

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 88
Commerce Committee Substitute Adopted 4/28/15
House Committee Substitute Favorable 6/17/15

Short Title: Pole Attachment Disputes.

(Public)

Sponsors:

Referred to:

February 17, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA
3 UTILITIES COMMISSION.

4 The General Assembly of North Carolina enacts:

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

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

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

23 "(c) In the event the parties are unable to reach an agreement within 90 days of a request
24 to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith
25 that an impasse has been reached prior to the expiration of the 90-day period, either party may
26 ~~bring an action in Business Court in accordance with the procedures for a mandatory business
27 ease set forth in G.S. 7A-45.4, and the Business Court initiate proceedings to resolve the dispute~~
28 before the Commission. The Commission shall have exclusive jurisdiction over such
29 actions-proceedings arising under this section and shall adjudicate disputes arising under this
30 section on a case-by-case basis. The Commission shall not exercise general rate-making
31 authority over communication service provider utilization of municipal or membership
32 corporation facilities. This section does not impact or expand the Commission's authority under
33 G.S. 62-133.5(h) or (m). The Public Staff may, at the discretion of the Commission, be made a
34 party to any proceedings under this section as may be appropriate to serve the using and
35 consuming public. The parties shall identify with specificity in their respective pleadings filings



1 the issues in dispute, and the Business Court shall (i) establish a procedural schedule which,
2 unless otherwise agreed by the parties, is intended to resolve the action within a time period not
3 to exceed 180 days of the commencement of the action, (ii) dispute. The Commission, in its
4 discretion, may consider any evidence or rate-making methodologies offered or proposed by
5 the parties and shall resolve any dispute identified in the pleadings filings consistent with the
6 public interest and necessity so as to derive just and reasonable rates, terms, and conditions,
7 taking into consideration and applying such other factors or evidence that may be presented by
8 a party, including without limitation the rules and regulations applicable to attachments by each
9 type of communications service provider under section 224 of the Communications Act of
10 1934, as amended, and (iii) conditions. The Commission shall apply any new rate adopted as a
11 result of the action retroactively to the date immediately following the expiration of the 90-day
12 negotiating period or initiation of the lawsuit, proceeding, whichever is earlier. If the new rate is
13 for the continuation of an existing agreement, the new rate shall apply retroactively to the date
14 immediately following the end of the existing agreement. Prior to commencing any
15 action initiating any proceedings under this subsection, a party must pay any undisputed fees
16 related to the use of poles, ducts, or conduits which are due and owing under a preexisting
17 agreement with the municipality or membership corporation. In any action proceeding brought
18 under this subsection, the court Commission may resolve any existing disputes regarding fees
19 alleged to be owing under a preexisting agreement or regarding safety compliance arising under
20 subsection (d) of this section. The provisions of this section do not apply to an entity whose
21 poles, ducts, and conduits are subject to regulation under section 224 of the Communications
22 Act of 1934, as amended."

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

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

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

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

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

49 "(h) As part of final adjudication, the Commission may assess the costs, not to exceed
50 ten thousand dollars (\$10,000), of adjudicating a dispute under this section against the parties to
51 the dispute proceeding. If the Public Staff is a party to a dispute proceeding and the Executive

1 Director of the Public Staff deems it necessary to hire expert witnesses or other individuals
2 with professional expertise to assist the Public Staff in the dispute proceeding, the Commission
3 may assess such additional costs incurred by the Public Staff by allocating such costs against
4 the parties to the dispute proceeding."

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

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

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