

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 762

Short Title: Universal Broadband for All State Citizens. (Public)

Sponsors: Representatives Queen, G. Graham, Hunter, and Waddell (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Regulatory Reform, if favorable, Public Utilities.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVISION OF ADVANCED BROADBAND
TELECOMMUNICATIONS SERVICE TO ALL CITIZENS OF NORTH CAROLINA.

Whereas, the 2015 Broadband Progress Report ("the FCC Report") issued by the
Federal Communications Commission found that 35% of citizens of North Carolina residing in
rural areas lack access to advanced broadband access, compared to only 4% of North Carolina
citizens in urban areas; and

Whereas, the FCC Report found that "people living in rural areas and on Tribal
lands remain persistently behind their urban counterparts in terms of broadband adoption and
deployment to these unserved areas is not progressing quickly enough"; and

Whereas, the FCC Report further concluded that one of the primary barriers to
adequate infrastructure investment and competition in the telecommunications market is the
high cost associated with deploying and operating a broadband network, combined with low
broadband adoption rates; and

Whereas, the infrastructure necessary to support deployment of so-called smart
meter technology can also simultaneously support broadband access to thousands of
households that currently lack broadband access and produce significant energy savings that
can serve as a self-sustaining funding source for the deployment effort; Now, therefore,
The General Assembly of North Carolina enacts:

I. TITLE

SECTION 1. This act shall be known as and may be cited as the "Close the Digital
Gap Act of 2015."

**II. UNIVERSAL BROADBAND ACCESS THROUGH ENERGY SAVINGS
UPGRADES TO ELECTRIC POWER DISTRIBUTION NETWORK**

SECTION 2.(a) The General Assembly finds that the primary barrier to provision
of universal broadband access across North Carolina is the expected rate of return on capital
investment necessary to install broadband infrastructure in unserved or underserved areas does
not exceed the cost of that capital, and that this barrier reinforces a digital divide with respect to
broadband access that in turn mirrors and reinforces current patterns of economic disparity.

SECTION 2.(b) The General Assembly further finds that the technology used to
provide real-time electric usage feedback from the universal deployment of smart electric
meters can also be utilized to provide broadband access to its customers, and that these smart
meters can empower consumers to analyze and reduce their energy use, save money on utility
costs, and provide broadband access.



1 **SECTION 2.(c)** The General Assembly further finds that electric public utility
2 companies can realize significant gains in energy efficiency through universal deployment of
3 smart meter systems, and the generating capacity made available through energy efficiency
4 gains used to service population growth without the necessity of constructing additional
5 generating capacity.

6 **SECTION 2.(d)** The General Assembly further finds that the benefits of the
7 avoided cost generated by smart meter related energy savings should be shared by all North
8 Carolina consumers and electric public utilities.

9 **SECTION 2.(e)** To this end, the North Carolina Utilities Commission shall do all
10 of the following:

- 11 (1) Issue Requests for Proposal to enter into contracts with as many firms or
12 other entities in the network or telecommunications sectors as is necessary to
13 establish a statewide Universal Broadband Smart Meter program that will
14 include the following components:
- 15 a. Smart meter technology at the household level that accommodates
16 broadband access to the home occupant and the opportunity for
17 remote real-time electric usage feedback.
 - 18 b. Remote energy usage management software and hardware interfaces
19 to promote average household energy savings of at least twenty
20 percent (20%) through peak shaving, peak avoidance, and other
21 cost-saving electric usage management practices.
 - 22 c. "Last mile" connectivity solutions that bridge the gap between
23 existing broadband infrastructure and unserved or underserved users
24 that maximize speed, reliability, and noninterference with existing
25 telecommunications systems and networks, and that can feature a
26 variety of last mile solutions, such as WiMAXX (Worldwide
27 Interoperability for Microwave Access) or BPL (Broadband over
28 Power Lines) technologies, avoiding complete reliance on any
29 particular last mile solution.
 - 30 d. Funding of the Universal Broadband Smart Meter program drawn
31 from resale by the electric public utility's share of the energy savings
32 created by the installation and use of smart meter systems.
- 33 (2) Execute a contract with the firm chosen to implement subdivision (1) of this
34 section and exercise oversight of the fulfillment of the contract.

