

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 88
PROPOSED COMMITTEE SUBSTITUTE S88-PCS25252-TD-22

Short Title: Pole Attachment Disputes.

(Public)

Sponsors:

Referred to:

February 17, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO ASSIGN POLE ATTACHMENT DISPUTES TO THE NORTH CAROLINA
3 UTILITIES COMMISSION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 62-350(a) reads as rewritten:

6 "(a) A municipality, or a membership corporation organized under Chapter 117 of the
7 General Statutes, that owns or controls poles, ducts, or ~~conduits~~ conduits, but which is exempt
8 from regulation under section 224 of the Communications Act of 1934, as amended, shall allow
9 any communications service provider to utilize its poles, ducts, and conduits at ~~just,~~
10 ~~reasonable,~~ just and reasonable ~~and nondiscriminatory~~ rates, and nondiscriminatory terms, and
11 conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles,
12 ducts, or conduits under this section may be denied only if there is insufficient capacity or for
13 reasons of safety, reliability, and generally applicable engineering principles, and those
14 limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the
15 facilities at the reasonable and actual cost of the municipality or membership corporation to be
16 reimbursed by the communications service provider. In granting a request under this section, a
17 municipality or membership corporation shall require the requesting entity to comply with
18 applicable safety requirements, including the National Electrical Safety Code and the
19 applicable rules and regulations issued by the Occupational Safety and Health Administration."

20 **SECTION 2.** G.S. 62-350(c) reads as rewritten:

21 "(c) In the event the parties are unable to reach an agreement within 90 days of a request
22 to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith
23 that an impasse has been reached prior to the expiration of the 90-day period, either party may
24 ~~bring an action in Business Court in accordance with the procedures for a mandatory business~~
25 ~~ease set forth in G.S. 7A-45.4, and the Business Court~~ initiate proceedings to resolve the dispute
26 before the Commission. The Commission shall have exclusive jurisdiction over such
27 ~~actions.~~ proceedings arising under this section and shall adjudicate individual disputes arising
28 under this section on a case-by-case basis. The Commission shall not exercise general rate
29 making authority over communication service provider utilization of municipal or membership
30 corporation facilities. The Public Staff shall automatically be made a party to any proceedings
31 under this section and shall provide evidence and argument as may be appropriate to serve the
32 using and consuming public. The parties shall identify with specificity in their respective
33 ~~pleadings~~ filings the issues in dispute, and the Business Court shall (i) establish a procedural
34 ~~schedule which, unless otherwise agreed by the parties, is intended to resolve the action within~~
35 ~~a time period not to exceed 180 days of the commencement of the action, (ii) dispute. The~~
36 Commission, in its discretion, may consider any evidence or rate-making methodologies



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1 offered or proposed by the parties and shall resolve any dispute identified in the pleadings
2 filings consistent with the public interest and necessity so as to derive just and reasonable rates,
3 terms, and conditions, taking into consideration and applying such other factors or evidence
4 that may be presented by a party, including without limitation the rules and regulations
5 applicable to attachments by each type of communications service provider under section 224
6 of the Communications Act of 1934, as amended, and (iii) conditions. The Commission shall
7 apply any new rate adopted as a result of the action retroactively to the date immediately
8 following the expiration of the 90-day negotiating period or initiation of the lawsuit, proceeding,
9 whichever is earlier. If the new rate is for the continuation of an existing agreement, the new
10 rate shall apply retroactively to the date immediately following the end of the existing
11 agreement. Prior to commencing any action initiating any proceedings under this subsection, a
12 party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due
13 and owing under a preexisting agreement with the municipality or membership corporation. In
14 any action proceeding brought under this subsection, the court Commission may resolve any
15 existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding
16 safety compliance arising under subsection (d) of this section. The provisions of this section do
17 not apply to an entity whose poles, ducts, and conduits are subject to regulation under section
18 224 of the Communications Act of 1934, as amended."

19 **SECTION 3.** G.S. 62-350(d)(4) reads as rewritten:

20 "(4) All attaching parties shall work cooperatively to determine the causation of,
21 and to effectuate any remedy for, noncompliant lines, equipment, and
22 attachments. In the event of disputes under this subsection, the involved
23 municipality or membership corporation or any attaching party may ~~bring an~~
24 ~~action in the Business Court in accordance with the procedures for a~~
25 ~~mandatory business case set forth in G.S. 7A-45.4, and the Business Court~~
26 initiate proceedings to resolve any dispute before the Commission. The
27 Commission shall have exclusive jurisdiction over such actions, proceedings
28 arising under this section and shall adjudicate individual disputes arising
29 under this section on a case-by-case basis. The Commission shall not
30 exercise general rate making authority over communication service provider
31 utilization of municipal or membership corporation facilities. The Public
32 Staff shall automatically be made a party to any proceedings under this
33 section and shall provide evidence and argument as may be appropriate to
34 serve the using and consuming public. The Business Court Commission shall
35 resolve such disputes consistent with the public interest and necessity.
36 Nothing herein shall prevent a municipality or membership corporation from
37 taking such action as may be necessary to remedy any exigent issue which is
38 an imminent threat of death or injury to persons or damage to property."

39 **SECTION 4.** G.S. 62-350(f) reads as rewritten:

40 "(f) ~~The Business Court Commission may adopt such rules as it deems necessary to~~
41 ~~implement its jurisdiction and authority under this section. exercise its responsibility to~~
42 adjudicate any disputes arising under this section."

43 **SECTION 5.** G.S. 7A-45.4(b)(3) is repealed.

44 **SECTION 6.** Notwithstanding the deletion of language referencing the factors or
45 evidence that may be presented by a party in Section 2 of this act, the Commission may
46 consider any evidence presented by a party in a proceeding brought under G.S. 62-350.

47 **SECTION 7.** This act is effective when it becomes law and applies to any action
48 filed on or after that date.