

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 343\*  
Finance Committee Substitute Adopted 4/5/11**

Short Title: Communications Regulatory Reform.

(Public)

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Sponsors:

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Referred to:

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March 15, 2011

A BILL TO BE ENTITLED

1 AN ACT ESTABLISHING THE COMMUNICATIONS REGULATORY REFORM AND  
2 INVESTMENT ACT OF 2011.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 62-110(f1) reads as rewritten:

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

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

31 The Commission is authorized to adopt rules it finds necessary (i) to provide for the  
32 reasonable interconnection of facilities between all providers of telecommunications services;  
33 (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the  
34 reasonable unbundling of essential facilities where technically and economically feasible; (iv)  
35 to provide for the transfer of telephone numbers between providers in a manner that is  
36 technically and economically reasonable; (v) to provide for the continued development and  
37



1 encouragement of universally available telephone service at reasonably affordable rates; and  
 2 (vi) to carry out the provisions of this subsection in a manner consistent with the public interest,  
 3 which will include a consideration of whether and to what extent resale should be permitted. In  
 4 adopting rules to establish an appropriate definition of universal service, the Commission shall  
 5 consider evolving trends in telecommunications services and the need for consumers to have  
 6 access to high-speed communications networks, the Internet, and other services to the extent  
 7 that those services provide social benefits to the public at a reasonable cost.

8 Local exchange companies and competing local providers shall negotiate the rates for local  
 9 interconnection. In the event that the parties are unable to agree within 90 days of a bona fide  
 10 request for interconnection on appropriate rates for interconnection, either party may petition  
 11 the Commission for determination of the appropriate rates for interconnection. The  
 12 Commission shall determine the appropriate rates for interconnection within 180 days from the  
 13 filing of the petition.

14 Except as provided in subsections (f4) and (f5) of this section, each local exchange  
 15 company shall be the universal service provider (carrier of last resort) in the area in which it is  
 16 certificated to operate on July 1, 1995. Each local exchange company or telecommunications  
 17 service provider with carrier of last resort responsibility may satisfy its carrier of last resort  
 18 obligation by using any available technology. In continuing this State's commitment to  
 19 universal service, the Commission shall, by December 31, 1996, adopt interim rules that  
 20 designate the person that should be the universal service provider and to determine whether  
 21 universal service should be funded through interconnection rates or through some other funding  
 22 mechanism. At a time determined by the Commission to be in the public interest, the  
 23 Commission shall conduct an investigation for the purpose of adopting final rules concerning  
 24 the provision of universal services, and whether universal service should be funded through  
 25 interconnection rates or through some other funding mechanism, and, consistent with the  
 26 provisions of subsections (f4) and (f5) of this section, the person that should be the universal  
 27 service provider. A local exchange company that has elected to be subject to alternative  
 28 regulation under G.S. 62-133.5(l) does not have any carrier of last resort obligations.

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

32 **SECTION 2.** G.S. 62-302(b)(4)b. reads as rewritten:

33 "(b) Public Utility Rate. –

34 ...

35 (4) As used in this section, the term "North Carolina jurisdictional revenues"  
 36 means:

37 ...

38 b. All revenues derived from retail services no longer otherwise  
 39 regulated by the operation of G.S. 62-133.5(h) or G.S. 62-133.5(l) for  
 40 a local exchange company or competing local provider that has  
 41 elected to be regulated under ~~that subsection~~ those subsections."

42 **SECTION 3.** G.S. 62-133.5 reads as rewritten:

43 **"§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications**  
 44 **utilities.**

45 ...

46 (g) The following sections of Chapter 62 of the General Statutes shall not apply to local  
 47 exchange companies subject to price regulation under the terms of subsection (a) of this section  
 48 or electing companies subject to alternative regulation under the terms of ~~subsection~~  
 49 ~~(h)~~ subsection (h) or (l) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130,  
 50 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153.

51 ...

1 (i) A competing local provider authorized by the Commission to do business under the  
2 provisions of G.S. 62-110(f1) may also elect to have its rates, terms, and conditions for its  
3 services determined pursuant to the ~~plan-plans~~ described in ~~subsection (h)~~ subsection (h) or (l)  
4 of this section. However, it is provided further that any provisions of subsection (h) of this  
5 section requiring the provision of a specific retail service or impacting the pricing of such  
6 service, including stand-alone residence service, shall not apply to competing local providers.

7 ...

