

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SENATE BILL 88
RATIFIED BILL**

**AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA
UTILITIES COMMISSION.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-350(a) reads as rewritten:

"(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or ~~conduits~~ conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, as amended, shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration. Any fees due from a communications service provider accessing or attaching to poles, ducts, or conduits under this section must be billed by separate invoice and shall not be bundled with charges for electric service."

SECTION 2. G.S. 62-350(c) reads as rewritten:

"(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may ~~bring an action in Business Court in accordance with the procedures for a mandatory business ease set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve the dispute before the Commission. The Commission shall have exclusive jurisdiction over such actions-proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The parties shall identify with specificity in their respective pleadings-filings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) dispute. The Commission, in its discretion, may consider any evidence or rate-making methodologies offered or proposed by the parties and shall resolve any dispute identified in the pleadings-filings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) conditions. The Commission shall apply any new rate adopted as a result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the lawsuit-proceeding, whichever is earlier. If the new rate is~~



for the continuation of an existing agreement, the new rate shall apply retroactively to the date immediately following the end of the existing agreement. Prior to ~~commencing any action~~initiating any proceedings under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any ~~action proceeding~~ brought under this subsection, the ~~court~~Commission may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended."

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

"(4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, noncompliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may ~~bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve any dispute before the Commission. The Commission shall have exclusive jurisdiction over such actions, proceedings arising under this section and shall adjudicate disputes arising under this section on a case-by-case basis. The Commission shall not exercise general rate-making authority over communication service provider utilization of municipal or membership corporation facilities. This section does not impact or expand the Commission's authority under G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a party to any proceedings under this section as may be appropriate to serve the using and consuming public. The Business Court~~Commission shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property."

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

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

SECTION 5. G.S. 62-350 is amended by adding a new subsection to read:

"(h) As part of final adjudication, the Commission may assess the costs, not to exceed ten thousand dollars (\$10,000), of adjudicating a dispute under this section against the parties to the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive Director of the Public Staff deems it necessary to hire expert witnesses or other individuals with professional expertise to assist the Public Staff in the dispute proceeding, the Commission may assess such additional costs incurred by the Public Staff by allocating such costs against the parties to the dispute proceeding."

SECTION 6. G.S. 7A-45.4(b)(3) is repealed.

SECTION 7. Notwithstanding the deletion of language referencing the factors or evidence that may be presented by a party in Section 2 of this act, the Commission may consider any evidence presented by a party, including any methodologies previously applied.

SECTION 8. This act is effective when it becomes law and applies to any action filed on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2015.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2015