

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 112
HOUSE BILL 415

AN ACT TO PERMIT PRICING FLEXIBILITY OF COMPETITIVE
TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 reads as rewritten:

"§ 62-2. Declaration of policy.

Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills.
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a

manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plant under construction;

- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;
- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."

Sec. 2. Chapter 62 is amended by adding a new section to read:

"§ 62-133.3. Fixing rates for telecommunications utilities.

In fixing rates for a public utility defined in G.S. 62-3(23)a.6., the Commission may on the request of the utility, on petition of any interested party, or on its own motion, consider, in lieu of the procedures outlined in G.S. 62-133(b) and (c), alternative means of regulating the public utility. The Commission may adopt an alternative means of regulation only following investigation and hearing and after finding that the alternative means of regulation:

- (1) Are consistent with the public interest;
- (2) Do not jeopardize reasonably affordable telecommunications services;
- (3) Provide adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers in the relevant geographic market;
- (4) Include safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services;
- (5) Maintain the ability of the public utility to attract investment capital necessary to provide quality, affordable telecommunications services; and
- (6) Assure the continued provision of reliable telecommunications services.

The Commission may at any time, on request of the utility, on the motion of any interested party, or on its own initiative, review any decision adopting alternative methods of regulation and after notice to the affected utility affording it an opportunity to be heard, reinstate regulation under the provisions of G.S. 62-133(b) and (c)."

Sec. 3. G.S. 62-134 is amended by adding new subsections to read:

"(h) Notwithstanding the requirements of subsections (a) and (b) of this section, the Commission may, in lieu of fixing specific rates or tariffs for competitive services offered by a public utility defined in G.S. 62-3(23)a.6., adopt practices and procedures to permit pricing flexibility, detariffing services, or both. In exercising its authority to permit pricing flexibility, detariffing of services, or both, the Commission shall first determine that the service is competitive. After a determination that the service is competitive, the Commission shall consider the following in deciding whether to permit pricing flexibility, detariffing of services, or both:

- (1) The extent to which competing telecommunications services are available from alternative providers in the relevant geographic or service market;
- (2) The market share, growth in market share, ease of entry, and affiliations of alternative providers;
- (3) The size and number of alternative providers and the ability of such alternative providers to make functionally equivalent or substitute services readily available at competitive rates and on competitive terms and conditions;
- (4) Whether the exercise of Commission authority produces tangible benefits to consumers that exceed those available by reliance on market forces;

- (5) Whether the exercise of Commission authority inhibits the public utility from competing with unregulated providers of functionally equivalent telecommunications services;
- (6) Whether the existence of competition tends to prevent abuses, unjust discrimination or excessive charges for the service or facility offered;
- (7) Whether the public utility would gain an unfair advantage in its competitive activities; and
- (8) Any other relevant factors protecting the public interest.

(i) On motion of any interested party and for good cause shown, the Commission shall hold hearings prior to adopting any pricing flexibility or detariffing of services permitted under this section. The Commission may also revoke a determination made under this section when the Commission determines, after notice and opportunity to be heard, that the public interest requires that the rates and charges for the service be more fully regulated.

(j) Notwithstanding the provisions of G.S. 62-140, the Commission may permit public utilities subject to subsection (h) of this section to offer competitive services to business customers upon agreement between the public utility and the customer provided the services are compensatory and cover the costs of providing the service."

Sec. 4. G.S. 62-137 reads as rewritten:

"§ 62-137. Scope of rate case.

In setting a hearing on rates upon its own motion, upon complaint, or upon application of a public utility, the Commission shall declare the scope of the hearing by determining whether it is to be a general rate case, under G.S. 62-133, or whether it is to be a case confined to the reasonableness of a specific single rate, a small part of the rate structure, or some classification of users involving questions which do not require a determination of the entire rate structure and overall rate of return. The procedures established in this section shall not be required when pricing alternatives permitted under G.S. 62-134(h) and (j) are adopted."

Sec. 5. G.S. 62-138(a) reads as rewritten:

"(a) Under such rules as the Commission may prescribe, every public utility, except as permitted under G.S. 62-134(h) and (j):

- (1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and
- (2) Shall keep copies of such schedules, service regulations and contracts open to public inspection. Except, if there is a sufficient likelihood that a public utility defined in G.S. 62-3(23)a.6. may suffer a competitive disadvantage if the rates for a specific competitive service are disclosed, the Commission may waive the public disclosure of the rates. The Commission may revoke the disclosure waiver upon a showing that the competitive disadvantage no longer exists."

Sec. 6. G.S. 62-139 reads as rewritten:

"§ 62-139. Rates varying from schedule prohibited; refunding overcharge; penalty.

(a) No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed ~~in the schedules of such public utility applicable thereto then filed in the manner provided in this Article, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules~~ by the Commission, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed by the Commission.

(b) Any public utility in the State which shall willfully charge a rate for any public utility service in excess of that prescribed ~~in the schedules of such public utility applicable thereto then filed under this Article~~ by the Commission, and which shall omit to refund the same within 30 days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown, shall be liable to him for double the amount of such overcharge, plus a penalty of ten dollars (\$10.00) per day for each day's delay after 30 days from such notice or date of denial or relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of May, 1989.