on the state of its
16 company's operations. The report shall be due 30 days after the close of each calendar year and
17 shall cover the period from January 1 through December 31 of the preceding year. The Joint
18 Legislative Utility Review Committee must review the annual reports and decide whether to
19 recommend that the General Assembly take corrective action in response to those reports. The
20 report shall include the following:

- 21 (1) An analysis of telecommunications competition by the local exchange
22 company or competing local provider, including access line gain or loss and
23 the impact on consumer choices from ~~enactment of the Consumer Choice
24 and Investment Act of 2009~~, the date the local exchange company makes its
25 election to be subject to alternative regulation under the terms of subsection
26 (h) or (l) of this section.
- 27 (2) An analysis of service quality based on customer satisfaction studies from
28 ~~enactment of the Consumer Choice and Investment Act of 2009~~, the date the
29 local exchange company makes its election to be subject to alternative
30 regulation under the terms of subsection (h) or (l) of this section.
- 31 (3) An analysis of the level of local exchange rates from ~~enactment of the
32 Consumer Choice and Investment Act of 2009~~, the date the local exchange
33 company makes its election to be subject to alternative regulation under the
34 terms of subsection (h) or (l) of this section.

35 (k1) For a local exchange company that has made an election to be subject to alternative
36 regulation under subsection (l) of this section, the requirement to report annually to the General
37 Assembly under subsection (k) of this section shall no longer apply on and after the third
38 anniversary following the date of the local exchange company's election.

39 (l) Notwithstanding any other provision of this Chapter, a local exchange company that
40 is subject to rate of return regulation or subject to another form of regulation authorized under
41 this section and who forgoes receipt of any funding from a state universal service fund or
42 alternative funding mechanism as described in G.S. 62-110(f1) and whose territory is open to
43 competition from competing local providers may elect to have its rates, terms, and conditions
44 for its services determined pursuant to the plan described in this subsection by filing notice of
45 its intent to do so with the Commission. The election is effective immediately upon filing. The
46 terms "local exchange company" and "open to competition from competing local providers"
47 shall have the same meanings as in subsection (h) of this section.

- 48 (1) Beginning on the date the local exchange company's election under this
49 subsection becomes effective, the Commission shall not:

- 1 a. Impose any requirements related to the terms, conditions, rates, or
2 availability of any of the local exchange company's retail services
3 regardless of the technology used to provide these services.
4 b. Otherwise regulate any of the local exchange company's retail
5 services regardless of the technology used to provide these services.
6 c. Impose any tariffing requirements on any of the local exchange
7 company's services that were not tariffed as of the date of the
8 election, or impose any constraints on the rates of the local exchange
9 company's services that were subject to full pricing flexibility as of
10 the date of election.
- 11 (2) A local exchange company's election under this subsection does not affect
12 the obligations or rights of an incumbent local exchange carrier, as that term
13 is defined by section 251(h) of the Federal Telecommunications Act of 1996
14 (Act), under sections 251 and 252 of the Act or any Federal
15 Communications Commission regulation relating to sections 251 and 252 of
16 the Act.
- 17 (3) A local exchange company's election under this subsection does not affect
18 the Commission's jurisdiction concerning:
- 19 a. Enforcement of federal requirements on the local exchange
20 company's marketing activities as set forth in 47 U.S.C. Part 64.
21 However, the Commission may not adopt, impose, or enforce other
22 requirements on the local exchange company's marketing activities.
23 b. The telecommunications relay service pursuant to G.S. 62-157.
24 c. The Life Line or Link Up programs consistent with Federal
25 Communications Commission rules and relevant orders of the North
26 Carolina Utilities Commission.
27 d. Universal service funding pursuant to G.S. 62-110(f1).
28 e. The authority delegated to it by the Federal Communications
29 Commission to manage the numbering resources involving that local
30 exchange company.
31 f. Regulatory authority over the rates, terms, and conditions of
32 wholesale services.
33 g. The Commission's authority under § 214(e) of the Federal
34 Communications Act of 1934, consistent with Federal
35 Communications Commission rules.
36 h. The authority of the Commission to act in accordance with federal or
37 State laws or regulations granting authority to set rates, terms, and
38 conditions for access to unbundled network elements and to arbitrate
39 and enforce interconnection agreements.
- 40 (4) A local exchange company's election under this subsection does not prevent
41 a consumer from seeking the assistance of the Public Staff of the North
42 Carolina Utilities Commission to resolve a complaint with that local
43 exchange company, as provided in G.S. 62-73.1."

44 **SECTION 4.** This act is effective when it becomes law.