8 (k) To evaluate the affordability and quality of local exchange service provided to  
9 consumers in this State, a local exchange company or competing local provider offering basic  
10 local residential exchange service that elects to have its rates, terms, and conditions for its  
11 services determined pursuant to the ~~plan-plans~~ described in ~~subsection (h)~~ subsection (h) or (l)  
12 of this section shall make an annual report to the General Assembly on the state of its  
13 company's operations. The report shall be due 30 days after the close of each calendar year and  
14 shall cover the period from January 1 through December 31 of the preceding year. The Joint  
15 Legislative Utility Review Committee must review the annual reports and decide whether to  
16 recommend that the General Assembly take corrective action in response to those reports. The  
17 report shall include the following:

- 18 (1) An analysis of telecommunications competition by the local exchange  
19 company or competing local provider, including access line gain or loss and  
20 the impact on consumer choices from ~~enactment of the Consumer Choice  
21 and Investment Act of 2009~~, the date the local exchange company makes its  
22 election to be subject to alternative regulation under the terms of subsection  
23 (h) or (l) of this section.
- 24 (2) An analysis of service quality based on customer satisfaction studies from  
25 ~~enactment of the Consumer Choice and Investment Act of 2009~~, the date the  
26 local exchange company makes its election to be subject to alternative  
27 regulation under the terms of subsection (h) or (l) of this section.
- 28 (3) An analysis of the level of local exchange rates from ~~enactment of the  
29 Consumer Choice and Investment Act of 2009~~, the date the local exchange  
30 company makes its election to be subject to alternative regulation under the  
31 terms of subsection (h) or (l) of this section.

32 (k1) For a local exchange company that has made an election to be subject to alternative  
33 regulation under subsection (l) of this section, the requirement to report annually to the General  
34 Assembly under subsection (k) of this section shall no longer apply on and after the third  
35 anniversary following the date of the local exchange company's election.

36 (l) Notwithstanding any other provision of this Chapter, a local exchange company that  
37 is subject to rate of return regulation or subject to another form of regulation authorized under  
38 this section and who forgoes receipt of any funding from a State funding mechanism, other than  
39 interconnection rates, that may be established to support universal service as described in  
40 G.S. 62-110(f1) and whose territory is open to competition from competing local providers  
41 may elect to have its rates, terms, and conditions for its services determined pursuant to the  
42 plan described in this subsection by filing notice of its intent to do so with the Commission.  
43 The election is effective immediately upon filing. The terms "local exchange company" and  
44 "open to competition from competing local providers" shall have the same meanings as in  
45 subsection (h) of this section.

- 46 (1) Beginning on the date the local exchange company's election under this  
47 subsection becomes effective, the Commission shall not:
  - 48 a. Impose any requirements related to the terms, conditions, rates, or  
49 availability of any of the local exchange company's retail services,  
50 regardless of the technology used to provide these services.

- 1                    b. Otherwise regulate any of the local exchange company's retail  
2                    services, regardless of the technology used to provide these services.  
3                    c. Impose any tariffing requirements on any of the local exchange  
4                    company's services that were not tariffed as of the date of the  
5                    election, or impose any constraints on the rates of the local exchange  
6                    company's services that were subject to full pricing flexibility as of  
7                    the date of election.
- 8                    (2) A local exchange company's election under this subsection does not affect  
9                    the obligations or rights of an incumbent local exchange carrier, as that term  
10                    is defined by section 251(h) of the Federal Telecommunications Act of 1996  
11                    (Act), under sections 251 and 252 of the Act, or any Federal  
12                    Communications Commission regulation relating to sections 251 and 252 of  
13                    the Act.
- 14                    (3) A local exchange company's election under this subsection does not affect  
15                    the Commission's jurisdiction concerning:
- 16                    a. Enforcement of federal requirements on the local exchange  
17                    company's marketing activities as set forth in 47 U.S.C. Part 64.  
18                    However, the Commission may not adopt, impose, or enforce other  
19                    requirements on the local exchange company's marketing activities.
- 20                    b. The telecommunications relay service pursuant to G.S. 62-157.  
21                    c. The Life Line or Link Up programs consistent with Federal  
22                    Communications Commission rules and relevant orders of the North  
23                    Carolina Utilities Commission.
- 24                    d. Universal service funding pursuant to G.S. 62-110(f1).  
25                    e. The authority delegated to it by the Federal Communications  
26                    Commission to manage the numbering resources involving that local  
27                    exchange company.
- 28                    f. Regulatory authority over the rates, terms, and conditions of  
29                    wholesale services.
- 30                    g. The Commission's authority under section 214(e) of the Federal  
31                    Communications Act of 1934, consistent with Federal  
32                    Communications Commission rules.
- 33                    h. The authority of the Commission to act in accordance with federal or  
34                    State laws or regulations, including those granting authority to set  
35                    rates, terms, and conditions for access to unbundled network  
36                    elements and to arbitrate and enforce interconnection agreements.
- 37                    (4) A local exchange company's election under this subsection does not prevent  
38                    a consumer from seeking the assistance of the Public Staff of the North  
39                    Carolina Utilities Commission to resolve a complaint with that local  
40                    exchange company, as provided in G.S. 62-73.1."
- 41                    **SECTION 4.** This act is effective when it becomes law.