35 **SECTION 2.(f)** It is the intent of the General Assembly that ongoing program
36 costs be funded by the electric public utilities based on the energy savings achieved through
37 implementation of the Universal Broadband Smart Meter Program. The North Carolina Utilities
38 Commission shall by order provide for the electric public utilities to expend remaining avoided
39 cost-savings on enhancements to its transmission and distribution networks to increase energy
40 efficiency and on development of alternative energy resources, in order to provide the State
41 with a lower cost, and more efficient power future. For purposes of this subsection, alternative
42 energy includes a renewable energy resource, as defined in G.S. 62-133.8(a) or any other
43 energy source that is not derived from the combustion of peat or a fossil fuel.

44 45 **III. REGULATORY REFORM FOR LOCAL GOVERNMENT BROADBAND** 46 **INNOVATION**

47 **SECTION 3.(a)** G.S. 160A-340.1 is rewritten to read:

48 "**§ 160A-340.1. City-owned communications service provider requirements.**

49 (a) A city-owned communications service provider shall meet all of the following
50 requirements:

- 1 (1) ~~Comply in its provision of communications service with all local, State, and~~
2 ~~federal laws, regulations, or other requirements applicable to the provision of~~
3 ~~the communications service if provided by a private communications service~~
4 ~~provider.~~
- 5 (2) In accordance with the provisions of Chapter 159 of the General Statutes, the
6 Local Government Finance Act, establish one or more separate enterprise
7 funds for the provision of communications service, use the enterprise funds
8 to separately account for revenues, expenses, property, and source of
9 investment dollars associated with the provision of communications service,
10 and prepare and publish an independent annual report and audit in
11 accordance with generally accepted accounting principles that reflect the
12 fully allocated cost of providing the communications service, including all
13 direct and indirect costs. An annual independent audit conducted under
14 G.S. 159-34 and submitted to the Local Government Commission satisfies
15 the audit requirement of this subdivision.
- 16 (3) ~~Limit the provision of communications service to within the corporate limits~~
17 ~~of the city providing the communications service.~~
- 18 (4) Shall not, directly or indirectly, under the powers of a city, exercise power or
19 authority in any area, including zoning or land-use regulation, or exercise
20 power to withhold or delay the provision of monopoly utility service, to
21 require any person, including residents of a particular development, to use or
22 subscribe to any communications service provided by the city-owned
23 communications service provider.
- 24 (5) ~~Shall provide nondiscriminatory access to private communications service~~
25 ~~providers on a first come, first served basis to rights of way, poles, or~~
26 ~~conduits owned, leased, or operated by the city unless the facilities have~~
27 ~~insufficient capacity for the access and additional capacity cannot reasonably~~
28 ~~be added to the facilities. For purposes of this subdivision, the term~~
29 ~~"nondiscriminatory access" means that, at a minimum, access shall be~~
30 ~~granted on the same terms and conditions as that given to a city owned~~
31 ~~communications service provider.~~
- 32 (6) ~~Shall not air advertisements or other promotions for the city-owned~~
33 ~~communications service on a public, educational, or governmental access~~
34 ~~channel if the city requires another communications service provider to carry~~
35 ~~the channel. The city shall not use city resources that are not allocated for~~
36 ~~cost accounting purposes to the city-owned communications service to~~
37 ~~promote city-owned communications service in comparison to private~~
38 ~~services or, directly or indirectly, require city employees, officers, or~~
39 ~~contractors to purchase city services.~~
- 40 (7) ~~Shall not subsidize the provision of communications service with funds from~~
41 ~~any other noncommunications service, operation, or other revenue source,~~
42 ~~including any funds or revenue generated from electric, gas, water, sewer, or~~
43 ~~garbage services.~~
- 44 (8) ~~Shall not price any communications service below the cost of providing the~~
45 ~~service, including any direct or indirect subsidies received by the city-owned~~
46 ~~communications service provider and allocation of costs associated with any~~
47 ~~shared use of buildings, equipment, vehicles, and personnel with other city~~
48 ~~departments. The city shall, in calculating the costs of providing the~~
49 ~~communications service, impute (i) the cost of the capital component that is~~
50 ~~equivalent to the cost of capital available to private communications service~~
51 ~~providers in the same locality and (ii) an amount equal to all taxes, including~~

