

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

S

4

**SENATE BILL 814
Commerce Committee Substitute Adopted 4/29/03
House Committee Substitute Favorable 5/8/03
Fourth Edition Engrossed 5/13/03**

Short Title: Clarify Compet. Telecommunications Statutes.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND
DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

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

"§ 62-2. Declaration of Policy.

(a) 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 rewards to utilities for efficiency and conservation which decrease utility bills;

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

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

41 Because of technological changes in the equipment and facilities now available and
42 needed to provide telephone and telecommunications services, changes in regulatory
43 policies by the federal government, and changes resulting from the court-ordered
44 divestiture of the American Telephone and Telegraph Company, competitive offerings

1 of certain types of telephone and telecommunications services may be in the public
2 interest. Consequently, authority shall be vested in the North Carolina Utilities
3 Commission to allow competitive offerings of local exchange, exchange access, and
4 long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in
5 accordance with the provisions of G.S. 62-110, and the Commission is further
6 authorized after notice to affected parties and hearing to deregulate or to exempt from
7 regulation under any or all provisions of this Chapter: (i) a service provided by any
8 public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is
9 competitive and that such deregulation or exemption from regulation is in the public
10 interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the
11 business of such public utility, upon a finding that the service or business of such public
12 utility is competitive and that such deregulation or exemption from regulation is in the
13 public interest.

14 ~~The policy and authority stated in this section shall be applicable to common carriers~~
15 ~~of passengers by motor vehicle and their regulation by the North Carolina Utilities~~
16 ~~Commission only to the extent that they are consistent with the provisions of the Bus~~
17 ~~Regulatory Reform Act of 1985. Notwithstanding the provisions of G.S. 62-110(b) and~~
18 ~~G.S. 62-134(h), the following services provided by public utilities defined in G.S.~~
19 ~~62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the~~
20 ~~Commission: (i) intraLATA long distance service; (ii) interLATA long distance service;~~
21 ~~and (iii) long distance operator services. A public utility providing such services shall be~~
22 ~~permitted, at its own election, to file and maintain tariffs for such services with the~~
23 ~~Commission up to and including September 1, 2003. Nothing in this subsection shall~~
24 ~~limit the Commission's authority regarding certification of providers of such services or~~
25 ~~its authority to hear and resolve complaints against providers of such services alleged to~~
26 ~~have made changes to the services of customers or imposed charges without appropriate~~
27 ~~authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b),~~
28 ~~"long distance services" shall not include existing or future extended area service, local~~
29 ~~measured service, or other local calling arrangements, and any future extended area~~
30 ~~service shall be implemented consistent with Commission rules governing extended~~
31 ~~area service existing as of May 1, 2003.~~

32 The North Carolina Utilities Commission may develop regulatory policies to govern
33 the provision of telecommunications services to the public which promote efficiency,
34 technological innovation, economic growth, and permit telecommunications utilities a
35 reasonable opportunity to compete in an emerging competitive environment, giving due
36 regard to consumers, stockholders, and maintenance of reasonably affordable local
37 exchange service and long distance service.

38 (c) ~~The policy and authority stated in this section shall be applicable to common~~
39 ~~carriers of passengers by motor vehicle and their regulation by the North Carolina~~
40 ~~Utilities Commission only to the extent that they are consistent with the provisions of~~
41 ~~the Bus Regulatory Reform Act of 1985."~~

42 **SECTION 2.** G.S. 62-133.5 reads as rewritten:

43 "**§ 62-133.5. Alternative regulation, tariffing, and deregulation of**
44 **telecommunications utilities.**

1 (a) Any local exchange company, subject to the provisions of G.S. 62-110(f1),
2 that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of
3 alternative regulation authorized by subsection (b) of this section may elect to have the
4 rates, terms, and conditions of its services determined pursuant to a form of price
5 regulation, rather than rate of return or other form of earnings regulation. Under this
6 form of price regulation, the Commission shall, among other things, permit the local
7 exchange company to determine and set its own depreciation rates, to rebalance its
8 rates, and to adjust its prices in the aggregate, or to adjust its prices for various
9 aggregated categories of services, based upon changes in generally accepted indices of
10 prices. Upon application, the Commission shall, after notice and an opportunity for
11 interested parties to be heard, approve such price regulation, which may differ between
12 local exchange companies, upon finding that the plan as proposed (i) protects the
13 affordability of basic local exchange service, as such service is defined by the
14 Commission; (ii) reasonably assures the continuation of basic local exchange service
15 that meets reasonable service standards that the Commission may adopt; (iii) will not
16 unreasonably prejudice any class of telephone customers, including telecommunications
17 companies; and (iv) is otherwise consistent with the public interest. Upon approval, and
18 except as provided in subsection (c) of this section, price regulation shall thereafter be
19 the sole form of regulation imposed upon the electing local exchange company, and the
20 Commission shall thenceforth regulate the electing local exchange company's prices,
21 rather than its earnings. The Commission shall issue an order denying or approving the
22 proposed plan for price regulation, with or without modification, not more than 90 days
23 from the filing of the application. However, the Commission may extend the time
24 period for an additional 90 days at the discretion of the Commission. If the Commission
25 approves the application with modifications, the local exchange company subject to
26 such approval may accept the modifications and implement the proposed plan as
27 modified, or may, at its option, (i) withdraw its application and continue to be regulated
28 under the form of regulation that existed immediately prior to the filing of the
29 application; (ii) file another proposed plan for price regulation; or (iii) file an
30 application for a form of alternative regulation under subsection (b) of this section. If
31 the initial price regulation plan is approved with modifications and the local exchange
32 company files another plan pursuant to part (ii) of the previous sentence, the
33 Commission shall issue an order denying or approving the proposed plan for price
34 regulation, with or without modifications, not more than 90 days from that filing by the
35 local exchange company.

