

South Carolina General Assembly
118th Session, 2009-2010

A7, R32, H3299

STATUS INFORMATION

General Bill

Sponsors: Reps. Sandifer, Harrell, Cato, Thompson, Bedingfield, Bingham, Brady, Gambrell, Harrison, Jennings, Mack, Mitchell, Cooper, Crawford, Alexander, Allison, Anthony, Bales, Bannister, Barfield, Bowers, G.A. Brown, Clemmons, Cobb-Hunter, Duncan, Gullick, Haley, Hayes, Herbkersman, Howard, Huggins, Limehouse, Littlejohn, Lowe, Miller, Ott, Owens, Pinson, M.A. Pitts, J.R. Smith, J.E. Smith, Spires, Toole, Umphlett, White, Whitmire, Anderson, A.D. Young, T.R. Young, Forrester, H.B. Brown, Weeks, Horne, Parker, Skelton, Wylie and Frye

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Introduced in the House on January 15, 2009
Introduced in the Senate on February 12, 2009
Last Amended on February 11, 2009
Passed by the General Assembly on April 23, 2009
Governor's Action: May 6, 2009, Signed

Summary: Customer Choice and Technology Investment Act

HISTORY OF LEGISLATIVE ACTIONS

| <u>Date</u> | <u>Body</u> | <u>Action Description with journal page number</u> |
|-------------|-------------|--|
| 1/15/2009 | House | Introduced and read first time <u>HJ-422</u> |
| 1/15/2009 | House | Referred to Committee on Labor, Commerce and Industry <u>HJ-422</u> |
| 1/15/2009 | House | Member(s) request name added as sponsor: Forrester, H.B.Brown, Anderson |
| 2/4/2009 | House | Committee report: Favorable with amendment Labor, Commerce and Industry <u>HJ-1</u> |
| 2/5/2009 | House | Member(s) request name added as sponsor: Weeks, Horne |
| 2/5/2009 | | Scrivener's error corrected |
| 2/10/2009 | House | Member(s) request name added as sponsor: Parker, Skelton, Wylie |
| 2/10/2009 | House | Requests for debate-Rep(s). Loftis and Harvin <u>HJ-24</u> |
| 2/10/2009 | House | Debate adjourned until Wednesday, February 11, 2009 <u>HJ-31</u> |
| 2/11/2009 | House | Member(s) request name added as sponsor: Frye |
| 2/11/2009 | House | Amended <u>HJ-18</u> |
| 2/11/2009 | House | Read second time <u>HJ-25</u> |
| 2/12/2009 | House | Read third time and sent to Senate <u>HJ-25</u> |
| 2/12/2009 | House | Motion to reconsider tabled <u>HJ-26</u> |
| 2/12/2009 | Senate | Introduced and read first time <u>SJ-9</u> |
| 2/12/2009 | Senate | Referred to Committee on Judiciary <u>SJ-9</u> |
| 2/19/2009 | Senate | Referred to Subcommittee: Rankin (ch), Hutto, Campbell |
| 4/2/2009 | Senate | Polled out of committee Judiciary <u>SJ-7</u> |
| 4/2/2009 | Senate | Committee report: Favorable with amendment Judiciary <u>SJ-7</u> |
| 4/6/2009 | | Scrivener's error corrected |
| 4/14/2009 | Senate | Committee Amendment Adopted <u>SJ-226</u> |
| 4/14/2009 | | Scrivener's error corrected |
| 4/15/2009 | | Scrivener's error corrected |
| 4/21/2009 | Senate | Read second time <u>SJ-21</u> |
| 4/22/2009 | Senate | Read third time and returned to House with amendments <u>SJ-15</u> |

4/23/2009 House Concurred in Senate amendment and enrolled HJ-268
4/23/2009 House Roll call Yeas-93 Nays-0 HJ-268
4/30/2009 Ratified R 32
5/6/2009 Signed By Governor
5/15/2009 Effective date 05/06/09
5/19/2009 Act No. 7

VERSIONS OF THIS BILL

1/15/2009
2/4/2009
2/5/2009
2/11/2009
4/2/2009
4/6/2009
4/14/2009
4/14/2009-A
4/15/2009
4/23/2009

(A7, R32, H3299)

AN ACT TO AMEND SECTION 58-9-576, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ELECTION BY AND DUTIES OF THE LOCAL EXCHANGE CARRIER AND ALTERNATIVE FORMS OF REGULATION, SO AS TO ENACT THE "CUSTOMER CHOICE AND TECHNOLOGY INVESTMENT ACT OF 2009", AND TO PROVIDE FOR THE CONTINUED REGULATION BY THE PUBLIC SERVICE COMMISSION OF CERTAIN LOCAL EXCHANGE CARRIERS WHEN PROVIDING CERTAIN TELECOM SERVICES, AND TO ALLOW OTHER LOCAL EXCHANGE CARRIERS TO OPT OUT OF REGULATION WHEN PROVIDING CERTAIN SERVICES.

