

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 814  
Commerce Committee Substitute Adopted 4/29/03

Short Title: Clarify Compet. Telecommunications Statutes.

(Public)

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Sponsors:

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Referred to:

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April 3, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND  
3 DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 62-2 reads as rewritten:

6 **"§ 62-2. Declaration of Policy.**

7 (a) Upon investigation, it has been determined that the rates, services and  
8 operations of public utilities as defined herein, are affected with the public interest and  
9 that the availability of an adequate and reliable supply of electric power and natural gas  
10 to the people, economy and government of North Carolina is a matter of public policy.  
11 It is hereby declared to be the policy of the State of North Carolina:

- 12 (1) To provide fair regulation of public utilities in the interest of the  
13 public;
- 14 (2) To promote the inherent advantage of regulated public utilities;
- 15 (3) To promote adequate, reliable and economical utility service to all of  
16 the citizens and residents of the State;
- 17 (3a) To assure that resources necessary to meet future growth through the  
18 provision of adequate, reliable utility service include use of the entire  
19 spectrum of demand-side options, including but not limited to  
20 conservation, load management and efficiency programs, as additional  
21 sources of energy supply and/or energy demand reductions. To that  
22 end, to require energy planning and fixing of rates in a manner to  
23 result in the least cost mix of generation and demand-reduction  
24 measures which is achievable, including consideration of appropriate  
25 rewards to utilities for efficiency and conservation which decrease  
26 utility bills;
- 27 (4) To provide just and reasonable rates and charges for public utility  
28 services without unjust discrimination, undue preferences or  
29 advantages, or unfair or destructive competitive practices and

1 consistent with long-term management and conservation of energy  
2 resources by avoiding wasteful, uneconomic and inefficient uses of  
3 energy;

4 (4a) To assure that facilities necessary to meet future growth can be  
5 financed by the utilities operating in this State on terms which are  
6 reasonable and fair to both the customers and existing investors of  
7 such utilities; and to that end to authorize fixing of rates in such a  
8 manner as to result in lower costs of new facilities and lower rates over  
9 the operating lives of such new facilities by making provisions in the  
10 rate-making process for the investment of public utilities in plants  
11 under construction;

12 (5) To encourage and promote harmony between public utilities, their  
13 users and the environment;

14 (6) To foster the continued service of public utilities on a well-planned  
15 and coordinated basis that is consistent with the level of energy needed  
16 for the protection of public health and safety and for the promotion of  
17 the general welfare as expressed in the State energy policy;

18 (7) To seek to adjust the rate of growth of regulated energy supply  
19 facilities serving the State to the policy requirements of statewide  
20 development;

21 (8) To cooperate with other states and with the federal government in  
22 promoting and coordinating interstate and intrastate public utility  
23 service and reliability of public utility energy supply; and

24 (9) To facilitate the construction of facilities in and the extension of  
25 natural gas service to unserved areas in order to promote the public  
26 welfare throughout the State and to that end to authorize the creation  
27 of expansion funds for natural gas local distribution companies or gas  
28 districts to be administered under the supervision of the North Carolina  
29 Utilities Commission.

30 (b) To these ends, therefore, authority shall be vested in the North Carolina  
31 Utilities Commission to regulate public utilities generally, their rates, services and  
32 operations, and their expansion in relation to long-term energy conservation and  
33 management policies and statewide development requirements, and in the manner and  
34 in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be  
35 construed to imply any extension of Utilities Commission regulatory jurisdiction over  
36 any industry or enterprise that is not subject to the regulatory jurisdiction of said  
37 Commission.

38 Because of technological changes in the equipment and facilities now available and  
39 needed to provide telephone and telecommunications services, changes in regulatory  
40 policies by the federal government, and changes resulting from the court-ordered  
41 divestiture of the American Telephone and Telegraph Company, competitive offerings  
42 of certain types of telephone and telecommunications services may be in the public  
43 interest. Consequently, authority shall be vested in the North Carolina Utilities  
44 Commission to allow competitive offerings of local exchange, exchange access, and

1 long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in  
2 accordance with the provisions of G.S. 62-110, and the Commission is further  
3 authorized after notice to affected parties and hearing to deregulate or to exempt from  
4 regulation under any or all provisions of this Chapter: (i) a service provided by any  
5 public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is  
6 competitive and that such deregulation or exemption from regulation is in the public  
7 interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the  
8 business of such public utility, upon a finding that the service or business of such public  
9 utility is competitive and that such deregulation or exemption from regulation is in the  
10 public interest.

