

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 165a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Implementation of Subsection (l)) ORDER INSTITUTING CERTAIN
Price Plans Pursuant to Senate) FILING REQUIREMENTS AND
Bill 343, Session Law 2011-52) REQUESTING COMMENTS

BY THE CHAIRMAN: On April 26, 2011, Senate Bill 343 (SB343) became law as Session Law 2011-52, a copy of which is attached as Appendix A. Entitled “An Act Establishing the Communications Reform and Investment Act of 2011,” the law creates a new category of price plan which any local exchange carrier (LEC) or competing local provider (CLP)¹ may elect “by filing notice of its intent to do so with the Commission.” Such election “is effective immediately upon filing.” The Commission will refer to these new price plans as “Subsection (l) price plans” to distinguish them from the already existing “Subsection (h) price plans.”

Subsection (l) price plans provide generally for an even greater degree of deregulation of “the terms, conditions, rates, or availability” of the electing carrier’s retail services² than the existing Subsection (h) price plans provide. For example, unlike a Subsection (h) election, there is no requirement that an electing Subsection (l) LEC continue to provide stand-alone basic residential lines with rate increases for such lines capped at no more than the percentage increase of the Gross Domestic Product Price Index. Under Subsection (l) an electing LEC is also relieved of carrier of last resort (COLR) obligations. Unlike the annual requirement for a given Subsection (h) electing carrier to submit an affordability and quality report to the Joint Legislative Utility Review Committee (G.S. 62-133.5(k)), under Subsection (l) that requirement lapses after three years (G.S. 62-133.5(k1)).

As with Subsection (h) price plans, there are specified reservations of authority left to the Commission. See, G.S. 62-133.5(l)(3)(a)-(h). These include (a) enforcement of federal requirements on LEC marketing activities, but the Commission may not adopt,

¹ See G.S. 62-133.5(i)

² See G.S. 62-133.5(l)(1). This provision reads: “Beginning on the date the local exchange company’s election under this subsection becomes effective, the Commission shall not: a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company’s retail services, regardless of the technology used to provide these services. b. Otherwise regulate any of the local exchange company’s retail services, regardless of the technology used to provide these services. c. Impose any tariffing requirements on any of the local exchange company’s services that were not tariffed as of the date of the election, or impose any constraints on the rates of the local exchange company’s services that were subject to full pricing flexibility as of the date of election.”

impose, or enforce other requirements on LEC 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 and relevant state orders; (d) universal service funding pursuant to G.S. 62-110(f1); (e) Commission authority to manage numbering resources; (f) Commission regulatory authority over the rates, terms, and conditions of wholesale services; (g) the Commission's authority under Section 214(e), concerning the designation of eligible telecommunications carriers, consistent with FCC rules; and (h) Commission authority to set the rates, terms, and conditions for access to unbundled network elements and to enforce and arbitrate interconnection agreements. The amendment to G.S. 62-302(b)(4)b., dealing with the meaning of the term "North Carolina jurisdictional revenues" with respect to Subsection (h) price plan companies, was extended to Subsection (l) price plan companies. Furthermore, pursuant to G.S. 62-133.5(l)(4), a Subsection (l) election does not prevent a consumer "from seeking the assistance of the Public Staff...to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1."

WHEREUPON, the Chairman reaches the following

CONCLUSIONS

As with the proceedings in Docket No. P-100, Sub 165, the Commission concludes that it would be appropriate to establish an orderly procedure for Subsection (l) election in the form of interim rules and to address certain other matters.

1. Election Filing Requirements. The core of the Subsection (l) process is the election by a LEC or CLP to operate under a Subsection (l) plan. The relevant text of G.S. 62-133.5(l) reads as follows:

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 who forgoes receipt of any funding from a State funding mechanism, other than interconnection rates, that may be established to support universal service* as described in G.S. 62-110(f1) 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. The terms "local exchange company" and "open to competition from competing local providers" shall have the same meanings as in subsection (h) of this section.³ (Emphasis added).

³ G.S. 62-133.5(h)(1)(b) 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."

The requirements attendant to Subsection (l) election are much simplified when compared to the Subsection (h) election. Based on the elements set forth in the statutory language and the Commission's inherent powers related to filings before it, the Commission concludes that a rule should be established that provides that an LEC or CLP desiring to elect a Subsection (l) price plan must file a sworn statement with the Commission stating the following:

- a. That it desires to be regulated under a Subsection (l) plan.
- b. That its territory is open to competition from competing local providers.
- c. That, in consequence of such election, it will forgo receipt of any funding from a State funding mechanism, other than interconnection rates, that may be established to support universal service as described in G.S. 62-110(f1).

2. Docket Numbers. As with Subsection (h) filings, the appropriate docket for a Subsection (l) election filing, and all future filings pursuant to that election, should be the next sequential subdocket of the company for its current price plan. In the case of a CLP's or a rate-of-return LEC's election of a Subsection (l) price plan, the docket number will be the next sequential docket pertaining to the company.

3. Switched Access and intercarrier compensation rates, terms, and conditions. Switched access charges and intercarrier compensation related to a LEC remain under Commission jurisdiction pursuant to G.S. 62-133.5(j), even if a company elects a Subsection (l) price plan. Currently, Subsection (h) LEC and CLP access charges are frozen. LEC or CLP access charges that exist at the time of a Subsection (l) election will continue to exist and remain frozen until a future proceeding establishes a methodology for different rates. The Commission notes that it is currently examining the issue of access charges in Docket NO. P-100, Sub 167.

4. Rules, statutes, notice and reporting obligations no longer in force. This question was examined in detail with respect to Subsection (h) price plans in Docket No. P-100, Sub 165 by recourse to a Work Group. A core feature of both Subsection (h) and Subsection (l) is that they both relieve electing carriers of Commission regulation concerning the "rates, terms, conditions, and availability" of their retail services. Examination of the effects of the deregulation of the "rates, terms, conditions, and availability" of retail services in the context of Subsection (h) gave rise to a great number of recommendations from the Work Group for the amendment or abolition of various obligations. However, in view of this earlier effort, it is reasonable to believe there may not be very many items that would be specific to Subsection (l) that have not already been examined with respect to Subsection (h). Nevertheless, out of an abundance of caution, the Commission concludes that good cause exists to request the Public Staff to examine whatever Subsection (l)-specific issues that may exist, to confer

with the various interested parties, and to present a report to the Commission with recommendations as to how to proceed on this subject by no later than August 1, 2011.

WHEREUPON, the Commission concludes as follows:

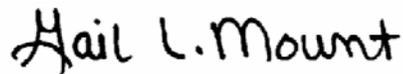
1. That Item No. 1 constitutes the interim rule with respect to the adequacy of Subsection (l) election notice.
2. That the docketing of Subsection (l) election filing be as set forth above.
3. That the access charges of CLPs and LECs that make a Subsection (l) election will remain frozen pending further order pursuant to Docket No. P-100, Sub 167.
4. That the Public Staff shall confer with interested parties on the issues related to rules, statutes, notice and reporting obligations no longer in force with respect to Subsection (l) companies and present a report on this subject to the Commission by no later than August 1, 2011.
5. That interested parties may comment on Ordering Paragraphs No. 1-3 above by no later than June 15, 2011.

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of May 2011.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk