

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 165

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Implementation of Subsection (h) Price)
Plans Pursuant to House Bill 1180,)
Session Law 2009-238)

ORDER REQUESTING COMMENTS
AND INSTITUTING CERTAIN INTERIM
REQUIREMENTS

BY THE COMMISSION: On June 30, 2009, House Bill 1180 (HB1180) became law as set forth in Session Law 2009-238, a copy of which is attached as Appendix A. Entitled “An Act Establishing The Consumer Choice And Investment Act of 2009,” the law creates a new category of price plan which any local exchange carrier (LEC) or competing local provider (CLP)¹ may opt into by simply “filing notice of its intent to do so with the Commission,” the election being effective immediately upon filing. The Commission will refer to these new price plans in general as “Subsection (h) price plans.”

Subsection (h) price plans provide for extensive deregulation of an eligible company’s “terms, conditions, rates, or availability” relating to its retail services. See, e.g., G.S. 62-133.5(h)(2)(a) and (b) and (h)(3)(a) and (b).² While the deregulation is very extensive by historical standards, it is not a complete deregulation. For example, the General Assembly provided that, as a condition for electing a Subsection (h) price plan, the LEC 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

¹ A new G.S. 62-133.5(i) provides that “[t]o 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.” With that proviso kept in mind, references in this Order to LECs’ electing Subsection (h) price plans and the consequences thereof also imply CLPs, as the statute says, “to the extent applicable.”

² Subsection 62-133.5(h)(2), which concerns rate increase limits on stand-alone basic residential lines, provides that, with the exception of that limit, “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.” Warming to this theme, G.S. 62-133.5(h)(3) provides: “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*.” (Emphasis added)

the United States Department of Labor, Bureau of Labor Statistics,³ unless otherwise authorized by the Commission.” See G.S. 62-133.5(h)(2).

There is also an extensive list of subjects which are specifically recognized as remaining under the jurisdiction of the Commission, although in some cases the Commission’s former authority is hedged. See G.S. 62-133.5(h)(4) (Commission authority over arbitrations, unbundled network elements, and interconnection agreement enforcement); (h)(5) (Consumer may seek the assistance of the Public Staff to resolve complaints); (h)(6)(a) (Commission may enforce only federal requirements with respect to LEC marketing activities); (h)(6)(b) (jurisdiction regarding the telecommunications relay service); (h)(6)(c) (jurisdiction regarding Life Line and Link Up); (h)(6)(d) (universal service funding); (h)(6)(e) (carrier of last resort obligations); and (h)(6)(f) (management of numbering resources). A new subsection G.S. 62-133.5(j) retains Commission jurisdiction over matters concerning switched access and intercarrier compensation, while a new Section G.S. 62-73.1 specifically deals with the Public Staff and Commission role with respect to complaints against providers of telephone service. G.S. 62-302(b)(4), regarding regulatory fees, holds the Commission harmless on such revenues.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

While the enactment of HB1180 significantly reduces the amount of regulation to be imposed on a LEC which has elected a Subsection (h) price plan, the Commission concludes that an orderly procedure needs to be established for such election and that the further implications of HB1180 are in need of exploration through a comment process.

1. Docket Numbers. An initial matter is the appropriate docket for each company making a Subsection (h) price plan election. The Commission concludes that the election filing and all future filings pursuant to that election should be made utilizing the next sequential subdocket of the company for its current price plans. For example, the docket number for AT&T, should AT&T decide to elect a Subsection (h) price plan, will be Docket No. P-55, Sub 1013L. In the case of a CLP’s or a rate-of-return LEC’s election of a Subsection (h) price plan, the docket number will be the next sequential docket pertaining to that company.

³ The reference in the statute to “United States Department of Labor, Bureau of Labor Statistics” appears to be an error. The correct reference is “United States Department of Commerce, Bureau of Economic Analysis.” Accordingly, in place of the reference to the United States Department of Labor, the Commission substitutes the United States Department of Commerce’s Bureau of Economic Analysis. Such substitution is authorized under the statute’s “unless otherwise authorized by the Commission” language.

