

1 offered or proposed by the parties and shall resolve any dispute identified in the pleadings
2 filings consistent with the public interest and necessity so as to derive just and reasonable rates,
3 terms, and conditions, taking into consideration and applying such other factors or evidence
4 that may be presented by a party, including without limitation the rules and regulations
5 applicable to attachments by each type of communications service provider under section 224
6 of the Communications Act of 1934, as amended, and (iii) conditions. The Commission shall
7 apply any new rate adopted as a result of the action retroactively to the date immediately
8 following the expiration of the 90-day negotiating period or initiation of the lawsuit, proceeding,
9 whichever is earlier. If the new rate is for the continuation of an existing agreement, the new
10 rate shall apply retroactively to the date immediately following the end of the existing
11 agreement. Prior to commencing any action initiating any proceedings under this subsection, a
12 party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due
13 and owing under a preexisting agreement with the municipality or membership corporation. In
14 any action proceeding brought under this subsection, the court Commission may resolve any
15 existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding
16 safety compliance arising under subsection (d) of this section. The provisions of this section do
17 not apply to an entity whose poles, ducts, and conduits are subject to regulation under section
18 224 of the Communications Act of 1934, as amended."

19 **SECTION 3.** G.S. 62-350(d)(4) reads as rewritten:

20 "(4) All attaching parties shall work cooperatively to determine the causation of,
21 and to effectuate any remedy for, noncompliant lines, equipment, and
22 attachments. In the event of disputes under this subsection, the involved
23 municipality or membership corporation or any attaching party may ~~bring an~~
24 ~~action in the Business Court in accordance with the procedures for a~~
25 ~~mandatory business case set forth in G.S. 7A-45.4, and the Business Court~~
26 initiate proceedings to resolve any dispute before the Commission. The
27 Commission shall have exclusive jurisdiction over such actions, proceedings
28 arising under this section and shall adjudicate individual disputes arising
29 under this section on a case-by-case basis. The Commission shall not
30 exercise general rate making authority over communication service provider
31 utilization of municipal or membership corporation facilities. The Public
32 Staff shall automatically be made a party to any proceedings under this
33 section and shall provide evidence and argument as may be appropriate to
34 serve the using and consuming public. The Business Court Commission shall
35 resolve such disputes consistent with the public interest and necessity.
36 Nothing herein shall prevent a municipality or membership corporation from
37 taking such action as may be necessary to remedy any exigent issue which is
38 an imminent threat of death or injury to persons or damage to property."

39 **SECTION 4.** G.S. 62-350(f) reads as rewritten:

40 "(f) ~~The Business Court Commission may adopt such rules as it deems necessary to~~
41 ~~implement its jurisdiction and authority under this section. exercise its responsibility to~~
42 adjudicate any disputes arising under this section."

43 **SECTION 5.** G.S. 7A-45.4(b)(3) is repealed.

44 **SECTION 6.** Notwithstanding the deletion of language referencing the factors or
45 evidence that may be presented by a party in Section 2 of this act, the Commission may
46 consider any evidence presented by a party in a proceeding brought under G.S. 62-350.

47 **SECTION 7.** This act is effective when it becomes law and applies to any action
48 filed on or after that date.