

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 357

Short Title: Utilities/Regulation of Pole Attachments. (Public)

Sponsors: Senator Rand.

Referred to: Commerce.

March 3, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING MUNICIPALITIES AND COOPERATIVELY OWNED ORGANIZATIONS TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS, AND AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO CONSIDER AND ARBITRATE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"§ 62-55. Regulation of pole attachments.

(a) A municipality or cooperatively owned organization that owns poles, ducts, or conduits shall allow any communications service provider to utilize their poles, ducts, and conduits at just, reasonable, and nondiscriminatory cost-based rates, terms, and conditions adopted pursuant to negotiated or arbitrated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or 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 communications service provider.

(b) The Commission is authorized to consider and arbitrate disputes concerning the rates, terms, and conditions for use of a municipality's or cooperatively owned organization's poles, ducts, and conduits by a communications service provider. The Commission shall exercise its authority under this section consistent with the public interest and necessity and shall apply, to the extent feasible, 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. 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.

(c) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide the following: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(d) The Commission shall adopt rules to implement its authority under this section."

SECTION 2. This act does not constitute certification of State regulation of pole attachments for purposes of section 224 of the Communications Act of 1934, as amended.



1 However, if a court of competent jurisdiction determines that this act is tantamount to
2 certification, this act shall become null and void.

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