2. Election filing requirements. As noted above, the election of the new Subsection (h) price plan is comparatively straightforward—the LECs simply files a notice with the Commission and the election becomes effective immediately upon filing. Nevertheless, the statute provides that certain requirements be met, so the election filing must contain certain content. The Commission concludes that, in order for such notice to be acceptable, the LEC must file a statement under oath that it meets the following necessary conditions which are outlined in G.S. 62-133.5(h). Accordingly, in its election notice to the Commission, the LEC must submit a sworn statement (1) that its territory is “open to competition from competing local providers” within the meaning of the definition set forth in G.S. 62-133.5(h)(1)(d)⁴ [See G.S. 62-133.5(h)]; (2) that 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” [See G.S. 62-133.5(h)]; (3) that it “shall continue to offer stand-alone basic residential lines to all customers who choose to subscribe to that service” [See G.S. 62-133.5(h)(2)]; and (4) that, if it raises rates for stand-alone basic residential lines, it will only “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 (GDP-PI)” as reported by the U.S. Department of Commerce, Bureau of Economic Analysis. [See Footnote 3 and G.S. 62-133.5(h)(2)] With respect to item (3) in this paragraph, the electing LEC shall provide, along with its election statement, a comprehensive list of the current charges for basic stand-alone residential lines in each of its rural and urban exchanges, an analysis and assessment of whether such rates are comparable, and, if not, how the LEC plans to make such rates comparable.
3. Annual stand-alone basic residential line GDP-PI statement. The GDP-PI naturally changes from year to year. The Commission therefore concludes that it is appropriate that any LEC that has elected to operate under a Subsection (h) price plan shall be required to provide a sworn annual statement to the Commission stating (1) the applicable GDP-PI for the prior year; (2) whether it has raised rates for stand-alone basic residential service; if so, (3) whether such rates were raised at or below the GDP-PI; and (4) the amount such rates were raised within the various exchanges within its service area. This annual filing will be due two weeks prior to the anniversary date of the LEC’s election filing so that the Public Staff will have an opportunity to review them.

⁴ G.S. 62-133.5(h)(1)(d) defines “Open to competition from competing local providers” as follows: “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.”

4. Access charge rates, terms and conditions. Currently, switched access charge rates are regulated through the existing LEC price plans or traditional rate of return regulation. These services remain under Commission jurisdiction pursuant to G.S. 62-133.5(j), even if the company elects a Subsection (h) price plan. Accordingly, the Commission concludes that the LEC access charge rates that exist in a LEC's price plan at the time of the Subsection (h) election shall continue to exist with respect to that LEC and are frozen until such time as a future proceeding establishes a new methodology and, possibly, a new rate. The same applies to a CLP electing a Subsection (h) price plan.
5. Rules, statutes, notice and reporting obligations no longer in force. While rules and statutes are the most salient items affected by the passage of HB1180, there are also orders that the Commission has issued over the years that have imposed notice obligations and reporting requirements on LECs that may be affected by a Subsection (h) election. The Commission concludes that it should solicit comments from parties setting forth those statutes, Commission rules, notice and reporting obligations that they believe will no longer be in force for a LEC in such circumstances, together with the reasons therefor.

Accordingly, the Commission concludes that those requirements set forth above in numbered paragraphs (1) through (4) shall go into effect on an interim basis.

Lastly, the Commission concludes that all interested parties should be allowed to comment on numbered paragraphs (1) through (5) on the following schedule: (1) Initial comments are due no later than Monday, August 31, 2009, while (2) reply comments are due by no later than Friday, September 25, 2009. Parties are requested to file comments and reply comments collectively to the extent practicable. The Chief Clerk shall serve copies of this Order on all LECs and CLPs.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of July, 2009.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk