

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 889  
PROPOSED COMMITTEE SUBSTITUTE S889-PCS35319-RL-25

Short Title: Utilities/Carrier of Last Resort.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT FURTHER AUTHORIZING THE UTILITIES COMMISSION TO DETERMINE  
THE UNIVERSAL SERVICE PROVIDER IN CERTAIN SUBDIVISIONS AND AREAS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 62-110 reads as rewritten:

"§ 62-110. **Certificate of convenience and necessity.**

...

(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23) a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.



1 The Commission is authorized to adopt rules it finds necessary (i) to provide for the  
2 reasonable interconnection of facilities between all providers of telecommunications services;  
3 (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the  
4 reasonable unbundling of essential facilities where technically and economically feasible; (iv)  
5 to provide for the transfer of telephone numbers between providers in a manner that is  
6 technically and economically reasonable; (v) to provide for the continued development and  
7 encouragement of universally available telephone service at reasonably affordable rates; and  
8 (vi) to carry out the provisions of this subsection in a manner consistent with the public interest,  
9 which will include a consideration of whether and to what extent resale should be permitted. In  
10 adopting rules to establish an appropriate definition of universal service, the Commission shall  
11 consider evolving trends in telecommunications services and the need for consumers to have  
12 access to high-speed communications networks, the Internet, and other services to the extent  
13 that those services provide social benefits to the public at a reasonable cost.

14 Local exchange companies and competing local providers shall negotiate the rates for local  
15 interconnection. In the event that the parties are unable to agree within 90 days of a bona fide  
16 request for interconnection on appropriate rates for interconnection, either party may petition  
17 the Commission for determination of the appropriate rates for interconnection. The  
18 Commission shall determine the appropriate rates for interconnection within 180 days from the  
19 filing of the petition.

20 Except as provided in subsections (f4) and (f5) of this section, each local exchange  
21 company shall be the universal service provider (carrier of last resort) in the area in which it is  
22 certificated to operate on July 1, 1995. Each local exchange company or telecommunications  
23 service provider with carrier of last resort responsibility may satisfy its carrier of last resort  
24 obligation by using any available technology. In continuing this State's commitment to  
25 universal service, the Commission shall, by December 31, 1996, adopt interim rules that  
26 designate the person that should be the universal service provider and to determine whether  
27 universal service should be funded through interconnection rates or through some other funding  
28 mechanism. At a time determined by the Commission to be in the public interest, the  
29 Commission shall conduct an investigation for the purpose of adopting final rules concerning  
30 the provision of universal services, and whether universal service should be funded through  
31 interconnection rates or through some other funding mechanism, and, consistent with the  
32 provisions of subsections (f4) and (f5) of this section, the person that should be the universal  
33 service provider.

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

37 ...

38 (f3) The provisions of subsection (f1) of this section shall not be applicable to areas  
39 served by telephone membership corporations formed and existing under Article 4 of Chapter  
40 117 of the General Statutes and exempt from regulation as public utilities, pursuant to  
41 G.S. 62-3(23)d. and G.S. 117-35. To the extent a telephone membership corporation has carrier  
42 of last resort obligations, it may fulfill those obligations using any available technology.

43 (f4) When any telecommunications service ~~provider~~ provider: (i) enters into an  
44 agreement to provide local exchange service for a subdivision or other area where access to  
45 right-of-way for the provision of local exchange service by other telecommunications service  
46 providers has not been granted coincident with any other grant of access by the property  
47 owner, owner; or (ii) enters into an agreement after July 1, 2008, to provide communications  
48 service that otherwise precludes the local exchange company from providing communications  
49 service for the subdivision or other area, the local exchange company is not obligated to  
50 provide basic local exchange telephone service or any other communications service to  
51 customers in the subdivision or other area. In each of the foregoing instances, the

