

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to: Finance.

May 21, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE
3 USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND
4 OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE
5 JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW
6 STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE
7 CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO
8 ENCOURAGE COLOCATION OF SERVICES TO THOSE TOWERS.

9 The General Assembly of North Carolina enacts:

10 Section 1. The General Statutes are amended by adding a new Chapter to read:

11 **"CHAPTER 62B.**

12 **"WIRELESS TELEPHONE SERVICE.**

13 **"§ 62B-1. Definitions.**

14 As used in this Chapter:

- 15 (1) 'Automatic location identification' or 'ALI' means a wireless Enhanced
16 911 service capability that enables the automatic display of information
17 defining the approximate geographic location of the wireless telephone
18 used to place a 911 call in accordance with the FCC Order and includes
19 pseudoautomatic number identification.

- 1 (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced
2 911 service capability that enables the automatic display of a mobile
3 handset telephone number used to place a 911 call.
- 4 (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27)
5 and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. §
6 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub.
7 L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term
8 'wireless' and service provided by any wireless two-way voice
9 communication device, including radio-telephone communications used
10 in cellular telephone service, personal communications service, or the
11 functional competitive equivalent of a radio-telephone communications
12 line used in cellular telephone service, a personal communications
13 service, SMR mobile service, or a network radio access line which has
14 access to E911 service.
- 15 (4) 'CMRS connection' means each mobile handset telephone number
16 assigned to a CMRS customer with a billing address in North Carolina.
- 17 (5) 'CMRS provider' means a person or entity who is licensed by the FCC
18 to provide CMRS service or is reselling CMRS service.
- 19 (6) 'Eligible PSAPs' means those public safety answering points that have
20 opted to provide wireless Enhanced 911 service and have submitted
21 written notice to their CMRS providers and to the Wireless Advisory
22 Board.
- 23 (7) 'FCC Order' means the Order of the Federal Communications
24 Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- 25 (8) 'Local exchange carrier' means any entity that is authorized to engage in
26 the provision of telephone exchange service or exchange access in
27 North Carolina.
- 28 (9) 'Mobile set telephone number' means the number assigned to a CMRS
29 connection.
- 30 (10) 'Proprietary information' means customer lists and other related
31 information, technology descriptions, technical information, or trade
32 secrets, including the term 'trade secrets' as defined by the North
33 Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or
34 developmental costs of wireless Enhanced 911 systems that are
35 developed, produced, or received internally by a CMRS provider or by a
36 CMRS provider's employees, directors, officers, or agents.
- 37 (11) 'PSAP' ('public safety answering point') means the public safety agency
38 that receives incoming 911 calls and dispatches appropriate public
39 safety agencies to respond to such calls.
- 40 (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a
41 wireless Enhanced 911 service capability that enables the automatic
42 display of the number of the cell site or cell face.

- 1 (13) 'Service supplier' means a person or entity who provides exchange
2 telephone service to a telephone subscriber.
- 3 (14) 'Wireless 911 system' means an emergency telephone system that
4 provides the user of a CMRS connection the ability to reach a PSAP by
5 dialing the digits 911.
- 6 (15) 'Wireless Enhanced 911 system' means an emergency telephone system
7 that provides the user of the CMRS connection with wireless 911
8 service and, in addition, directs 911 calls to appropriate PSAPs by
9 selective routing based on the geographical location from which the call
10 originated and provides the capability for ANI (or Pseudo-ANI) and
11 ALI features, in accordance with the requirements of the FCC Order.
- 12 (16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund
13 required to be established and maintained pursuant to G.S. 62B-2(c).

14 **"§ 62B-2. Wireless 911 Advisory Board.**

15 (a) There is created a Wireless 911 Advisory Board ('Board'), consisting of nine
16 members as follows:

- 17 (1) Two members appointed by the Governor, one upon the
18 recommendation of the North Carolina League of Municipalities and
19 one upon the recommendation of the North Carolina Association of
20 County Commissioners;
- 21 (2) Three members appointed by the Speaker of the House of
22 Representatives, two representing CMRS providers licensed to do
23 business in North Carolina and one representing the North Carolina
24 Chapter of the Association of Public Safety Communications Officials
25 (APCO);
- 26 (3) Three appointed by the President Pro Tempore of the Senate, one
27 representing CMRS providers licensed to do business in North Carolina,
28 one representing local exchange carriers licensed to do business in
29 North Carolina, and one representing the North Carolina Chapter of the
30 National Emergency Number Association (NENA); and
- 31 (4) The Secretary of Commerce or the Secretary's designee, who shall serve
32 as the chair.

