

March 2, 2009

S 357. UTILITIES/REGULATION OF POLE ATTACHMENTS. Filed 3/2/09. *REQUIRING MUNICIPALITIES AND COOPERATIVELY OWNED ORGANIZATIONS TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS, AND AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO CONSIDER AND ARBITRATE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.*

Enacts new GS 62-55 to provide that a municipality or cooperatively owned organization that owns poles, ducts, or conduits must allow any communications service provider to utilize their poles, ducts, and conduits at just, reasonable, and nondiscriminatory cost-based rates, terms, and conditions adopted pursuant to negotiated or arbitrated agreements. Limits the denial of such a request to insufficient capacity or reasons related to safety, reliability, and general engineering principles when there is no remedy available at the reasonable and actual cost of the communications service provider. Authorizes the NC Utilities Commission (Commission) to consider and arbitrate disputes concerning rates, terms, and conditions. Provides guidelines for the Commission in exercising this authority in the public interest and as it relates to section 224 of the Communications Act of 1934, as amended. Defines *communications service provider* as a person or entity that provides or intends to provide the following: (1) telephone service as a public utility under GS Chapter 62 or as a telephone membership corporation (2) broadband service or (3) cable service over a cable system as defined in Article 42 of GS Chapter 66. Directs the Commission to adopt rules to implement its authority. Provides that this act does not constitute certification of state regulation of pole attachment for the purposes of section 224 of the Communications Act of 1934, as amended, and establishes that, if a court determines the act is tantamount to certification, the act is null and void.

Intro. by Rand.

GS 62

May 7, 2009

S 357. UTILITIES/REGULATION OF POLE ATTACHMENTS. Filed 3/2/09. Senate committee substitute makes the following changes to 1st edition.

Amends proposed GS 62-55 to direct a municipality or a membership organization organized under GS Chapter 117 (was, cooperatively owned organization) that owns or controls (was, owned) poles, ducts, or conduits to allow any communications service provider to utilize their poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates (was, cost-based rates), terms, and conditions adopted pursuant to negotiated or adjudicated agreements. Authorizes the municipality or membership corporation to require the entity making the request under this section to comply with applicable safety requirements.

Sets out the applicable procedures and governing criteria following a request from a communications service provider to a municipality or membership corporation. Directs the municipality or membership corporation to negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits that it owns or controls. Also sets out the procedures and governing criteria applicable to a request from a party to an existing agreement. Provides that the negotiations are to include the matters customary to such negotiations, including a fair and reasonable rate for the use of facilities; indemnification by the attaching entity for losses caused in connection with the attachments; and the removal, replacement, or repair of installed facilities for safety reasons. Directs that upon reasonable request, a party is to provide a written statement of its objections to the proposal from the other party.

Provides that either party may bring an action in Business Court in accordance with the procedures set out in GS 7A-45.4 if either of the following circumstances exist: (1) the parties are unable to reach an agreement within 90 days or (2) either party has a good-faith belief that an impasse has been reached prior to the expiration of the 90-day period. Requires each party to identify with specificity the issues in dispute in their respective pleadings. Directs the Business Court to establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within 180 days of the commencement of the action. Provides additional criteria to guide the Business Court in such actions. Requires a party to pay any

undisputed fees before beginning any action under this subsection, and allows the court to resolve any existing disputes regarding fees alleged to be owed under a preexisting agreement. Deletes provision that authorized the NC Utilities Commission to consider and arbitrate disputes between parties. Authorizes the Business Court to adopt rules as it deems necessary to implement its jurisdiction and authority under the section. Provides that nothing in this section precludes a party from bringing a civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement under this section.

Permits a municipality or membership corporation to take such remedial actions as are reasonably necessary when the lines, equipment, or attachments of a communications service provider do not comply with applicable safety rules and regulations. Requires written notice of noncompliance to the communications service provider and allows 90 days from the date of the demand and notice for the communications service provider to bring the lines, attachments, and equipment into compliance. Provides additional guidelines regarding safety compliance issues.

Makes technical changes. Makes conforming changes to the title.

June 18, 2009

S 357. UTILITIES/REGULATION OF POLE ATTACHMENTS. Filed 3/2/09. House committee substitute makes the following changes to 2nd edition. Provides in proposed GS 62-55 that upon request (was, reasonable request), a party must state in writing its objections to any proposed rate, terms, and conditions of the other party during negotiation of an agreement. Clarifies that, in the event parties are unable to reach an agreement within 90 days *of a request to negotiate*, either party may bring an action in Business Court. Provides that in actions brought under subsection (c), the court may resolve any existing disputes regarding safety compliance arising under the statute.

Reorganizes subsection (d) and provides that within the 60-day period following the notice and demand regarding a communications service provider's noncompliance with applicable safety rules and regulations under the statute, the provider must either contest the notice in writing or bring its lines, equipment, and attachments into compliance (was, a municipality or membership corporation may demand the provider bring its lines, equipment, and attachments into compliance within 90 days). Allows a reasonable extension of the 60-day period if the work required to bring facilities into compliance is not reasonably capable of being completed within that time and the provider promptly commences and diligently pursues in that 60-day period such actions to cause the facilities to come into compliance. Allows the municipality or membership corporation to take remedial action if the attaching party fails to bring lines, equipment, or attachments into compliance (1) within the 60-day period or (2) within 120 days following the date of the notice and demand if the period is extended (was, within 90 days of notice and demand, unless the provider demonstrates it is in compliance or brings the lines, equipment, and attachments into compliance). Requires all attaching parties to work cooperatively to determine the causation of, and to effectuate any remedy for, non-compliant lines, equipment, and attachments. Provides that any party may bring an action in Business Court in the event of a dispute and that the Business Court has exclusive jurisdiction over such actions. Requires that the Business Court resolve such disputes consistent with the public interest and necessity.

Modifies the definition of *communications service provider* to clarify that a person or entity that provides or intends to provide broadband service over energized electrical conductors owned by a municipality or membership corporation (was, a municipality or a cooperatively organized entity) is excluded from the definition.

Makes various technical and clarifying changes throughout proposed GS 62-55.

June 25, 2009

S 357. UTILITIES/REGULATION OF POLE ATTACHMENTS. Filed 3/2/09. House committee substitute makes the following changes to 3rd edition. Amends proposed GS 62-55(c) (concerning bringing an action in Business Court when the parties are unable to reach an agreement within 90 days of a request to negotiate) to require that if a new rate adopted in the Business Court Action is for the continuation of an existing agreement, then the new rate must apply retroactively to the date immediately following the end of the existing agreement.

July 13, 2009

SL 2009-278 (S 357). UTILITIES/REGULATION OF POLE ATTACHMENTS. *AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.* Summarized in *Daily Bulletin* 3/2/09, 5/7/09, 6/18/09, and 6/25/09. Enacted July 10, 2009. Effective July 10, 2009.