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 customer choices for these services; and

Whereas, competition tends to lower prices for competitive services, but in more rural areas it also may have the unintended consequence of adversely impacting the availability of affordable basic local exchange telephone service to all South Carolina citizens; and

Whereas, current state and federal mechanisms for providing universal service funding to carriers of last resort in rural areas have helped to ensure that customers in rural areas continue to have access to basic local exchange telephone service at affordable rates, in furtherance of important state and national telecommunications goals; and

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

Whereas, this disparity may deprive customers of traditional telephone services 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 will relieve customers 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 customers 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, and at the same time ensuring that customers in rural areas of the State continue to have access to basic local exchange service at affordable rates, the General Assembly hereby enacts the "Customer Choice and Technology Investment Act of 2009". Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Certain rates of a local exchange carrier

SECTION 1. Section 58-9-576 of the 1976 Code, as last amended by Act 318 of 2006, is further amended by adding:

"(C) Notwithstanding any other provision of this chapter, upon the effective date of this subsection, a LEC that is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), or a LEC that complies with subsection (A)(1) or (A)(2), may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection. If at the time of this election the LEC is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), the election becomes effective five days after the notice of the election is filed with the commission. Otherwise, the election becomes effective in the same manner as provided for in subsection (B)(1).

(1) As used in this subsection:

(a) 'Single-line basic residential service' means 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 equivalent).

(b) 'Stand-alone basic residential line' means 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 LEC or an affiliate of the LEC and that is billed on a recurring basis on the LEC's bill.

(c) 'Preelection date' means the date immediately before the effective date of the LEC's election under this subsection.

(d) 'LEC's preelection state USF withdrawal' means the amount of annual distributions or payments the LEC receives from the state USF as of the preelection date.

(e) 'LEC's state USF reduction' means an amount equal to twenty percent of the LEC's preelection state USF withdrawal.

(f) 'LEC's preelection Interim LEC fund withdrawal' means the amount of annual distributions or payments the LEC receives from the Interim LEC Fund as of the preelection date.

(g) 'LEC's Interim LEC fund reduction' means twenty percent of the LEC's preelection Interim LEC fund withdrawal.

(h) 'LEC' has the same meaning as provided for in Section 58-9-10(12).

(2) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC may increase its rates for its stand-alone basic residential lines that were in service on the preelection date on an annual basis 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. If the customer of record for a stand-alone basic residential line that was in service on the preelection date dies or moves from the residence, the provisions of this subitem will continue to apply to the stand-alone basic residential line at the residence if a spouse, family member, or co-tenant of that customer of record provides documentation showing that he resided at the location and requests to have the stand-alone basic residential line continued in his name. With the sole exception of ensuring the LEC's compliance with the preceding sentences, the commission must not:

(a) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC's stand-alone basic residential lines that were in service on the preelection date; or

(b) otherwise regulate any of the LEC's stand-alone basic residential lines that were in service on the preelection date.

(3) Except to the extent provided for in item (2), beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the commission must not:

(a) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC's retail services; or

(b) otherwise regulate any of the LEC's retail services, including without limitation any stand-alone basic residential lines put into service after the preelection date.

(4) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the commission must not:

(a) impose any requirements related to the terms, conditions, rates, or availability of any retail interexchange services offered by the LEC or any of its affiliated entities; or

(b) otherwise regulate any of the retail interexchange services of the LEC or any of its affiliates.

(5) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is not required to file schedules as required by Section 58-9-230 for any of its billing and collection services. Nothing in this subsection otherwise diminishes, and nothing in this subsection expands the commission's jurisdiction as it exists on the effective date of this subsection over wholesale services, including without limitation switched access services, carrier-to-carrier agreements, and carrier-to-carrier complaints regarding nonretail services.

(6) A LEC's election, pursuant to this subsection, does not affect obligations of an incumbent local exchange carrier, as defined by Section 251(h) of the federal Telecommunications Act of 1996, pursuant to Sections 251 and 252 of the federal act or any Federal Communications Commission regulation relating to Sections 251 and 252 of the federal act.

(7) A LEC's election, pursuant to the provisions of this subsection, does not affect the commission's jurisdiction to enforce federal requirements on the LEC's marketing activities. The commission must not adopt, impose, or enforce other requirements on the LEC's marketing activities, including without limitation any requirements of Orders No. 2001-1036 and 2002-2 the South Carolina Public Service Commission entered in Docket No. 2000-378C.

(8) Nothing in this section affects the commission's certification authority pursuant to Section 58-9-280(A) or (B), or the commission's authority under federal or state law to make appropriate determinations with respect to market entry or other matters in areas served by small LECs.

(9) Nothing in this subsection affects any obligation of the LEC and its affiliates to provide contributions to the state USF and Interim LEC fund, and the commission must ensure that contributions to the state USF and Interim LEC fund, pursuant to the provisions of Section 58-9-280(E), (L), and (M), are maintained at appropriate levels.

(a) For the one-year period beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the Interim LEC fund an amount equal to the LEC's preelection Interim LEC fund withdrawal less the LEC's Interim LEC fund reduction. For the subsequent one-year period, the amount the LEC is entitled to withdraw from the Interim LEC fund is reduced by the LEC's Interim LEC fund reduction. Beginning at the expiration of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the Interim LEC fund.

(b) Except as otherwise provided in subitem (c) of this item, for the one-year period beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the state USF an amount equal to the LEC's preelection state USF withdrawal less the LEC's state USF reduction. For the subsequent one-year period, the amount the LEC is entitled to withdraw from the state USF is reduced by the LEC's state USF reduction amount. At the end of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the state USF.

(c) Before the end of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC may petition the commission to withdraw from the state USF an amount that differs from the amount determined pursuant to subitem (b) of this item. Upon the filing of this petition, the commission, after notice and opportunity for a hearing, must determine the amount of distributions or payments from the state USF the LEC is entitled to receive, based only on the LEC's stand-alone basic residential lines that were in service on the preelection date and that remain in service as of the date of the LEC's petition. The commission also must establish a process for annually reducing the amount of distributions or payments from the state USF based on the LEC's stand-alone basic residential lines that were in service on the preelection date and that remain in service as of the adjustment date.

(d) In addition to any amounts the LEC is entitled to withdraw pursuant to subitems (a), (b), and (c) of this item, the LEC also is entitled to withdraw from the state USF all amounts needed to fund any state Lifeline match that is necessary to ensure that persons enrolled in the Lifeline program receive the maximum federally funded Lifeline credit amounts available, including without limitation, federal baseline credit amounts and federal supplemental credit amounts.

(10) For those LECs that have not elected to have rates, terms, and conditions for their services determined pursuant to the plan described

in this subsection, the Interim LEC fund and state USF shall continue to operate in accordance with Sections 58-9-280(E), (L), and (M).

(11) For those LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF.

(12)(a) In order to transition to the changes effectuated by items (2), (3), and (4), the rates, terms, and conditions for products and services no longer subject to regulation by the commission, which were in effect with a specific term on the preelection date, remain in effect for the duration of the specific term as to customers who subscribed to those products or services on or before the preelection date. If no term applied to the products or services as of the preelection date, then the rates, terms, and conditions governing those products or services remain in effect until a written customer service agreement becomes effective as provided for in subitem (b) of this item.

(b) Except as provided in subitem(a) of this item, the LEC and the LEC's affiliates offering interexchange services must offer existing and new customers a written customer service agreement, which in the case of new customers must be delivered no later than thirty days after the initiation of service. The customer service agreement must include a provision advising the customer that he has thirty days from receipt in which to elect to:

(i) terminate service with the LEC or the LEC's affiliates offering interexchange services by contacting the entity within the thirty-day time period, in which case the customer has the right to pay off the account in the same manner and under the same rates, terms, and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement must relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and is in effect until termination through pay off. The written customer service agreement must not impose termination charges, transfer charges, or similar charges or limitations that did not apply to the customer's service on the preelection date; or

(ii) use the services of the LEC or the LEC's affiliates offering interexchange services, or to otherwise continue the account with the LEC or the LEC's affiliates offering interexchange services after the thirty-day time period has elapsed, either of which constitutes the customer's assent to all the rates, terms, and conditions of the written customer service agreement. The written customer service agreement must not impose a term commitment, termination charges,

transfer charges, or similar charges or limitations that did not apply to the customer's service on the preelection date. The customer service agreement is deemed received three business days after deposit in the United States mail, first-class delivery.

(13) The LEC's assessments pursuant to Sections 58-3-100, 58-3-540, and 58-4-60, and the assessments of the LEC's affiliates offering interexchange services pursuant to Sections 58-3-100, 58-3-540, and 58-4-60, continue to be based upon gross income from operation in this State in the same manner as such assessments were calculated before the effective date of this subsection.

(14) With respect to electing LECs, the Office of Regulatory Staff must maintain copies of all written complaints it receives regarding the following: (a) allegations regarding the inability of residential and business customers to obtain the functional equivalent of basic local exchange service; (b) allegations of anticompetitive practices; and (c) allegations regarding violations of contract terms and conditions by an electing LEC.

(15) No later than five years from the effective date of this act and every five years following the submission of the first report, the Office of Regulatory Staff must submit to the General Assembly a report examining the effect of this act on residential and business consumers in areas served by the LECs that elect to operate under this subitem. These reports shall include details of any pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or commercial customers or engaging in anticompetitive activities. These reports must be based on all records in the possession of the Office of Regulatory Staff, including without limitation, information obtained by the Office of Regulatory Staff pursuant to Section 58-4-55. The reports must not disclose any proprietary or confidential information about individual providers.

(16) When considered in the public interest by the Executive Director of the Office of Regulatory Staff, the Office of Regulatory Staff may file an action, in the name of the State and in any court of competent jurisdiction, against a LEC that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in Section 58-9-576(C), seeking to restrain by temporary restraining order, temporary injunction, or permanent injunction, a pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or business customers or of engaging in anticompetitive activities."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.