33 A quorum of the Board shall consist of five members. The Board shall meet upon the
34 call of the chair.

35 (b) Each member shall serve a term of four years and may be appointed to no more
36 than two successive terms. Vacancies may be filled in the same manner as the original
37 appointment.

38 (c) The Board shall establish and maintain the Wireless Fund as an insured,
39 interest-bearing account into which the Board shall deposit all revenues derived from the
40 service charge levied on CMRS connections in the State and collected pursuant to G.S.
41 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this
42 Chapter. The Board may invest the revenue in the Wireless Fund in the same manner

1 that State funds may be invested. The Board shall deposit any income earned from such
2 an investment in the Wireless Fund.

3 (d) The Board may disburse the revenues remitted to the Wireless Fund in the
4 manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of
5 these revenues and advise the CMRS providers and eligible counties of such procedures
6 within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

7 (e) The Board shall serve without compensation, but members of the Board shall
8 receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

9 **§ 62B-3. Amount of service charge.**

10 (a) The Board shall levy a monthly wireless Enhanced 911 service charge on each
11 CMRS connection. The rate of such service charge shall initially be set at eighty cents
12 (80¢) per month per each CMRS connection beginning July 1, 1998. The service charge
13 shall have uniform application and shall be imposed throughout the State.

14 (b) The service charge may be adjusted by the Board every two years, beginning
15 July 1, 2000. The Board is to set the service charge at such a rate as to ensure full
16 recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the
17 costs associated with developing and maintaining a wireless Enhanced 911 system. If
18 necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a
19 reasonable period of time, the Board may, at the time it adjusts the service charge, also
20 adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

21 (c) The service charge shall not exceed one dollar and twenty-five cents (\$1.25).

22 (d) The Board may adopt other rules and procedures as may be necessary to effect
23 the provisions of this act but may not regulate any other aspect of the provision of
24 wireless Enhanced 911 service, such as technical standards.

25 (e) No other State agency or local government may levy any additional surcharge
26 relating to the provision of wireless Enhanced 911 service.

27 **§ 62B-4. Management of funds.**

28 (a) Each CMRS provider, as a part of its monthly billing process, shall collect the
29 wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider
30 may list the service charge as a separate entry on each bill. If a CMRS provider receives
31 a partial payment for a monthly bill from a subscriber, the provider shall apply the
32 payment first against the amount the subscriber owes the provider.

33 (b) A CMRS provider has no obligation to take any legal action to enforce the
34 collection of the service charges for which any subscriber is billed. However, a
35 collection action may be initiated by the Board and reasonable costs and attorneys' fees
36 associated with that collection action may be awarded.

37 (c) State and local taxes do not apply to the wireless Enhanced 911 service charge.

38 (d) Each CMRS provider shall be entitled to deduct a one percent (1%)
39 administrative fee from the total service charges collected.

40 (e) All service charges collected by the CMRS providers, less the administrative
41 fee described in subsection (d) of this section, are to be remitted to the Board to be placed
42 in the Wireless Fund, not later than 30 days after the end of the calendar month in which
43 such service charges are collected.

1 "§ 62B-5. Use of funds.

2 (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-
3 2(c) shall be held in escrow and used to reimburse CMRS providers, in response to sworn
4 invoices submitted to the Board, for the actual costs incurred by the CMRS providers in
5 complying with the wireless 911 requirements established by the FCC Order and any
6 rules and regulations which are or may be adopted by the FCC pursuant to the FCC
7 Order, including costs and expenses incurred for designing, upgrading, purchasing,
8 leasing, programming, installing, testing, or maintaining all necessary data, hardware, and
9 software required in order to provide such service as well as the recurring and
10 nonrecurring costs of operating such service.

11 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-
12 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). The
13 40% Fund shall be distributed as follows:

14 (1) Fifty percent (50%) of it shall be divided equally among the total
15 number of PSAPs in North Carolina. However, monthly distribution
16 shall be made only to those PSAPs that have complied with the
17 provisions of this Chapter. Distribution to each eligible PSAP will
18 begin the month following its compliance with the provisions of this
19 Chapter. All monies remaining in this portion of the 40% Fund on
20 January 31 of each year will then be evenly distributed to each of the
21 eligible PSAPs.

