

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 415

Short Title: Competitive Telecomm. Services.

(Public)

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Sponsors: Representatives Miller; Stamey and Perdue.

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Referred to: Infrastructure.

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March 1, 1989

A BILL TO BE ENTITLED

AN ACT TO PERMIT PRICING FLEXIBILITY OF COMPETITIVE  
TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

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

**"§ 62-2. Declaration of policy.**

Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate

- 1 rewards to utilities for efficiency and conservation which decrease  
2 utility bills.
- 3 (4) To provide just and reasonable rates and charges for public utility  
4 services without unjust discrimination, undue preferences or  
5 advantages, or unfair or destructive competitive practices and  
6 consistent with long-term management and conservation of energy  
7 resources by avoiding wasteful, uneconomic and inefficient uses of  
8 energy;
- 9 (4a) To assure that facilities necessary to meet future growth can be  
10 financed by the utilities operating in this State on terms which are  
11 reasonable and fair to both the customers and existing investors of  
12 such utilities; and to that end to authorize fixing of rates in such a  
13 manner as to result in lower costs of new facilities and lower rates over  
14 the operating lives of such new facilities by making provisions in the  
15 rate-making process for the investment of public utilities in plant under  
16 construction;
- 17 (5) To encourage and promote harmony between public utilities, their  
18 users and the environment;
- 19 (6) To foster the continued service of public utilities on a well-planned  
20 and coordinated basis that is consistent with the level of energy needed  
21 for the protection of public health and safety and for the promotion of  
22 the general welfare as expressed in the State energy policy;
- 23 (7) To seek to adjust the rate of growth of regulated energy supply  
24 facilities serving the State to the policy requirements of statewide  
25 development; and
- 26 (8) To cooperate with other states and with the federal government in  
27 promoting and coordinating interstate and intrastate public utility  
28 service and reliability of public utility energy supply.

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

36 Because of technological changes in the equipment and facilities now available and  
37 needed to provide telephone and telecommunications services, changes in regulatory  
38 policies by the federal government, and changes resulting from the court-ordered  
39 divestiture of the American Telephone and Telegraph Company, competitive offerings  
40 of certain types of telephone and telecommunications services may be in the public  
41 interest. Consequently, authority shall be vested in the North Carolina Utilities  
42 Commission to allow competitive offerings of long distance services by public utilities  
43 defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-  
44 110.

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

5 The North Carolina Utilities Commission may develop regulatory policies to govern  
6 the provision of telecommunications services to the public which promote efficiency,  
7 technological innovation, economic growth, and permit telecommunications utilities a  
8 reasonable opportunity to compete in an emerging competitive environment, giving due  
9 regard to consumers, stockholders, and maintenance of reasonably affordable local  
10 exchange service."

11 Sec. 2. Chapter 62 is amended by adding a new section to read:

12 **"§ 62-133.3. Fixing rates for telecommunications utilities.**

13 In fixing rates for telecommunications utilities defined in G.S. 62-3(23)a.6., the  
14 Commission may on the request of the utility, on petition of any interested party, or on  
15 its own motion, consider, in lieu of the procedures outlined in G.S. 62-133(b) and (c),  
16 alternative means of regulating the telecommunications utilities. The Commission may  
17 adopt an alternative means of regulation only following investigation and hearing and  
18 after finding that the alternative means of regulation:

- 19 (1) Are consistent with the public interest;
- 20 (2) Do not jeopardize reasonably affordable local exchange service;
- 21 (3) Provide adequate safeguards to consumers of telecommunications  
22 services which are not readily available from alternative suppliers;
- 23 (4) Include safeguards to assure that rates for noncompetitive services do  
24 not subsidize the prices charged for competitive services;
- 25 (5) Maintain the ability of telecommunications utilities to attract  
26 investment capital necessary to provide quality, affordable  
27 telecommunications services; and
- 28 (6) Assure the continued provision of reliable telecommunications  
29 services.

30 The Commission may at any time, on request of the utility, on the motion of any  
31 interested party, or on its own initiative, review any decision adopting alternative  
32 methods of regulation and after notice to the affected utility affording it an opportunity  
33 to be heard, reinstate regulation under the provisions of G.S. 62-133(b) and (c)."

