

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 224\*

Short Title: Local Telephone Competition.

(Public)

Sponsors: Senators Hoyle; Plyler, Conder, Perdue, Sherron, Speed, Warren, Hobbs, Kincaid, Rand, Cochrane, Forrester, Parnell, Martin of Pitt, Odom, Albertson, Hartsell, Lucas, Simpson, Jordan, McDaniel, East, McKoy, Soles, Allran, Little, Webster, Davis, Sawyer, Martin of Guilford, Foxx, Ballantine, Gulley, Carpenter, Blackmon, Cooper, Dannelly, and Edwards.

Referred to: Commerce.

February 16, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE PUBLIC WITH ACCESS TO LOW-COST TELECOMMUNICATIONS SERVICE IN A CHANGING COMPETITIVE ENVIRONMENT.

The General Assembly of North Carolina enacts:

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

"§ 62-2. Declaration of policy.

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;

- 1           (3a) To assure that resources necessary to meet future growth through the  
2           provision of adequate, reliable utility service include use of the entire  
3           spectrum of demand-side options, including but not limited to  
4           conservation, load management and efficiency programs, as additional  
5           sources of energy supply and/or energy demand reductions. To that  
6           end, to require energy planning and fixing of rates in a manner to result  
7           in the least cost mix of generation and demand-reduction measures  
8           which is achievable, including consideration of appropriate rewards to  
9           utilities for efficiency and conservation which decrease utility bills.
- 10          (4) To provide just and reasonable rates and charges for public utility  
11          services without unjust discrimination, undue preferences or advantages,  
12          or unfair or destructive competitive practices and consistent with long-  
13          term management and conservation of energy resources by avoiding  
14          wasteful, uneconomic and inefficient uses of energy;
- 15          (4a) To assure that facilities necessary to meet future growth can be financed  
16          by the utilities operating in this State on terms which are reasonable and  
17          fair to both the customers and existing investors of such utilities; and to  
18          that end to authorize fixing of rates in such a manner as to result in  
19          lower costs of new facilities and lower rates over the operating lives of  
20          such new facilities by making provisions in the rate-making process for  
21          the investment of public utilities in plant under construction;
- 22          (5) To encourage and promote harmony between public utilities, their users  
23          and the environment;
- 24          (6) To foster the continued service of public utilities on a well-planned and  
25          coordinated basis that is consistent with the level of energy needed for  
26          the protection of public health and safety and for the promotion of the  
27          general welfare as expressed in the State energy policy;
- 28          (7) To seek to adjust the rate of growth of regulated energy supply facilities  
29          serving the State to the policy requirements of statewide development;  
30          and
- 31          (8) To cooperate with other states and with the federal government in  
32          promoting and coordinating interstate and intrastate public utility  
33          service and reliability of public utility energy supply.
- 34          (9) To facilitate the construction of facilities in and the extension of natural  
35          gas service to unserved areas in order to promote the public welfare  
36          throughout the State and to that end to authorize the creation of an  
37          expansion fund for each natural gas local distribution company to be  
38          administered under the supervision of the North Carolina Utilities  
39          Commission.

40          To these ends, therefore, authority shall be vested in the North Carolina Utilities  
41          Commission to regulate public utilities generally, their rates, services and operations, and  
42          their expansion in relation to long-term energy conservation and management policies  
43          and statewide development requirements, and in the manner and in accordance with the

1 policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any  
2 extension of Utilities Commission regulatory jurisdiction over any industry or enterprise  
3 that is not subject to the regulatory jurisdiction of said Commission.

4 Because of technological changes in the equipment and facilities now available and  
5 needed to provide telephone and telecommunications services, changes in regulatory  
6 policies by the federal government, and changes resulting from the court-ordered  
7 divestiture of the American Telephone and Telegraph Company, competitive offerings of  
8 certain types of telephone and telecommunications services may be in the public interest.  
9 Consequently, authority shall be vested in the North Carolina Utilities Commission to  
10 allow competitive offerings of local exchange, exchange access, and long distance  
11 services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with  
12 the provisions of G.S. 62-110.