36 (b) Any local exchange company that is subject to rate of return regulation
37 pursuant to G.S. 62-133 and which elects not to file for price regulation under the
38 provisions of subsection (a) above may file an application with the Commission for
39 forms of alternative regulation, which may differ between companies and may include,
40 but are not limited to, ranges of authorized returns, categories of services, and price
41 indexing. Upon application, the Commission shall approve such alternative regulatory
42 plan upon finding that the plan as proposed (i) protects the affordability of basic local
43 exchange service, as such service is defined by the Commission; (ii) reasonably assures
44 the continuation of basic local exchange service that meets reasonable service standards

1 established by the Commission; (iii) will not unreasonably prejudice any class of
2 telephone customers, including telecommunications companies; and (iv) is otherwise
3 consistent with the public interest. The Commission shall issue an order denying or
4 approving the proposed plan with or without modification, not more than 90 days from
5 the filing of the application. However, the Commission may extend the time period for
6 an additional 90 days at the discretion of the Commission. If the Commission approves
7 the application with modifications, the local exchange company subject to such
8 approval may, at its option, accept the modifications and implement the proposed plan
9 as modified or may, at its option, (i) withdraw its application and continue to be
10 regulated under the form of regulation that existed at the time of filing the application;
11 or (ii) file an application for another form of alternative regulation. If the initial plan is
12 approved with modifications and the local exchange company files another plan
13 pursuant to part (ii) of the previous sentence, the Commission shall issue an order
14 denying or approving the proposed plan, with or without modifications, not more than
15 90 days from that filing by the local exchange company.

16 (c) Any local exchange company subject to price regulation under the provisions
17 of subsection (a) of this section may file an application with the Commission to modify
18 such form of price regulation or for other forms of regulation. Any local exchange
19 company subject to a form of alternative regulation under subsection (b) of this section
20 may file an application with the Commission to modify such form of alternative
21 regulation. Upon application, the Commission shall approve such other form of
22 regulation upon finding that the plan as proposed (i) protects the affordability of basic
23 local exchange service, as such service is defined by the Commission; (ii) reasonably
24 assures the continuation of basic local exchange service that meets reasonable service
25 standards established by the Commission; (iii) will not unreasonably prejudice any class
26 of telephone customers, including telecommunications companies; and (iv) is otherwise
27 consistent with the public interest. If the Commission disapproves, in whole or in part, a
28 local exchange company's application to modify its existing form of price regulation,
29 the company may elect to continue to operate under its then existing plan previously
30 approved under this subsection or subsection (a) of this section.

31 (d) In determining whether a price regulation plan is otherwise consistent with
32 the public interest, the Commission shall not consider the local exchange company's
33 past or present earnings or rates of return.

34 ~~(d1)~~ Any local exchange company subject to price regulation under the
35 provisions of subsection (a) of this section, or other alternative regulation under
36 subsection (b) of this section, or other form of regulation under subsection (c) of this
37 section shall file tariffs for basic local exchange service and toll switched access
38 services stating the terms and conditions of the services and the applicable rates.
39 However, fees charged by such local exchange companies applicable to charges for
40 returned checks shall not be tariffed or otherwise regulated by the Commission. The
41 filing of any tariff changing the terms and conditions of such services or increasing the
42 rates for such services shall be presumed valid and shall become effective, unless
43 otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after
44 filing. Any tariff reducing rates for basic local exchange service or toll switched access

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

17 (e) Any allegation of anticompetitive activity by a competing local provider or a
18 local exchange company shall be raised in a complaint proceeding pursuant to G.S.
19 62-73.

20 (f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or
21 regulation, the Commission shall permit a local exchange company or a competing local
22 provider to offer competitive services with flexible pricing arrangements to business
23 customers pursuant to contract and shall permit other flexible pricing options. Local
24 exchange companies and competing local providers shall be required to give the
25 Commission one business day's notice but need not seek Commission approval for any
26 promotion or bundled service offering for residence or business customers involving
27 both regulated and nonregulated services that feature price discounts that apply
28 exclusively to services not regulated by the Commission. Furthermore, local exchange
29 companies and competing local providers may offer special promotions and bundles of
30 new or existing service or products without the obligation to identify or convert existing
31 customers who subscribe to the same or similar services or products. The Commission's
32 complaint authority under G.S. 62-73 and subsection (e) of this section is applicable to
33 any promotion or bundled service offering filed or offered under this subsection.

34 (g) The following sections of Chapter 62 of the General Statutes shall not apply
35 to local exchange companies subject to price regulation under the terms of subsection
36 (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132,
37 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

38 **SECTION 3.** This act is effective when it becomes law.