

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2009**

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**SENATE BILL 889**

Short Title: Utilities/Carrier of Last Resort. (Public)

Sponsors: Senators Vaughan; Dorsett, McKissick, and Rand.

Referred to: Commerce.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT FURTHER AUTHORIZING THE UTILITIES COMMISSION TO DETERMINE  
THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 62-110 reads as rewritten:

"§ 62-110. **Certificate of convenience and necessity.**

...

(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv)



1 to provide for the transfer of telephone numbers between providers in a manner that is  
2 technically and economically reasonable; (v) to provide for the continued development and  
3 encouragement of universally available telephone service at reasonably affordable rates; and  
4 (vi) to carry out the provisions of this subsection in a manner consistent with the public interest,  
5 which will include a consideration of whether and to what extent resale should be permitted. In  
6 adopting rules to establish an appropriate definition of universal service, the Commission shall  
7 consider evolving trends in telecommunications services and the need for consumers to have  
8 access to high-speed communications networks, the Internet, and other services to the extent  
9 that those services provide social benefits to the public at a reasonable cost.

10 Local exchange companies and competing local providers shall negotiate the rates for local  
11 interconnection. In the event that the parties are unable to agree within 90 days of a bona fide  
12 request for interconnection on appropriate rates for interconnection, either party may petition  
13 the Commission for determination of the appropriate rates for interconnection. The  
14 Commission shall determine the appropriate rates for interconnection within 180 days from the  
15 filing of the petition.

16 Except as provided in subsections (f4) and (f5) of this section, each local exchange  
17 company shall be the universal service provider (carrier of last resort) in the area in which it is  
18 certificated to operate on ~~July 1, 1995.~~ July 1, 1995; provided, however, each local exchange  
19 company may satisfy its carrier of last resort obligation by using any available technology. In  
20 continuing this State's commitment to universal service, the Commission shall, by December  
21 31, 1996, adopt interim rules that designate the person that should be the universal service  
22 provider and to determine whether universal service should be funded through interconnection  
23 rates or through some other funding mechanism. At a time determined by the Commission to be  
24 in the public interest, the Commission shall conduct an investigation for the purpose of  
25 adopting final rules concerning the provision of universal services, and whether universal  
26 service should be funded through interconnection rates or through some other funding  
27 mechanism, and, consistent with the provisions of subsections (f4) and (f5) of this section, the  
28 person that should be the universal service provider.

29 The Commission shall make the determination required pursuant to this subsection in a  
30 manner that furthers this State's policy favoring universally available telephone service at  
31 reasonable rates.

32 ...

33 (f3) The provisions of subsection (f1) of this section shall not be applicable to areas  
34 served by telephone membership corporations formed and existing under Article 4 of Chapter  
35 117 of the General Statutes and exempt from regulation as public utilities, pursuant to  
36 G.S. 62-3(23)d. and ~~G.S. 117-35.~~ G.S. 117-35; provided, however, to the extent telephone  
37 membership corporations have carrier of last resort obligations, they may fulfill those  
38 obligations using any available technology.

39 (f4) When any telecommunications service ~~provider~~ provider: (i) enters into an  
40 agreement to provide local exchange service for ~~a~~ the subdivision or other area where access to  
41 right-of-way for the provision of local exchange service by other telecommunications service  
42 providers has not been granted coincident with any other grant of access by the property  
43 ~~owner,~~ owner; or (ii) enters into an agreement to provide communications service or otherwise  
44 precludes the local exchange company from providing communications services for the  
45 subdivision or other area, the local exchange company is not obligated to provide basic local  
46 exchange telephone service or any other communications service to customers in the  
47 subdivision or other area. In each of the foregoing instances, the telecommunications service  
48 provider entering into the agreement shall be the universal service provider in the subdivision  
49 or other area. If area, and the local exchange company for the franchise area or territory in  
50 which the subdivision or other area is located is not a party to the agreement, the local  
51 exchange company shall be relieved of any universal service provider obligation for that

1 subdivision or other area. In that case, the local exchange company and all other  
2 telecommunications service providers shall retain the option, but not the obligation, to serve  
3 customers in the subdivision or other area. The local exchange company shall provide written  
4 notification to the appropriate State agency that it is no longer the universal service provider for  
5 the subdivision or other area. The appropriate State agency shall retain the right to redesignate a  
6 local exchange company or telecommunications service provider as the universal service  
7 provider in accordance with the provisions of subsection (f5) of this section.

8 For any circumstance not described in this subsection, a local exchange company may be  
9 granted a waiver of its carrier of last resort obligation by the appropriate State agency based  
10 upon a showing by the local exchange company that providing service would be inequitable or  
11 unduly burdensome.

12 ...

13 (f6) For purposes of subsections (f4) and (f5) of this section, the following definitions  
14 are applicable:

15 (1) "Appropriate State agency" means the Commission for purposes of any  
16 subdivision or other area within the franchise area of a local exchange  
17 company, and the Rural Electrification Authority for the purposes of any  
18 subdivision or other area within the franchise area or territory of a telephone  
19 membership corporation.

20 (2) "Local exchange company" means a local exchange company subject to  
21 price regulation, or other alternative regulation or rate base regulation by the  
22 Commission or a telephone membership corporation organized under  
23 G.S. 117-30.

24 (3) "Telecommunications service provider" means a competing local provider,  
25 or any other person providing local exchange service by means of  
26 voice-over-Internet protocol, wireless, power line, satellite, or other  
27 nontraditional means, whether or not regulated by the Commission, but the  
28 term shall not include local exchange companies or telephone membership  
29 corporations.

30 (4) "Communications service" means either voice, video, or data service through  
31 any technology.

32 (5) "Local exchange service" means a voice service regardless of the  
33 technologies used, including Voice Over Internet Protocol (VoIP), wireless,  
34 or any technology the local exchange company chooses to provide service.

35 ...."

36 **SECTION 2.** This act is effective when it becomes law and applies to agreements  
37 to provide communications service entered into prior to or on or after that date.