22 (2) The other fifty percent (50%) shall be divided pro rata among the
23 eligible PSAPs based on the population served by the PSAP. The
24 population data to be used will be those numbers on file with the
25 Secretary of State. All monies remaining in this portion of the 40%
26 Fund on January 31 of each year will then be evenly distributed to each
27 of the eligible PSAPs.

28 (c) Sworn invoices shall be presented by CMRS providers in connection with any
29 request for reimbursement under this section. In no event shall any invoice for
30 reimbursement be approved for the payment of costs that are not related to compliance
31 with the wireless Enhanced 911 service requirements established by the FCC Order and
32 any rules and regulations which are or may be adopted by the FCC pursuant to the FCC
33 Order.

34 (d) In no event shall any invoice for reimbursement be approved for payment of
35 costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the
36 service charges remitted by such CMRS provider unless prior approval for such
37 expenditures is received from the Board. If the total amount of invoices submitted to the
38 Board and approved for payment exceeds the amount in the Wireless Fund in any month,
39 CMRS providers that have invoices approved for payment shall receive a pro rata share
40 of the Wireless Fund, based on the relative amount of their approved invoices available
41 that month, and the balance of the payments will be carried over to the following month
42 or months and shall include interest at the rate set out in G.S. 24-1 until all of the
43 approved payments are made.

1 **"§ 62B-6. Distributions of funds.**

2 (a) The Board shall, upon majority vote, retain an independent, third-party
3 accounting firm for the purposes of processing checks and distributing funds as directed
4 by the Board, in accordance with the provision of this Chapter.

5 (b) The Board shall be entitled to deduct a one percent (1%) administrative fee
6 from the total service charges remitted by the CMRS providers for its expenses.

7 **"§ 62B-7. Provision of services.**

8 In accordance with the FCC Order, no CMRS provider shall be required to provide
9 wireless Enhanced 911 service until such time as (i) the provider receives a request for
10 such service from the administrator of a PSAP that is capable of receiving and utilizing
11 the data elements associated with the service; (ii) funds are available pursuant to G.S.
12 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911
13 system.

14 **"§ 62B-8. Audit.**

15 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the
16 General Statutes to ensure that funds in the Wireless Fund are being managed in
17 accordance with the provisions of this Chapter and shall perform an audit at least every
18 two years. The State Auditor shall provide the audit to the Board when it meets to adjust
19 the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the
20 State Auditor by the Board.

21 **"§ 62B-9. Customer records.**

22 Each CMRS provider shall provide its ten thousand number groups to the PSAPs
23 upon request. This information shall remain the property of the disclosing CMRS
24 provider and shall be used only in providing emergency response services to 911 calls.

25 **"§ 62B-10. Proprietary information.**

26 All proprietary information submitted to the Board or the State Auditor shall be
27 retained in confidence. Notwithstanding any other provision of law, no proprietary
28 information submitted pursuant to this Chapter shall be subject to the North Carolina
29 Public Records Law or subpoena, or otherwise released to any person other than to the
30 submitting CMRS provider, the Board, and the independent, third-party auditor retained
31 pursuant to G.S. 62B-6, without the express permission of the submitting CMRS
32 provider. Further, proprietary information shall constitute trade secrets as defined by the
33 North Carolina Trade Secrets Protection Act, G.S. 66-152. General information collected
34 by the Board or the State Auditor shall be released or published only in aggregate
35 amounts that do not identify or allow identification of numbers of subscribers or revenues
36 attributable to an individual CMRS provider.

37 **"§ 62B-11. Limitation of liability.**

38 Notwithstanding any other provision of law, no CMRS provider, local exchange
39 company, service supplier, PSAP, the Board or their employees, directors, officers, or
40 agents, except in cases of wanton and willful misconduct, shall be liable for any damages
41 in a civil action or subject to criminal prosecution resulting from death or injury to the
42 person or from damage to property incurred by any person in connection with

1 developing, adopting, implementing, maintaining, or operating any wireless 911 system
2 or wireless Enhanced 911 system.

3 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

4 Wireless emergency telephone service shall be used solely for emergency
5 communications by the public. Any person who knowingly uses or attempts to use
6 wireless emergency telephone service for a purpose other than obtaining public safety
7 assistance, or who knowingly uses or attempts to use wireless emergency telephone
8 service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If
9 the value of the CMRS charge or service obtained in a manner prohibited by this section
10 exceeds one hundred dollars (\$100.00), the person is guilty of a Class 1 misdemeanor."

