

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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**SENATE BILL 889
Commerce Committee Substitute Adopted 5/12/09**

Short Title: Utilities/Carrier of Last Resort.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

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

3 The General Assembly of North Carolina enacts:

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

5 "**§ 62-110. Certificate of convenience and necessity.**

6 ...

7
8 (f1) Except as provided in subsection (f2) of this section, the Commission is authorized,
9 following notice and an opportunity for interested parties to be heard, to issue a certificate to
10 any person applying to provide local exchange or exchange access services as a public utility as
11 defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being
12 provided in the territory for which the certificate is sought, provided that the person seeking to
13 provide the service makes a satisfactory showing to the Commission that (i) the person is fit,
14 capable, and financially able to render such service; (ii) the service to be provided will
15 reasonably meet the service standards that the Commission may adopt; (iii) the provision of the
16 service will not adversely impact the availability of reasonably affordable local exchange
17 service; (iv) the person, to the extent it may be required to do so by the Commission, will
18 participate in the support of universally available telephone service at affordable rates; and (v)
19 the provision of the service does not otherwise adversely impact the public interest. In its
20 application for certification, the person seeking to provide the service shall set forth with
21 particularity the proposed geographic territory to be served and the types of local exchange and
22 exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person
23 receiving a certificate under this section shall, until otherwise determined by the Commission,
24 file and maintain with the Commission a complete list of the local exchange and exchange
25 access services to be provided and the prices charged for those services, and shall be subject to
26 such reporting requirements as the Commission may require.

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

34 The Commission is authorized to adopt rules it finds necessary (i) to provide for the
35 reasonable interconnection of facilities between all providers of telecommunications services;
36 (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the
37 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. Each local exchange company or telecommunications
19 service provider with carrier of last resort responsibility may satisfy its carrier of last resort
20 obligation by using any available technology. In continuing this State's commitment to
21 universal service, the Commission shall, by December 31, 1996, adopt interim rules that
22 designate the person that should be the universal service provider and to determine whether
23 universal service should be funded through interconnection rates or through some other funding
24 mechanism. At a time determined by the Commission to be in the public interest, the
25 Commission shall conduct an investigation for the purpose of adopting final rules concerning
26 the provision of universal services, and whether universal service should be funded through
27 interconnection rates or through some other funding mechanism, and, consistent with the
28 provisions of subsections (f4) and (f5) of this section, the person that should be the universal
29 service provider.

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

33 ...

34 (f3) The provisions of subsection (f1) of this section shall not be applicable to areas
35 served by telephone membership corporations formed and existing under Article 4 of Chapter
36 117 of the General Statutes and exempt from regulation as public utilities, pursuant to
37 G.S. 62-3(23)d. and G.S. 117-35. To the extent a telephone membership corporation has carrier
38 of last resort obligations, it may fulfill those 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 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 after July 1, 2008, to provide communications
44 service that otherwise precludes the local exchange company from providing communications
45 service for the subdivision or other area, the local exchange company is not obligated to
46 provide basic local exchange telephone service or any other communications service to
47 customers in the subdivision or other area. In each of the foregoing instances, the
48 telecommunications service provider entering into the agreement shall be the universal service
49 provider in the subdivision or other area. area under the terms of the agreement and applicable
50 law. ~~If the~~ The local exchange company for the franchise area or territory in which the
51 subdivision or other area is located ~~is not a party to the agreement, the local exchange company~~

1 shall be relieved of any universal service provider obligation for that subdivision or other area.
2 In that case, the local exchange company and all other telecommunications service providers
3 shall retain the option, but not the obligation, to serve customers in the subdivision or other
4 area. The local exchange company shall provide written notification to the appropriate State
5 agency that ~~it~~ the local exchange company is no longer the universal service provider for the
6 subdivision or other area. The appropriate State agency shall retain the right to redesignate a
7 local exchange company or telecommunications service provider as the universal service
8 provider in accordance with the provisions of subsection (f5) of this section. Any person that
9 enters into an agreement with a telecommunications service provider to provide local exchange
10 service for a subdivision or other area as described in this subsection shall notify a purchaser of
11 real property within the subdivision or other area of the agreement.

12 For any circumstance not described in this subsection, a local exchange company may be
13 granted a waiver of its carrier of last resort obligation in a subdivision or other area by the
14 appropriate State agency based upon a showing by the local exchange company of all of the
15 following:

- 16 (1) Providing service in the subdivision or area would be inequitable or unduly
17 burdensome.
- 18 (2) One or more alternative providers of local exchange service exist.
- 19 (3) Granting the waiver is in the public interest.

20 (f5) If the appropriate State agency finds, upon hearing, that the telecommunications
21 service provider ~~that entered into the agreement,~~ serving the subdivision or other area pursuant
22 to subsection (f4) of this section, or its successor in interest, is no longer willing or no longer
23 able to provide adequate services to the subdivision or other area, the appropriate State agency
24 may redesignate the local exchange company for the franchise area or territory in which the
25 subdivision or other area is located, or another telecommunications service provider, to be the
26 universal service provider for the subdivision or other area. If the redesignated local exchange
27 company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it
28 may treat the costs incurred in extending its facilities into the subdivision or other area as
29 exogenous to that form of regulation and may, subject to providing written notice to the
30 Commission, adjust its rates to recover these costs on an equitable basis from its customers
31 whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to
32 review by the Commission in a complaint proceeding initiated by any interested party pursuant
33 to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or
34 other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending
35 its facilities into the subdivision or other area in the form of a surcharge, subject to Commission
36 approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a),
37 without having to file a general rate case proceeding. During the period that a
38 telecommunications service provider is serving as a universal service provider and prior to the
39 redesignation of a local exchange company as the universal service provider as provided for
40 herein, for the purposes of the appropriate State agency's periodic certification to the Federal
41 Communications Commission in matters regarding eligible telecommunications carrier status, a
42 local company's status shall not be deemed to affect its eligibility to be an eligible
43 telecommunications carrier, and the appropriate State agency shall so certify.

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

- 46 (1) "Appropriate State agency" means the Commission for purposes of any
47 subdivision or other area within the franchise area of a local exchange
48 company, and the Rural Electrification Authority for the purposes of any
49 subdivision or other area within the franchise area or territory of a telephone
50 membership corporation.

- 1 (2) "Local exchange company" means a local exchange company subject to
2 price regulation, or other alternative regulation or rate base regulation by the
3 Commission or a telephone membership corporation organized under
4 G.S. 117-30.
- 5 (3) "Telecommunications service provider" means a competing local provider,
6 or any other person providing local exchange service by means of
7 voice-over-Internet protocol, wireless, power line, satellite, or other
8 nontraditional means, whether or not regulated by the Commission, but the
9 term shall not include local exchange companies or telephone membership
10 corporations.
- 11 (4) "Communications service" means either voice, video, or data service through
12 any technology.

13 "

14 **SECTION 2.** This act is effective when it becomes law.