1 telecommunications service provider ~~entering into the agreement~~ shall be the universal service  
2 provider in the subdivision or other ~~area~~ area under the terms of the agreement and applicable  
3 law. ~~If the~~ The local exchange company for the franchise area or territory in which the  
4 subdivision or other area is located ~~is not a party to the agreement, the local exchange company~~  
5 shall be relieved of any universal service provider obligation for that subdivision or other area.  
6 In that case, the local exchange company and all other telecommunications service providers  
7 shall retain the option, but not the obligation, to serve customers in the subdivision or other  
8 area. The local exchange company shall provide written notification to the appropriate State  
9 agency that ~~it the local exchange company~~ is no longer the universal service provider for the  
10 subdivision or other area. The appropriate State agency shall retain the right to redesignate a  
11 local exchange company or telecommunications service provider as the universal service  
12 provider in accordance with the provisions of subsection (f5) of this section. Any person that  
13 enters into an agreement with a telecommunications service provider to provide local exchange  
14 service for a subdivision or other area as described in this subsection shall notify a purchaser of  
15 real property within the subdivision or other area of the agreement.

16 For any circumstance not described in this subsection, a local exchange company may be  
17 granted a waiver of its carrier of last resort obligation in a subdivision or other area by the  
18 appropriate State agency based upon a showing by the local exchange company of all of the  
19 following:

- 20 (1) Providing service in the subdivision or area would be inequitable or unduly  
21 burdensome.
- 22 (2) One or more alternative providers of local exchange service exist.
- 23 (3) Granting the waiver is in the public interest.

24 (f5) If the appropriate State agency finds, upon hearing, that the telecommunications  
25 service provider ~~that entered into the agreement,~~ -serving the subdivision or other area pursuant  
26 to subsection (f4) of this section, or its successor in interest, is no longer willing or no longer  
27 able to provide adequate services to the subdivision or other area, the appropriate State agency  
28 may redesignate the local exchange company for the franchise area or territory in which the  
29 subdivision or other area is located, or another telecommunications service provider, to be the  
30 universal service provider for the subdivision or other area. If the redesignated local exchange  
31 company is subject to price regulation or other alternative regulation under G.S. 62-133.5, it  
32 may treat the costs incurred in extending its facilities into the subdivision or other area as  
33 exogenous to that form of regulation and may, subject to providing written notice to the  
34 Commission, adjust its rates to recover these costs on an equitable basis from its customers  
35 whose rates are subject to regulation under G.S. 62-133.5. Any such action shall be subject to  
36 review by the Commission in a complaint proceeding initiated by any interested party pursuant  
37 to G.S. 62-73. If the redesignated local exchange company is not subject to price regulation or  
38 other alternative regulation under G.S. 62-133.5, it may recover the costs incurred in extending  
39 its facilities into the subdivision or other area in the form of a surcharge, subject to Commission  
40 approval, spread equitably among all of its customers in a proceeding under G.S. 62-136(a),  
41 without having to file a general rate case proceeding. During the period that a  
42 telecommunications service provider is serving as a universal service provider and prior to the  
43 redesignation of a local exchange company as the universal service provider as provided for  
44 herein, for the purposes of the appropriate State agency's periodic certification to the Federal  
45 Communications Commission in matters regarding eligible telecommunications carrier status, a  
46 local company's status shall not be deemed to affect its eligibility to be an eligible  
47 telecommunications carrier, and the appropriate State agency shall so certify.

48 (f6) For purposes of subsections (f4) and (f5) of this section, the following definitions  
49 are applicable:

- 50 (1) "Appropriate State agency" means the Commission for purposes of any  
51 subdivision or other area within the franchise area of a local exchange

- 1 company, and the Rural Electrification Authority for the purposes of any  
2 subdivision or other area within the franchise area or territory of a telephone  
3 membership corporation.  
4 (2) "Local exchange company" means a local exchange company subject to  
5 price regulation, or other alternative regulation or rate base regulation by the  
6 Commission or a telephone membership corporation organized under  
7 G.S. 117-30.  
8 (3) "Telecommunications service provider" means a competing local provider,  
9 or any other person providing local exchange service by means of  
10 voice-over-Internet protocol, wireless, power line, satellite, or other  
11 nontraditional means, whether or not regulated by the Commission, but the  
12 term shall not include local exchange companies or telephone membership  
13 corporations.  
14 (4) "Communications service" means either voice, video, or data service through  
15 any technology.

16 ...."

17 **SECTION 2.** This act is effective when it becomes law.