11 Section 2. G.S. 150B-1(c) reads as rewritten:

12 "(c) Full Exemptions. – This Chapter applies to every agency except:

- 13 (1) The North Carolina National Guard in exercising its court-martial
14 jurisdiction.
15 (2) The Department of Health and Human Services in exercising its
16 authority over the Camp Butner reservation granted in Article 6 of
17 Chapter 122C of the General Statutes.
18 (3) The Utilities Commission.
19 (4) The Industrial Commission.
20 (5) The Employment Security Commission.
21 (6) The Wireless 911 Advisory Board."

22 Section 3. G.S. 136-18 is amended by adding a new subdivision to read:

23 "(35) The Department of Transportation may lease land, or
24 any interest thereof, for the purposes of construction and
25 placement of communications towers on State land controlled
26 by the Department of Transportation or for placement of
27 antennas upon State-owned structures controlled by the
28 Department of Transportation. The following requirements
29 shall apply to such leases:

- 30 a. The lease shall require the lessee to permit other
31 telecommunications carriers to colocate on the communications
32 tower on commercially reasonable terms between the lessee and
33 the collocating carrier until the communications tower reaches its
34 capacity. Unless the Department of Transportation determines
35 that colocation is unfeasible at that location, the communications
36 tower shall be designed and constructed to accommodate at least
37 one other carrier on the tower.
38 b. The Department of Transportation shall, in determining the
39 location of lands to be leased for communications towers,
40 encourage communications towers to be located near other
41 communications towers to the extent technically desirable.

1 c. The Department of Transportation shall, when choosing a
2 communications tower or antenna location, choose a location
3 which minimizes the visual impact on surrounding landscape.

4 For purposes of this subdivision, 'colocate and colocation' mean the
5 sharing of a communications tower for two or more services.

6 City and county zoning ordinances apply to leases and rentals created under
7 this subdivision.

8 Leases created under this subdivision do not require approval under
9 G.S. 146-29."

10 Section 4. G.S. 146-29 reads as rewritten:

11 "**§ 146-29. Procedure for sale, lease, or rental.**

12 (a) If, after investigation, the Department of Administration determines that it is in
13 the best interest of the State that land be sold, leased, or rented, the Department shall
14 proceed with its sale, lease, or rental, as the case may be, in accordance with rules
15 adopted by the Governor and approved by the Council of State. If an agreement of sale,
16 lease, or rental is reached, the proposed transaction shall then be submitted to the
17 Governor and Council of State for their approval or disapproval. Every conveyance in fee
18 of land owned by the State or by any State agency shall be made and executed in the
19 manner prescribed in G.S. 146-74 through 146-78.

20 (b) The State may lease land, or any interest thereof, for the purposes of
21 construction and placement of communications towers on State land or for placement of
22 antennas upon State-owned structures. The following additional requirements shall apply
23 to such leases:

24 (1) The lease shall require the lessee to permit other telecommunications
25 carriers to colocate on the communications tower on commercially
26 reasonable terms between the lessee and the collocating carrier until the
27 communications tower reaches its capacity. Unless the State determines
28 that colocation is unfeasible at that location, the communications tower
29 shall be designed and constructed to accommodate at least one other
30 carrier on the tower.

31 (2) The State shall, in determining the location of lands to be leased for
32 communications towers, encourage communications towers to be
33 located near other communications towers to the extent technically
34 desirable.

35 (3) The State shall, when choosing a communications tower or antenna
36 location, choose a location which minimizes the visual impact on
37 surrounding landscape.

38 For purposes of this subsection, 'colocate and colocation' mean the sharing of a
39 communications tower by two or more services.

40 City and county zoning ordinances apply to leases and rentals created under this
41 subsection."

42 Section 5. If any provision of this act or the application of this act to any
43 person or circumstance is held invalid, that invalidity shall not affect other provisions or

1 applications of this act that can be given effect without the invalid provision or
2 application, and to this end the provisions of this act are severable.

3 Section 6. Sections 1 and 2 of this act become effective 90 days after it
4 becomes law. Appointments to the Wireless 911 Advisory Board created in G.S. 62B-2
5 shall be made within 30 days of the effective date of Sections 1 and 2 of this act. The
6 remainder of this act becomes effective when it becomes law.