1 property taxes, licenses, fees, and other assessments that would apply to a
2 private communications service provider, including federal, State, and local
3 taxes; rights-of-way, franchise, consent, or administrative fees; and pole
4 attachment fees. In calculating the costs of the service the city may amortize
5 the capital assets of the communications system over the useful life of the
6 assets in accordance with generally accepted principles of governmental
7 accounting.

8 (9) The city shall annually remit to the general fund of the city an amount
9 equivalent to all taxes or fees a private communications service provider
10 would be required to pay the city or county in which the city is located,
11 including any applicable tax refunds received by the city owned
12 communications service provider because of its government status and a sum
13 equal to the amount of property tax that would have been due if the
14 city owned communications service provider were a private communications
15 service provider."

16 (b) A city-owned communications service provider shall not be required to obtain voter
17 approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications
18 network."

19 **SECTION 3.(b)** Article 9A of Subchapter IV of Chapter 159 of the General
20 Statutes, G.S. 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6, G.S. 105-164.14(d2),
21 G.S. 62-3(23)(l.) and Sections 2(b) and 5 of S.L. 2011-84 are repealed.

22 23 **IV. DOT BROADBAND INFRASTRUCTURE**

24 **SECTION 4.(a)** G.S. 136-18 is amended by adding a new subdivision to read:

25 "(46) The Department of Transportation shall have authority to construct conduits
26 for telecommunication cable in the State right-of-way, with the costs of
27 construction to be borne through the leasing of the conduit to private
28 telecommunications companies, where such construction and leasing is not
29 otherwise prohibited by any other federal or State law. The Conduit
30 Installation Account is created as a nonreverting account within the Highway
31 Trust Fund to receive revenues from conduit leasing. The Department shall
32 administer the Account. Revenue in the Account may be used only to fund
33 the installation of telecommunications conduit in State right-of-way, as
34 authorized by this subdivision."

35 **SECTION 4.(b)** Article 2A of Chapter 136 of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 136-44.17. Installation of telecommunications conduit within State right-of-way.**

38 As authorized in G.S. 136-18(46), the Department shall include in its planning for new
39 roads and for improvements to existing roads the installation of conduit for telecommunications
40 cables when all of the following apply:

- 41 (1) Less than fifty percent (50%) of households in the county where the road
42 project is located have access to high-speed data or telecommunications
43 services. If a project is located in more than one county, the Department may
44 evaluate each county separately under this subdivision.
45 (2) A provider of high-speed data or telecommunications services provides the
46 Department with a letter indicating its interest in leasing the conduit from the
47 Department at any time within five years of completion of the project."

48 **SECTION 4.(c)** The Department shall report no later than May 1, 2016, to the
49 Joint Legislative Transportation Oversight Committee and annually thereafter on its progress in
50 implementing the program to install telecommunications conduit authorized by this act. The
51 initial report shall include identification by the Department of any statutory or regulatory

1 barriers to implementation of the conduit installation program. Each report shall include a list
2 of highway projects eligible for conduit installation in the next year with a financial and market
3 analysis and resulting estimate by the Department as to whether the conduit installation
4 authorized by this act is likely to be cost-effective for that project.

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6 **V. EFFECTIVE DATE**

7 **SECTION 5.** This act is effective when it becomes law.