

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1242*
Commerce Committee Substitute Adopted 6/16/98
Finance Committee Substitute #2 Adopted 7/9/98

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to:

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 CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO
9 MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

10 The General Assembly of North Carolina enacts:

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

12 **"CHAPTER 62B.**

13 **"WIRELESS TELEPHONE SERVICE.**

14 **"§ 62B-1. Definitions.**

15 As used in this Chapter:

16 (1) 'Automatic location identification' or 'ALI' means a wireless Enhanced
17 911 service capability that enables the automatic display of information
18 defining the approximate geographic location of the wireless telephone

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

15 (a) There is created a Wireless 911 Board ('Board'), consisting of thirteen
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) Five members appointed by the General Assembly upon the
22 recommendation of the Speaker of the House of Representatives, one of
23 whom shall be a sheriff, three representing CMRS providers licensed to
24 do business in North Carolina and one representing the North Carolina
25 Chapter of the Association of Public Safety Communications Officials
26 (APCO);
- 27 (3) Five members appointed by the General Assembly upon the
28 recommendation of the President Pro Tempore of the Senate, one of
29 whom shall be a chief of police, two representing CMRS providers
30 licensed to do business in North Carolina, one representing local
31 exchange carriers licensed to do business in North Carolina, and one
32 representing the North Carolina Chapter of the National Emergency
33 Number Association (NENA); and
- 34 (4) The Secretary of Commerce or the Secretary's designee, who shall serve
35 as the chair.

36 A quorum of the Board shall consist of seven members. The Board shall meet upon
37 the call of the chair.

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

41 (c) There is established with the Treasurer the Wireless Fund into which the Board
42 shall deposit all revenues derived from the service charge levied on CMRS connections
43 in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate

1 fund restricted to the uses set forth in this Chapter. (d) Consistent with the provisions of
2 G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the
3 manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of
4 these revenues and advise the CMRS providers and eligible counties of such procedures
5 within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

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

8 **"§ 62B-3. Amount of service charge.**

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

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

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

43 **"§ 62B-5. Use of funds.**

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

10 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-
11 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund').
12 Money from the 40% Fund shall be used only to pay for the lease, purchase, or
13 maintenance of emergency telephone equipment for the wireless Enhanced 911 system,
14 including necessary computer hardware, software and database provisioning, and
15 nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the
16 40% Fund shall also be used to pay the rates associated with the local telephone
17 companies' charges related to the operation of the wireless Enhanced 911 system. The
18 40% Fund shall be distributed as follows:

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

27 (2) The other fifty percent (50%) shall be divided pro rata among the
28 eligible PSAPs based on the population served by the PSAP. However,
29 monthly distribution shall be made only to those PSAPs that have
30 complied with the provisions of this Chapter. Distribution to each
31 eligible PSAP will begin the month following its compliance with the
32 provisions of this Chapter. The population data to be used shall be the
33 latest certified county and official municipal estimates of population
34 published by the Office of State Planning. All monies remaining in this
35 portion of the 40% Fund on January 31 of each year will then be
36 distributed to each of the eligible PSAPs based on the population served
37 by the PSAP.

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

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

11 (e) In January of each year every participating PSAP will submit to the Board a
12 copy of its governing agency's approved budget detailing the PSAP's revenues and
13 expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs
14 must comply with all requests by the Board for financial information related to the
15 operation of the wireless Enhanced 911 system.

16 (f) On February 15, 2000, and every two years thereafter the Board shall report to
17 the Joint Legislative Commission on Governmental Operations and the Revenue Laws
18 Study Committee. The report shall contain complete information regarding receipts and
19 expenditures of all funds received by the Board during the period covered by the report as
20 well as the status of wireless Enhanced 911 systems in North Carolina at the time of the
21 report. The first report shall cover the period from the formation of the Board to
22 December 31, 1999. Each succeeding report shall cover the two year period of time from
23 the ending date of the previous report.

24 **"§ 62B-6. Administrative fee.**

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

27 **"§ 62B-7. Provision of services.**

28 In accordance with the FCC Order, no CMRS provider shall be required to provide
29 wireless Enhanced 911 service until such time as (i) the provider receives a request for
30 such service from the administrator of a PSAP that is capable of receiving and utilizing
31 the data elements associated with the service; (ii) funds are available pursuant to G.S.
32 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911
33 system.

