

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 1180
Committee Substitute Favorable 5/7/09
Committee Substitute #2 Favorable 5/12/09
Senate Commerce Committee Substitute Adopted 6/1/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1180-PCS11001-TD-51

Short Title: Consumer Choice and Investment Act of 2009.

(Public)

Sponsors:

Referred to:

April 8, 2009

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF
3 2009.

4 Whereas, the technology used to provide communications services has evolved and
5 continues to evolve at an ever-increasing pace; and

6 Whereas, the resulting competition between traditional telephone service providers,
7 cable companies offering communications services, Voice-over Internet Protocol (VoIP)
8 providers, wireless communications service providers, and other communications service
9 providers promotes and continues to promote additional consumer choices for these services;
10 and

11 Whereas, traditional telephone service providers remain subject to certain antiquated
12 statutory and regulatory restrictions that do not apply to other communications service
13 providers; and

14 Whereas, this disparity may deprive consumers of traditional telephone companies
15 of the full range of timely and competitive options and offerings that otherwise would be
16 available to them; and

17 Whereas, the General Assembly finds that relaxing certain restrictions for traditional
18 telephone companies will relieve consumers of unnecessary costs and burdens, encourage
19 investment, and promote timely deployment of more innovative offerings at more competitive
20 prices for customers; and

21 Whereas, in order to make the full range of competitive options and offerings
22 available to consumers of communications services while maintaining inflation-based price
23 controls for those existing customers who currently receive and wish to continue receiving only
24 stand-alone basic residential lines from traditional telephone companies, the General Assembly
25 hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,
26 The General Assembly of North Carolina enacts:

27 **SECTION 1.** G.S. 62-133.5 is amended by adding a new subsection to read:

28 "(h) Notwithstanding any other provision of this Chapter, a local exchange company that
29 is subject to rate of return regulation or subject to another form of regulation authorized under
30 this section and whose territory is open to competition from competing local providers may
31 elect to have its rates, terms, and conditions for its services determined pursuant to the plan



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1 described in this subsection by filing notice of its intent to do so with the Commission. The
2 election is effective immediately upon filing. A local exchange company shall not be permitted
3 to make the election under this section unless it commits to provide stand-alone basic
4 residential lines to rural customers at rates comparable to those rates charged to urban
5 customers for the same service.

6 (1) Definitions. – The following definitions apply in this subsection:

- 7 a. Local exchange company. – The same meaning as provided in
8 G.S. 62-3(16a).
- 9 b. Single-line basic residential service. – Single-line residential flat rate
10 basic voice grade local service with touch tone within a traditional
11 local calling area that provides access to available emergency
12 services and directory assistance, the capability to access
13 interconnecting carriers, relay services, access to operator services,
14 and one annual local directory listing (white pages or the equivalent).
- 15 c. Stand-alone basic residential line. – Single-line basic residential
16 service that is billed on a billing account that does not also contain
17 another service, feature, or product that is sold by the local exchange
18 company or an affiliate of the local exchange company and is billed
19 on a recurring basis on the local exchange company's bill.
- 20 d. Open to competition from competing local providers. – Both of the
21 following apply:
- 22 1. G.S. 62-110(f1) applies to the franchised area and to local
23 exchange and exchange access services offered by the local
24 exchange company.
- 25 2. The local exchange company is open to interconnection with
26 competing local providers that possess a certificate of public
27 convenience and necessity issued by the Commission. The
28 Commission is authorized to resolve any disputes concerning
29 whether a local exchange company is open to interconnection
30 under this section.

31 (2) Beginning on the date that the local exchange company's election under this
32 subsection becomes effective, the local exchange company shall continue to
33 offer stand-alone basic residential lines to all customers who choose to
34 subscribe to that service, and the local exchange company may increase rates
35 for those lines annually by a percentage that does not exceed the percentage
36 increase over the prior year in the Gross Domestic Product Price Index as
37 reported by the United States Department of Labor, Bureau of Labor
38 Statistics, unless otherwise authorized by the Commission. With the sole
39 exception of ensuring the local exchange company's compliance with the
40 preceding sentence, the Commission shall not:

- 41 a. Impose any requirements related to the terms, conditions, rates, or
42 availability of any of the local exchange company's stand-alone basic
43 residential lines.
- 44 b. Otherwise regulate any of the local exchange company's stand-alone
45 basic residential lines.

46 (3) Except to the extent provided in subdivision (2) of this subsection, beginning
47 on the date the local exchange company's election under this subsection
48 becomes effective, the Commission shall not do either of the following:

- 49 a. Impose any requirements related to the terms, conditions, rates, or
50 availability of any of the local exchange company's retail services.

1 b. Otherwise regulate any of the local exchange company's retail
2 services.

3 (4) A local exchange company's election under this subsection does not affect
4 the obligations or rights of an incumbent local exchange carrier, as that term
5 is defined by section 251(h) of the Federal Telecommunications Act of 1996
6 (Act), under sections 251 and 252 of the Act or any Federal
7 Communications Commission regulation relating to sections 251 and 252 of
8 the Act, nor does it affect any authority of the Commission to act in
9 accordance with federal or State laws or regulations, including those
10 granting authority to set rates, terms, and conditions for access to unbundled
11 network elements and to arbitrate and enforce interconnection agreements.

12 (5) A local exchange company's election under this subsection does not prevent
13 a consumer from seeking the assistance of the Public Staff of the North
14 Carolina Utilities Commission to resolve a complaint with that local
15 exchange company, as provided in G.S. 62-73.1.

16 (6) A local exchange company's election under this subsection does not affect
17 the Commission's jurisdiction concerning the following:

18 a. Enforce federal requirements on the local exchange company's
19 marketing activities. However, the Commission may not adopt,
20 impose, or enforce other requirements on the local exchange
21 company's marketing activities.

22 b. The telecommunications relay service pursuant to G.S. 62-157.

23 c. The Life Line or Link Up programs consistent with Federal
24 Communications Commission rules, including, but not limited to, 47
25 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant
26 orders of the North Carolina Utilities Commission.

27 d. Universal service funding pursuant to G.S. 62-110(f1).

28 e. Carrier of last resort obligations pursuant to G.S. 62-110.

29 f. The authority delegated to it by the Federal Communications
30 Commission to manage the numbering resources involving that local
31 exchange company."

32 **SECTION 2.** G.S. 62-133.5 is amended by adding a new subsection to read:

33 "(i) To the extent applicable, a competing local provider authorized by the Commission
34 to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms,
35 and conditions for its services determined pursuant to the plan described in subsection (h) of
36 this section."

37 **SECTION 3.** G.S. 62-133.5 is amended by adding a new subsection to read:

38 "(j) Notwithstanding any other provision of this Chapter, the Commission has
39 jurisdiction over matters concerning switched access and intercarrier compensation of a local
40 exchange company that has elected to operate under price regulation, as well as a local
41 exchange carrier or competing local provider operating under any form of regulation covered
42 under this Article or G.S. 62-110(f1)."

43 **SECTION 4.** G.S. 62-133.5 is amended by adding a new subsection to read:

44 "(k) To evaluate the affordability and quality of local exchange service provided to
45 consumers in this State, a local exchange company or competing local provider offering basic
46 local residential exchange service that elects to have its rates, terms, and conditions for its
47 services determined pursuant to the plan described in subsection (h) of this section shall make
48 an annual report to the General Assembly on the state of its company's operations. The report
49 shall be due 30 days after the close of each calendar year and shall cover the period from
50 January 1 through December 31 of the preceding year. The Joint Legislative Utility Review
51 Committee must review the annual reports and decide whether to recommend that the General

1 Assembly take corrective action in response to those reports. The report shall include the
2 following:

- 3 (1) An analysis of telecommunications competition by the local exchange
4 company or competing local provider, including access line gain or loss and
5 the impact on consumer choices from enactment of the Consumer Choice
6 and Investment Act of 2009.
7 (2) An analysis of service quality based on customer satisfaction studies from
8 enactment of the Consumer Choice and Investment Act of 2009.
9 (3) An analysis of the level of local exchange rates from enactment of the
10 Consumer Choice and Investment Act of 2009."

11 **SECTION 5.** Article 4 of Chapter 62 of the General Statutes is amended by adding
12 a new section to read:

13 **"§ 62-73.1. Complaints against providers of telephone services.**

14 (a) A local exchange company or competing local provider that is unable to resolve a
15 customer complaint shall (i) provide notice to the consumer of the consumer's right to contact
16 the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact
17 information for the Public Staff, including both a toll-free telephone number and an electronic
18 mail address.

19 (b) The Public Staff shall keep a record of all complaints received pertaining to the
20 provider, including the nature of each complaint and the resolution thereof. If the Public Staff
21 determines that it cannot reasonably resolve the matter, the matter shall be referred to the
22 Commission. The standard for review by both the Public Staff and the Commission shall be
23 whether the action or inaction of the provider is reasonable and appropriate."

24 **SECTION 6.** G.S. 62-302(b)(4) reads as rewritten:

25 "(b) Public Utility Rate. –

26 ...

27 (4) As used in this section, the term "North Carolina jurisdictional revenues"
28 ~~means means:~~

- 29 a. ~~all~~ All revenues derived or realized from intrastate tariffs, rates, and
30 charges approved or allowed by the Commission or collected
31 pursuant to Commission order or rule, but not including tap-on fees
32 or any other form of contributions in aid of construction.
33 b. All revenues derived from retail services no longer otherwise
34 regulated by the operation of G.S. 62-133.5(h) for a local exchange
35 company or competing local provider that has elected to be regulated
36 under that subsection."

37 **SECTION 7.** This act is effective when it becomes law.