11 ~~The policy and authority stated in this section shall be applicable to common carriers~~  
12 ~~of passengers by motor vehicle and their regulation by the North Carolina Utilities~~  
13 ~~Commission only to the extent that they are consistent with the provisions of the Bus~~  
14 ~~Regulatory Reform Act of 1985. Notwithstanding the provisions of G.S. 62-110(b) and~~  
15 ~~G.S. 62-134(h), the following services provided by public utilities defined in G.S.~~  
16 ~~62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the~~  
17 ~~Commission: (i) intraLATA long distance service; (ii) interLATA long distance service;~~  
18 ~~and (iii) long distance operator services. Nothing in this subsection shall limit the~~  
19 ~~Commission's authority regarding certification of providers of such services or its~~  
20 ~~authority to hear and resolve complaints against providers of such services alleged to~~  
21 ~~have made changes to the services of customers or imposed charges without appropriate~~  
22 ~~authorization.~~

23 The North Carolina Utilities Commission may develop regulatory policies to govern  
24 the provision of telecommunications services to the public which promote efficiency,  
25 technological innovation, economic growth, and permit telecommunications utilities a  
26 reasonable opportunity to compete in an emerging competitive environment, giving due  
27 regard to consumers, stockholders, and maintenance of reasonably affordable local  
28 exchange service and long distance service.

29 (c) The policy and authority stated in this section shall be applicable to common  
30 carriers of passengers by motor vehicle and their regulation by the North Carolina  
31 Utilities Commission only to the extent that they are consistent with the provisions of  
32 the Bus Regulatory Reform Act of 1985."

33 **SECTION 2.** G.S. 62-133.5 reads as rewritten:

34 "**§ 62-133.5. Alternative regulation, tariffing, and deregulation of**  
35 **telecommunications utilities.**

36 (a) Any local exchange company, subject to the provisions of G.S. 62-110(f1),  
37 that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of  
38 alternative regulation authorized by subsection (b) of this section may elect to have the  
39 rates, terms, and conditions of its services determined pursuant to a form of price  
40 regulation, rather than rate of return or other form of earnings regulation. Under this  
41 form of price regulation, the Commission shall, among other things, permit the local  
42 exchange company to determine and set its own depreciation rates, to rebalance its  
43 rates, and to adjust its prices in the aggregate, or to adjust its prices for various  
44 aggregated categories of services, based upon changes in generally accepted indices of

1 prices. Upon application, the Commission shall, after notice and an opportunity for  
2 interested parties to be heard, approve such price regulation, which may differ between  
3 local exchange companies, upon finding that the plan as proposed (i) protects the  
4 affordability of basic local exchange service, as such service is defined by the  
5 Commission; (ii) reasonably assures the continuation of basic local exchange service  
6 that meets reasonable service standards that the Commission may adopt; (iii) will not  
7 unreasonably prejudice any class of telephone customers, including telecommunications  
8 companies; and (iv) is otherwise consistent with the public interest. Upon approval, and  
9 except as provided in subsection (c) of this section, price regulation shall thereafter be  
10 the sole form of regulation imposed upon the electing local exchange company, and the  
11 Commission shall thenceforth regulate the electing local exchange company's prices,  
12 rather than its earnings. The Commission shall issue an order denying or approving the  
13 proposed plan for price regulation, with or without modification, not more than 90 days  
14 from the filing of the application. However, the Commission may extend the time  
15 period for an additional 90 days at the discretion of the Commission. If the Commission  
16 approves the application with modifications, the local exchange company subject to  
17 such approval may accept the modifications and implement the proposed plan as  
18 modified, or may, at its option, (i) withdraw its application and continue to be regulated  
19 under the form of regulation that existed immediately prior to the filing of the  
20 application; (ii) file another proposed plan for price regulation; or (iii) file an  
21 application for a form of alternative regulation under subsection (b) of this section. If  
22 the initial price regulation plan is approved with modifications and the local exchange  
23 company files another plan pursuant to part (ii) of the previous sentence, the  
24 Commission shall issue an order denying or approving the proposed plan for price  
25 regulation, with or without modifications, not more than 90 days from that filing by the  
26 local exchange company.

27 (b) Any local exchange company that is subject to rate of return regulation  
28 pursuant to G.S. 62-133 and which elects not to file for price regulation under the  
29 provisions of subsection (a) above may file an application with the Commission for  
30 forms of alternative regulation, which may differ between companies and may include,  
31 but are not limited to, ranges of authorized returns, categories of services, and price  
32 indexing. Upon application, the Commission shall approve such alternative regulatory  
33 plan upon finding that the plan as proposed (i) protects the affordability of basic local  
34 exchange service, as such service is defined by the Commission; (ii) reasonably assures  
35 the continuation of basic local exchange service that meets reasonable service standards  
36 established by the Commission; (iii) will not unreasonably prejudice any class of  
37 telephone customers, including telecommunications companies; and (iv) is otherwise  
38 consistent with the public interest. The Commission shall issue an order denying or  
39 approving the proposed plan with or without modification, not more than 90 days from  
40 the filing of the application. However, the Commission may extend the time period for  
41 an additional 90 days at the discretion of the Commission. If the Commission approves  
42 the application with modifications, the local exchange company subject to such  
43 approval may, at its option, accept the modifications and implement the proposed plan  
44 as modified or may, at its option, (i) withdraw its application and continue to be