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

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

23 Sec. 2. G.S. 62-110 is amended by adding three new subsections to read:

24 "(f1) Except as provided in subsection (f2) of this section, the Commission is  
25 authorized, following notice and an opportunity for interested parties to be heard, to issue  
26 a certificate to any person applying to provide local exchange or exchange access  
27 services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether  
28 local telephone service is already being provided in the territory for which the certificate  
29 is sought, provided that the person seeking to provide the service makes a satisfactory  
30 showing to the Commission that (i) the person is fit, capable, and financially able to  
31 render such service; (ii) the service to be provided will reasonably meet the service  
32 standards adopted by the Commission for similar services provided by other local  
33 exchange and access service providers; (iii) the provision of the service will not adversely  
34 impact the availability of reasonably affordable local exchange service; (iv) the person, to  
35 the extent it may be required to do so by the Commission, will participate in the support  
36 of universally available telephone service at affordable rates; and (v) the provision of the  
37 service does not otherwise adversely impact the public interest. In its application for  
38 certification, the person seeking to provide the service shall set forth with particularity the  
39 proposed geographic territory to be served and the types of local exchange and exchange  
40 access services to be provided. Any person receiving a certificate under this section shall  
41 file and maintain with the Commission a complete list of the local exchange and  
42 exchange access services to be provided and the prices charged for those services and

1 shall be subject to the same taxation and reporting requirements as any other provider of  
2 the same service.

3 Any certificate issued by the Commission pursuant to this subsection shall not permit  
4 the provision of the local exchange or exchange access service until July 1, 1996.

5 The Commission is authorized to adopt rules it finds necessary (i) to provide for  
6 the reasonable interconnection of facilities between all providers of telecommunications  
7 services; (ii) to determine when necessary the rates for such interconnection; (iii) to  
8 provide for the reasonable unbundling of essential facilities where technically and  
9 economically feasible; (iv) to provide for the transfer of telephone numbers between  
10 providers in a manner that is technically and economically reasonable; (v) to provide for  
11 the continued development and encouragement of universally available telephone service  
12 at reasonably affordable rates; and (vi) to carry out the provisions of this section in a  
13 manner consistent with the public interest.

14 Incumbent local exchange companies and other telecommunications companies shall  
15 negotiate the rates for interconnection. In the event, however, that the parties are unable  
16 to agree within 90 days upon appropriate rates for interconnection, either party may  
17 petition the Commission for determination of the appropriate rates for interconnection.

18 The incumbent local exchange company shall be the universal service provider in the  
19 area in which it is certificated to operate on July 1, 1995, until otherwise determined by  
20 the Commission. In continuing this State's commitment to universal service, the  
21 Commission shall by July 1, 1996, complete an investigation to determine the person that  
22 should be the universal service provider and to determine whether universal service  
23 should be funded through interconnection rates or through some other funding  
24 mechanism.

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

28 (f2) The provisions of subsection (f1) of this section shall not be applicable to  
29 franchised areas within the State that are being served by incumbent local exchange  
30 companies with 200,000 access lines or less located within the State, and it is further  
31 provided that such incumbent local exchange company providing service to 200,000  
32 access lines or less shall not be subject to the regulatory reform procedures outlined under  
33 the terms of G.S. 62-133.5(a) or permitted to compete in territory outside of its franchised  
34 area for local exchange and access services until such time as the franchised area is  
35 opened to competing providers as provided for in this subsection. Upon the filing of an  
36 application by an incumbent local exchange company with 200,000 access lines or less  
37 for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the  
38 provisions of that section to such incumbent local exchange company, but only upon the  
39 condition that the provisions of subsection (f1) of this section are to be applicable to the  
40 franchised area and local exchange and exchange access services offered by such a local  
41 exchange company.

42 (f3) The provisions of subsection (f1) of this section shall not be applicable to areas  
43 served by telephone membership corporations formed and existing under Article 4 of

1 Chapter 117 of the General Statutes and exempt from regulation as public utilities, as  
2 defined under Chapter 62 of the General Statutes, pursuant to G.S. 62-3(23)d. and G.S.  
3 117-35."

4 Sec. 3. G.S. 62-133.3 is repealed.

5 Sec. 4. Article 7 of Chapter 62 is amended by adding a new section to read:

6 "**§ 62-133.5. Alternative regulation, tariffing and deregulation of**  
7 **telecommunications utilities.**

8 (a) Any local exchange company subject to the provisions of G.S. 62-110(f1) that  
9 is subject to rate of return regulation or a form of alternative regulation authorized by this  
10 Chapter may elect to have the rates, terms, and conditions of its services determined  
11 pursuant to a form of price regulation set forth in this subsection, rather than rate of  
12 return or other form of earnings regulation. Upon application, the Commission shall  
13 approve such price regulation, which may differ from company to company, upon finding  
14 that the plan as proposed (i) protects the affordability of basic local exchange service, as  
15 such service is defined by the Commission; (ii) reasonably assures the continuation of  
16 basic local exchange service that meets reasonable service standards established by the  
17 Commission; (iii) will not unreasonably prejudice any class of telephone customers,  
18 including telecommunications companies; and (iv) is otherwise consistent with the public  
19 interest. Upon approval, and except as provided in subsection (c) of this section, price  
20 regulation shall thereafter be the sole form of regulation imposed upon the electing local  
21 exchange company, and the Commission shall thenceforth regulate the electing local  
22 exchange company's prices, rather than its earnings, and shall permit the electing local  
23 exchange company to determine and set its own depreciation rates, rebalance rates, and  
24 adjust its prices in the aggregate based upon changes in generally accepted indices of  
25 prices. The Commission shall issue an order denying or approving the proposed plan for  
26 price regulation, with or without modification, not more than 90 days from the filing of  
27 the application. However, the Commission may extend the time period for an additional  
28 60 days at the discretion of the Commission. If the Commission approves the application  
29 with modifications, the local exchange company subject to such approval may accept the  
30 modifications and implement the proposed plans as modified, or may, at its option, (i)  
31 withdraw its application and continue to be regulated under the form of regulation that  
32 existed immediately prior to the filing of the application; (ii) file another proposed plan  
33 for price regulation; or (iii) file an application for a form of alternative regulation under  
34 subsection (b).

