

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-91
SENATE BILL 814**

**AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND
DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.**

The General Assembly of North Carolina enacts:

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

"§ 62-2. Declaration of Policy.

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

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed

- for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;
- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;
 - (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and
 - (9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

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

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985. Notwithstanding the provisions of G.S. 62-110(b) and G.S. 62-134(h), the following services provided by public utilities defined in G.S. 62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long distance service; and (iii) long distance operator services. A public utility providing such services shall be permitted, at its own election, to file and maintain tariffs for such services with the Commission up to and including September 1, 2003. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b), "long distance services" shall not include existing or future extended area service, local measured service, or other local calling arrangements, and any future extended area

service shall be implemented consistent with Commission rules governing extended area service existing as of May 1, 2003.

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

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

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

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

(a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative regulation authorized by subsection (b) of this section may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation. Under this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices. Upon application, the Commission shall, after notice and an opportunity for interested parties to be heard, approve such price regulation, which may differ between local exchange companies, upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. Upon approval, and except as provided in subsection (c) of this section, price regulation shall thereafter be the sole form of regulation imposed upon the electing local exchange company, and the Commission shall thenceforth regulate the electing local exchange company's prices, rather than its earnings. The Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may accept the modifications and implement the proposed plan as modified, or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application; (ii) file another proposed plan for price regulation; or (iii) file an application for a form of alternative regulation under subsection (b) of this section. If the initial price regulation plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modifications, not more than 90 days from that filing by the local exchange company.

(b) Any local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 and which elects not to file for price regulation under the provisions of subsection (a) above may file an application with the Commission for forms of alternative regulation, which may differ between companies and may include, but are not limited to, ranges of authorized returns, categories of services, and price

indexing. Upon application, the Commission shall approve such alternative regulatory plan upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. The Commission shall issue an order denying or approving the proposed plan with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may, at its option, accept the modifications and implement the proposed plan as modified or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed at the time of filing the application; or (ii) file an application for another form of alternative regulation. If the initial plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan, with or without modifications, not more than 90 days from that filing by the local exchange company.

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

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

~~(d1)~~(d) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section shall file tariffs for basic local exchange service and toll switched access services stating the terms and conditions of the services and the applicable rates. However, fees charged by such local exchange companies applicable to charges for returned checks shall not be tariffed or otherwise regulated by the Commission. The filing of any tariff changing the terms and conditions of such services or increasing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing rates for basic local exchange service or toll switched access service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section may file tariffs for services other than basic local exchange services and toll switched access services. Any tariff changing the terms and conditions of such services or increasing the rates for an existing

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

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

(f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or regulation, the Commission shall permit a local exchange company or a competing local provider to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and shall permit other flexible pricing options. Local exchange companies and competing local providers shall be required to give the Commission one business day's notice but need not seek Commission approval for any promotion or bundled service offering for residence or business customers involving both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission. Furthermore, local exchange companies and competing local providers may offer special promotions and bundles of new or existing service or products without the obligation to identify or convert existing customers who subscribe to the same or similar services or products. The Commission's complaint authority under G.S. 62-73 and subsection (e) of this section is applicable to any promotion or bundled service offering filed or offered under this subsection.

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

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

In the General Assembly read three times and ratified this the 19th day of May, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:55 p.m. this 30th day of May, 2003