1 regulated under the form of regulation that existed at the time of filing the application;  
2 or (ii) file an application for another form of alternative regulation. If the initial plan is  
3 approved with modifications and the local exchange company files another plan  
4 pursuant to part (ii) of the previous sentence, the Commission shall issue an order  
5 denying or approving the proposed plan, with or without modifications, not more than  
6 90 days from that filing by the local exchange company.

7 (c) Any local exchange company subject to price regulation under the provisions  
8 of subsection (a) of this section may file an application with the Commission to modify  
9 such form of price regulation or for other forms of regulation. Any local exchange  
10 company subject to a form of alternative regulation under subsection (b) of this section  
11 may file an application with the Commission to modify such form of alternative  
12 regulation. Upon application, the Commission shall approve such other form of  
13 regulation upon finding that the plan as proposed (i) protects the affordability of basic  
14 local exchange service, as such service is defined by the Commission; (ii) reasonably  
15 assures the continuation of basic local exchange service that meets reasonable service  
16 standards established by the Commission; (iii) will not unreasonably prejudice any class  
17 of telephone customers, including telecommunications companies; and (iv) is otherwise  
18 consistent with the public interest. If the Commission disapproves, in whole or in part, a  
19 local exchange company's application to modify its existing form of price regulation,  
20 the company may elect to continue to operate under its then existing plan previously  
21 approved under this subsection or subsection (a) of this section.

22 (d) In determining whether a price regulation plan is otherwise consistent with  
23 the public interest, the Commission shall not consider the local exchange company's  
24 past or present earnings or rates of return.

25 ~~(d1)~~ Any local exchange company subject to price regulation under the  
26 provisions of subsection (a) of this section, or other alternative regulation under  
27 subsection (b) of this section, or other form of regulation under subsection (c) of this  
28 section shall file tariffs for basic local exchange service and toll switched access  
29 services stating the terms and conditions of the services and the applicable rates.  
30 However, fees charged by such local exchange companies applicable to charges for  
31 returned checks shall not be tariffed or otherwise regulated by the Commission. The  
32 filing of any tariff changing the terms and conditions of such services or increasing the  
33 rates for such services shall be presumed valid and shall become effective, unless  
34 otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after  
35 filing. Any tariff reducing rates for basic local exchange service or toll switched access  
36 service shall be presumed valid and shall become effective, unless otherwise suspended  
37 by the Commission for a term not to exceed 45 days, seven days after filing. Any local  
38 exchange company subject to price regulation under the provisions of subsection (a) of  
39 this section, or other alternative regulation under subsection (b) of this section, or other  
40 form of regulation under subsection (c) of this section may file tariffs for services other  
41 than basic local exchange services and toll switched access services. Any tariff  
42 changing the terms and conditions of such services or increasing the rates for an existing  
43 service or establishing the terms, conditions, or rates for a new service shall be  
44 presumed valid and shall become effective, unless otherwise suspended by the

1 Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing  
2 the rates for such services shall be presumed valid and shall become effective, unless  
3 otherwise suspended by the Commission for a term not to exceed 45 days, seven days  
4 after filing. In the event of a complaint with regard to a tariff filing under this  
5 subsection, the Commission may take such steps as it deems appropriate to assure that  
6 such tariff filing is consistent with the plan previously adopted pursuant to subsection  
7 (a) of this section, subsection (b) of this section, or subsection (c) of this section.

8 (e) Any allegation of anticompetitive activity by a competing local provider or a  
9 local exchange company shall be raised in a complaint proceeding pursuant to G.S.  
10 62-73.

11 (f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or  
12 regulation, the Commission shall permit a local exchange company or a competing local  
13 provider to offer competitive services with flexible pricing arrangements to business  
14 customers pursuant to contract and shall permit other flexible pricing options. Local  
15 exchange companies and competing local providers shall be required to give the  
16 Commission one business day's notice but need not seek Commission approval for any  
17 promotion or bundled service offering for residence or business customers involving  
18 both regulated and nonregulated services that feature price discounts that apply  
19 exclusively to services not regulated by the Commission. Furthermore, local exchange  
20 companies and competing local providers may offer special promotions and bundles of  
21 new or existing service or products without the obligation to identify or convert existing  
22 customers who subscribe to the same or similar services or products.

23 (g) The following sections of Chapter 62 of the General Statutes shall not apply  
24 to local exchange companies subject to price regulation under the terms of subsection  
25 (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132,  
26 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

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