

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-238
HOUSE BILL 1180**

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

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

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

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

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

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

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

The General Assembly of North Carolina enacts:

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

"(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section and whose territory is open to competition from competing local providers may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection by filing notice of its intent to do so with the Commission. The election is effective immediately upon filing. A local exchange company shall not be permitted to make the election under this section unless it commits to provide stand-alone basic residential lines to rural customers at rates comparable to those rates charged to urban customers for the same service.

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

a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).



- b. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).
 - c. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.
 - d. Open to competition from competing local providers. – Both of the following apply:
 - 1. G.S. 62-110(f1) applies to the franchised area and to local exchange and exchange access services offered by the local exchange company.
 - 2. The local exchange company is open to interconnection with competing local providers that possess a certificate of public convenience and necessity issued by the Commission. The Commission is authorized to resolve any disputes concerning whether a local exchange company is open to interconnection under this section.
- (2) Beginning on the date that the local exchange company's election under this subsection becomes effective, the local exchange company shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines.
 - b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines.
- (3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:
- a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.
 - b. Otherwise regulate any of the local exchange company's retail services.
- (4) A local exchange company's election under this subsection does not affect the obligations or rights of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations, including those

- granting authority to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements.
- (5) A local exchange company's election under this subsection does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1.
- (6) A local exchange company's election under this subsection does not affect the Commission's jurisdiction concerning the following:
- a. Enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.
 - b. The telecommunications relay service pursuant to G.S. 62-157.
 - c. The Life Line or Link Up programs consistent with Federal Communications Commission rules, including, but not limited to, 47 C.F.R. § 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission.
 - d. Universal service funding pursuant to G.S. 62-110(f1).
 - e. Carrier of last resort obligations pursuant to G.S. 62-110.
 - f. The authority delegated to it by the Federal Communications Commission to manage the numbering resources involving that local exchange company."

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

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

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

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

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

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

- (1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from enactment of the Consumer Choice and Investment Act of 2009.
- (2) An analysis of service quality based on customer satisfaction studies from enactment of the Consumer Choice and Investment Act of 2009.

(3) An analysis of the level of local exchange rates from enactment of the Consumer Choice and Investment Act of 2009."

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

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

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

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

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

"(b) Public Utility Rate. –

...

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

~~means~~ means:

a. ~~all~~ All revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

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

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

In the General Assembly read three times and ratified this the 22nd day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 6:15 p.m. this 30th day of June, 2009