35 (b) Any local exchange company that is subject to rate of return regulation and  
36 which elects not to file for price regulation under the provisions of subsection (a) above  
37 may file an application with the Commission for forms of alternative regulation, which  
38 may differ between companies and may include, but are not limited to, ranges of  
39 authorized returns, categories of services, and price indexing. Upon application, the  
40 Commission shall approve such alternative regulatory plan upon finding that the plan as  
41 proposed (i) protects the affordability of basic local exchange service, as such service is  
42 defined by the Commission; (ii) reasonably assures the continuation of basic local  
43 exchange service that meets reasonable service standards established by the Commission;

1 (iii) will not unreasonably prejudice any class of telephone customers, including  
2 telecommunications companies; and (iv) is otherwise consistent with the public interest.  
3 The Commission shall issue an order denying or approving the proposed plan with or  
4 without modification, not more than 90 days from the filing of the application. However,  
5 the Commission may extend the time period for an additional 60 days at the discretion of  
6 the Commission. If the Commission approves the application with modifications, the  
7 local exchange company subject to such approval may, at its option, accept the  
8 modifications and implement the proposed plan as modified or may, at its option, (i)  
9 withdraw its application and continue to be regulated under the form of regulation that  
10 existed at the time of filing the application; or (ii) file an application for another form of  
11 alternative regulation.

12 (c) Any local exchange company subject to price regulation under the provisions  
13 of subsection (a) of this section may file an application with the Commission to modify  
14 such form of price regulation or for other forms of regulation. Upon application, the  
15 Commission shall approve such other form of regulation upon finding that the plan as  
16 proposed (i) protects the affordability of basic local exchange service, as such service is  
17 defined by the Commission; (ii) reasonably assures the continuation of basic local  
18 exchange service that meets reasonable service standards established by the Commission;  
19 (iii) will not unreasonably prejudice any class of telephone customers, including  
20 telecommunications companies; and (iv) is otherwise consistent with the public interest.

21 (d) After notice to affected parties and hearing, the Commission is authorized to  
22 determine whether any service provided by any telecommunications provider, including a  
23 local exchange company, is subject to competition and to provide, either by rule or on a  
24 case-by-case basis, for detariffing or deregulation of such services, or both. The  
25 Commission may determine a service to be competitive when it finds that competition or  
26 the potential for competition is an effective regulator of price for the service.

27 (e) Any local exchange company subject to price regulation under the provisions  
28 of subsection (a) or other alternative regulation under subsection (b) of this section shall  
29 file tariffs for basic local exchange service and toll switched access services stating the  
30 terms and conditions of the services and the applicable rates. Any tariff filing changing  
31 the terms and conditions of such services or increasing the rates for such services shall be  
32 presumed valid and shall become effective upon 14 days' notice. Any tariff reducing  
33 rates for basic local exchange service or toll switched access service shall be presumed  
34 valid and become effective upon seven days' notice. Any local exchange company  
35 subject to price regulation under the provisions of subsection (a) of this section or other  
36 alternative regulation under subsection (b) of this section may file tariffs for services  
37 other than basic local exchange services and toll switched access services. Any tariff  
38 changing the terms and conditions, of such services or increasing the rates for an existing  
39 service or establishing the terms, conditions or rates for a new service shall be presumed  
40 valid and shall become effective upon 14 days' notice. Any tariff reducing the rates for  
41 such services shall be presumed valid and shall become effective upon seven days' notice.

1       (f) Notwithstanding the provisions of G.S. 62-140, any local exchange company  
2 may offer competitive services with flexible pricing arrangements to business customers  
3 pursuant to contract and may utilize other flexible pricing options.

4       (g) The following sections of Chapter 62 of the General Statutes shall not apply to  
5 local exchange companies subject to price regulation under the terms of subsection (a) of  
6 this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-  
7 133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

8               Sec. 5. This act becomes effective July 1, 1995.