

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 397

Short Title: Competitive Telecom. Protection.

(Public)

Sponsors: Senator Daniel.

Referred to: Public Utilities.

March 13, 1989

A BILL TO BE ENTITLED

AN ACT TO PERMIT PRICING FLEXIBILITY OF COMPETITIVE
TELECOMMUNICATIONS SERVICES.

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;
- (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

- 1 rewards to utilities for efficiency and conservation which decrease
2 utility bills.
- 3 (4) To provide just and reasonable rates and charges for public utility
4 services without unjust discrimination, undue preferences or
5 advantages, or unfair or destructive competitive practices and
6 consistent with long-term management and conservation of energy
7 resources by avoiding wasteful, uneconomic and inefficient uses of
8 energy;
- 9 (4a) To assure that facilities necessary to meet future growth can be
10 financed by the utilities operating in this State on terms which are
11 reasonable and fair to both the customers and existing investors of
12 such utilities; and to that end to authorize fixing of rates in such a
13 manner as to result in lower costs of new facilities and lower rates over
14 the operating lives of such new facilities by making provisions in the
15 rate-making process for the investment of public utilities in plant under
16 construction;
- 17 (5) To encourage and promote harmony between public utilities,
18 their users and the environment;
- 19 (6) To foster the continued service of public utilities on a well-planned
20 and coordinated basis that is consistent with the level of energy needed
21 for the protection of public health and safety and for the promotion of
22 the general welfare as expressed in the State energy policy;
- 23 (7) To seek to adjust the rate of growth of regulated energy supply
24 facilities serving the State to the policy requirements of statewide
25 development; and
- 26 (8) To cooperate with other states and with the federal government in
27 promoting and coordinating interstate and intrastate public utility
28 service and reliability of public utility energy supply.

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

36 Because of technological changes in the equipment and facilities now available and
37 needed to provide telephone and telecommunications services, changes in regulatory
38 policies by the federal government, and changes resulting from the court-ordered
39 divestiture of the American Telephone and Telegraph Company, competitive offerings
40 of certain types of telephone and telecommunications services may be in the public
41 interest. Consequently, authority shall be vested in the North Carolina Utilities
42 Commission to allow competitive offerings of long distance services by public utilities
43 defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-
44 110. The North Carolina Utilities Commission may develop regulatory policies to

1 govern the provision of telecommunications services to the public which promote
2 efficiency, technological innovation, economic growth and permit fair competition
3 between telecommunications utilities and others when a competitive environment exists,
4 in order to provide benefits to consumers and maintain reasonably affordable
5 telecommunications services.

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

10 Sec. 2. Chapter 62 of the General Statutes is amended by adding a new
11 section to read:

12 **"§ 62-133.3. Alternative procedures.**

13 In fixing rates for a telecommunications utility defined in G.S. 62-3(23)a.6, that
14 provides local exchange service as part of its service offerings, the Commission may, on
15 the request of such utility, on petition by any interested party or on its own motion,
16 consider, in lieu of the procedures outlined in G.S. 62-133(b) and (c), alternative
17 procedures for establishing rates of such telecommunications utility. The Commission
18 may adopt such alternative procedures only following investigation and hearing and
19 after finding that such alternative procedures:

- 20 (1) Are consistent with the public interest;
- 21 (2) Produce tangible benefits to customers that exceed those available by
22 reliance on existing procedures;
- 23 (3) Provide for the rates being set at a level which provides a reasonable
24 balance of risk and reward for the utility;
- 25 (4) Provide for the rates for services required for the provisioning of long
26 distance calls within the State being set reasonably comparable to the
27 rates for services required for the provisioning of long distance calls
28 outside the State;
- 29 (5) Do not jeopardize reasonably affordable telecommunications services;
- 30 (6) Provide adequate safeguards to customers of telecommunications
31 services which are not readily available from alternative suppliers;
- 32 (7) Include safeguards to assure that rates for local exchange, access
33 services and other noncompetitive services do not subsidize the prices
34 charged for competitive services;
- 35 (8) Maintain the ability of the telecommunications utility to attract
36 investment capital necessary to provide quality, affordable
37 telecommunications services; and
- 38 (9) Assure the continued provision of reliable telecommunications
39 services.

40 The Commission may at any time, on request of the utility, motion of any interested
41 party or its own initiative, review any Commission decision adopting alternative
42 procedures for establishing rates and after notice to the affected utility an opportunity to
43 be heard, reinstate regulation under the provisions of G.S. 62-133 (b)and (c)."