34 Sec. 3. G.S. 62-134 is amended by adding new subsections to read:

35 "(h) Notwithstanding the requirements of subsections (a) and (b) of this section,  
36 the Commission may, in lieu of fixing specific rates or tariffs for competitive services  
37 offered by a telecommunications utility, adopt practices and procedures to permit  
38 pricing flexibility, detariffing services, or both. In exercising its authority under this  
39 subsection, the Commission shall consider:

- 40 (1) The extent to which competing telecommunications services are  
41 available from alternative providers in the relevant geographic or  
42 service market;
- 43 (2) The ability of alternative providers to make functionally equivalent or  
44 substitute services readily available;

- 1           (3) Whether the exercise of Commission authority produces tangible  
2 benefits to consumers that exceed those available by reliance on  
3 market forces;  
4           (4) Whether the nature of the service or facility is discretionary to the  
5 subscriber;  
6           (5) Whether the exercise of Commission authority inhibits a  
7 telecommunications utility from competing with unregulated providers  
8 of functionally equivalent telecommunications services or equipment;  
9           (6) Whether the existence of competition tends to prevent abuses, unjust  
10 discrimination or excessive charges for the service or facility offered;  
11 and  
12           (7) Any other relevant factors protecting the public interest.

13           After notice and opportunity to be heard, the Commission may revoke a  
14 determination made under this subsection when the Commission determines that the  
15 public interest requires that the rates and charges for the service be more fully regulated.

16           (i) Notwithstanding the provisions of G.S. 62-140, the Commission may permit  
17 telecommunications utilities to offer competitive services to business customers upon  
18 agreement between the telecommunications utility and the customer provided the  
19 services are compensatory and cover the costs of providing the service."

20           Sec. 4. G.S. 62-137 reads as rewritten:

21 **"§ 62-137. Scope of rate case.**

22           In setting a hearing on rates upon its own motion, upon complaint, or upon  
23 application of a public utility, the Commission shall declare the scope of the hearing by  
24 determining whether it is to be a general rate case, under G.S. 62-133, or whether it is to  
25 be a case confined to the reasonableness of a specific single rate, a small part of the rate  
26 structure, or some classification of users involving questions which do not require a  
27 determination of the entire rate structure and overall rate of return. The procedures  
28 established in this section shall not be required when pricing alternatives permitted  
29 under G.S. 62-134(h) and (i) for telecommunications utilities are adopted."

30           Sec. 5. G.S. 62-138(a) reads as rewritten:

31           "(a) Under such rules as the Commission may prescribe, every public utility,  
32 except as permitted under G.S. 62-134(h) and (i):

- 33           (1) Shall file with the Commission all schedules of rates, service  
34 regulations and forms of service contracts, used or to be used within  
35 the jurisdiction of the Commission; and  
36           (2) Shall keep copies of such schedules, service regulations and contracts  
37 open to public inspection. Except, if there is a sufficient likelihood  
38 that a telecommunications utility may suffer a competitive  
39 disadvantage if the rates for a specific competitive service are  
40 disclosed, the Commission may not require public disclosure of the  
41 rates."

42           Sec. 6. G.S. 62-139 reads as rewritten:

43 **"§ 62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.**

1 (a) No public utility shall directly or indirectly, by any device whatsoever,  
2 charge, demand, collect or receive from any person a greater or less compensation for  
3 any service rendered or to be rendered by such public utility than that prescribed ~~in the~~  
4 ~~schedules of such public utility applicable thereto then filed in the manner provided in this~~  
5 ~~Article, nor shall any person receive or accept any service from a public utility for a~~  
6 ~~compensation greater or less than that prescribed in such schedules~~ by the Commission, nor  
7 shall any person receive or accept any service from a public utility for a compensation  
8 greater or less than that prescribed by the Commission.

9 (b) Any public utility in the State which shall willfully charge a rate for any  
10 public utility service in excess of that prescribed ~~in the schedules of such public utility~~  
11 ~~applicable thereto then filed under this Article~~ by the Commission, and which shall omit to  
12 refund the same within 30 days after written notice and demand of the person  
13 overcharged, unless relieved by the Commission for good cause shown, shall be liable  
14 to him for double the amount of such overcharge, plus a penalty of ten dollars (\$10.00)  
15 per day for each day's delay after 30 days from such notice or date of denial or relief by  
16 the Commission, whichever is later. Such overcharge and penalty shall be recoverable  
17 in any court of competent jurisdiction."

18 Sec. 7. This act is effective upon ratification.