1 Sec. 3. G.S. 62-134 is amended by adding the following subsection (h) to
2 read as follows:

3 "(h) Notwithstanding the requirements of paragraphs (a) and (b) of this section,
4 the Commission may, in lieu of fixing specific rates or tariffs for competitive services
5 offered by a telecommunications utility that provides local exchange service, adopt
6 practices and procedures to permit pricing flexibility, detariffing of services, or both.
7 For purposes of this subsection, local exchange and access services provided by a
8 telecommunications utility are deemed to be noncompetitive services. In exercising its
9 authority under this subsection, the Commission shall institute a proceeding, providing
10 notice and opportunity to be heard, to evaluate and determine a service to be
11 competitive. The Commission shall consider all of the following:

- 12 (1) The extent to which competing telecommunications services are
13 available from alternative providers, in the relevant geographic or
14 service market;
- 15 (2) The ability of alternative providers to offer telecommunications
16 services which are functionally equivalent or substitutable and
17 reasonably available at comparable prices, terms, quality and
18 conditions.
- 19 (3) Whether the exercise of Commission authority produces tangible
20 benefits to consumers that exceed those available by reliance on
21 market forces;
- 22 (4) Whether the exercise of Commission authority inhibits a
23 telecommunications utility from competing with unregulated providers
24 of functionally equivalent telecommunications services or equipment;
- 25 (5) Whether the existence of competition tends to prevent abuses, unjust
26 discrimination or excessive charges for the service or facility offered;
- 27 (6) Any other relevant factors deemed necessary by the Commission to
28 protect the public interest.

29 Where noncompetitive services, elements and functions are components of
30 competitive services offered by the telecommunications utility, the utility shall: (i)
31 impute the price of noncompetitive services, elements and functions used in
32 providing competitive services as a cost of providing those services; and (ii) offer the
33 tariff rates for such noncompetitive services, elements or functions separately and
34 individually and on a nondiscriminatory basis to all persons, including other telephone
35 service providers.

36 On motion of any interested party and for good cause shown, the Commission shall
37 hold hearings open to any interested party prior to adopting any pricing flexibility or
38 detariffing of services permitted under this section. The Commission may also revoke a
39 determination made under this subsection by its own initiative or upon complaint to the
40 Commission and after notice and opportunity to be heard, if the Commission determines
41 that the public interest requires that the rates and charges for the service be more fully
42 regulated."

43 Sec. 4. G.S. 62-134 is amended by adding the following subsection (i) to
44 read as follows:

1 "(i) Notwithstanding the provisions of G.S. 62-140, the Commission may permit
2 telecommunications utilities to offer services which have been found by the
3 Commission to be competitive to business customers upon agreement between the
4 telecommunications utility and the customer, provided that any noncompetitive
5 services, elements or functions which are components of the competitive services must
6 be provided to the customer at the tariffed rates for those services and provided further
7 that the competitive portion of the service is compensatory and covers the costs of
8 providing the service, including a fair and reasonable share of the company's common
9 overhead."

10 Sec. 5. G.S. 62-137 reads as rewritten:

11 "**§ 62-137. Scope of rate case.**

12 In setting a hearing on rates upon its own motion, upon complaint, or upon
13 application of a public utility, the Commission shall declare the scope of the hearing by
14 determining whether it is to be a general rate case, under G.S. 62-133, or whether it is to
15 be a case confined to the reasonableness of a specific single rate, a small part of the rate
16 structure, or some classification of users involving questions which do not require a
17 determination of the entire rate structure and overall rate of return. The procedures
18 established in this section shall not be required when pricing alternatives permitted
19 under G.S. 62-134(h) and (i) for telecommunications utilities are adopted."

20 Sec. 6. G.S. 62-138(a) reads as rewritten:

21 "(a) Under such rules as the Commission may prescribe, every public ~~utility:~~
22 utility except as may be permitted under G.S. 62-134(h) and (i):

- 23 (1) Shall file with the Commission all schedules of rates, service
24 regulations and forms of service contracts, used or to be used within
25 the jurisdiction of the Commission; and
26 (2) Shall keep copies of such schedules, service regulations and contracts
27 open to public inspection. Except, if there is a sufficient likelihood
28 that a telecommunications utility may suffer a competitive
29 disadvantage if the rates for a specific competitive service that does
30 not include noncompetitive services, elements or functions are
31 disclosed, the Commission, after a showing of a competitive
32 disadvantage by the affected telecommunications utility, is authorized
33 not to require public disclosure of such rates."

34 Sec. 7. G.S. 62-139 reads as rewritten:

35 "**§ 62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.**

36 (a) No public utility shall directly or indirectly, by any device whatsoever,
37 charge, demand, collect or receive from any person a greater or less compensation for
38 any service rendered or to be rendered by such public utility than that prescribed ~~in the~~
39 ~~schedules of such public utility applicable thereto then filed in the manner provided in this~~
40 ~~Article, by the Commission,~~ nor shall any person receive or accept any service from a
41 public utility for a compensation greater or less than that prescribed in such schedules by
42 the Commission.

43 (b) Any public utility in the State which shall willfully charge a rate for any
44 public utility service in excess of that prescribed ~~in the schedules of such public utility~~

1 ~~applicable thereto then filed under this Article,~~ by the Commission, and which shall omit to
2 refund the same within 30 days after written notice and demand of the person
3 overcharged, unless relieved by the Commission for good cause shown, shall be liable
4 to him for double the amount of such overcharge, plus a penalty of ten dollars (\$10.00)
5 per day for each day's delay after 30 days from such notice or date of denial or relief by
6 the Commission, whichever is later. Such overcharge and penalty shall be recoverable
7 in any court of competent jurisdiction."

8 Sec. 8. This act is effective upon ratification.