34 **"§ 62B-8. Audit.**

35 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the
36 General Statutes to ensure that funds in the Wireless Fund are being managed in
37 accordance with the provisions of this Chapter and shall perform an audit at least every
38 two years. The State Auditor shall provide the audit to the Board when it meets to
39 consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be
40 reimbursed to the State Auditor by the Board.

41 **"§ 62B-9. Customer records.**

42 Each CMRS provider shall provide its ten thousand number groups to the PSAPs
43 upon request. This information shall remain the property of the disclosing CMRS

1 provider and shall be used only in providing emergency response services to 911 calls.
2 CMRS connection information obtained by PSAP personnel for public safety purposes is
3 not public information under Chapter 132 of the General Statutes. No person shall
4 disclose or use, for any purpose other than for the wireless 911 calling system,
5 information contained in the data base of the telephone network portion of a wireless 911
6 calling system established pursuant to this Chapter.

7 **"§ 62B-10. Proprietary information.**

8 All proprietary information submitted to the Board or the State Auditor shall be
9 retained in confidence. Proprietary information submitted pursuant to this Chapter shall
10 not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise
11 released to any person other than to the submitting CMRS provider, the Board, and the
12 independent, third-party auditor retained pursuant to G.S. 62B-6, without the express
13 permission of the submitting CMRS provider. Further, proprietary information shall
14 constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act,
15 Article 24 of Chapter 66 of the General Statutes. General information collected by the
16 Board or the State Auditor shall be released or published only in aggregate amounts that
17 do not identify or allow identification of numbers of subscribers or revenues attributable
18 to an individual CMRS provider.

19 **"§ 62B-11. Limitation of liability.**

20 A CMRS provider, local exchange company, service supplier, or their employees,
21 directors, officers, or agents, except in cases of wanton or willful misconduct, shall not be
22 liable for any damages in a civil action resulting from death or injury to any person or
23 from damage to property incurred by any person in connection with developing,
24 adopting, implementing, maintaining, or operating any wireless 911 system or wireless
25 Enhanced 911 system. This section shall not apply to actions arising out of the operation
26 or ownership of a motor vehicle.

27 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

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

36 Section 2. G.S. 62A-10 reads as rewritten:

37 **"§ 62A-10. Limitation of liability.**

38 A service supplier, including any telephone company and its employees, directors,
39 officers and agents, is not liable for any damages in a civil action for injuries, death, or
40 loss to persons or property incurred by any person as a result of any act or omission of a
41 service supplier or of any of its employees, directors, officers, or agents, except for
42 willful or wanton misconduct, in connection with developing, adopting, implementing,

1 maintaining, or operating any 911 system. This section shall not apply to actions arising
2 out of the operation or ownership of a motor vehicle."

3 Section 3. Chapter 146 of the General Statutes is amended by adding a new
4 section to read:

5 **"§ 146-29.2. Lease provisions for communications towers.**

6 The State may lease real property, or any interest in real property, for the purposes of
7 construction and placement of communications towers on State land or for placement of
8 antennas upon State-owned structures. The following additional requirements shall apply
9 to such leases:

10 (1) The lease shall require the lessee to permit other telecommunications
11 carriers to co-locate on the communications tower on commercially
12 reasonable terms between the lessee and the co-locating carrier until the
13 communications tower reaches its capacity. Unless the State determines
14 that co-location is not feasible at that location, the communications
15 tower shall be designed and constructed to accommodate other carriers
16 on the tower.

17 (2) The State shall, in determining the location of lands to be leased for
18 communications towers, encourage communications towers to be
19 located near other communications towers to the extent technically
20 desirable.

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

24 For purposes of this section, 'co-locate and co-location' mean the sharing of a
25 communications tower by two or more services.

26 City and county ordinances apply to leases and rentals created under this section."

27 Section 4. G.S. 105-120 is amended by adding a new subsection to read:

28 "(c1) Enhanced 911 service charge. – Gross receipts of an entity that provides local
29 telecommunications service do not include wireless Enhanced 911 service charges
30 imposed under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

31 Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

32 "(17) The amount of wireless Enhanced 911 service charges collected under
33 G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

34 Section 6. If any provision of this act or the application of this act to any
35 person or circumstance is held invalid, that invalidity shall not affect other provisions or
36 applications of this act that can be given effect without the invalid provision or
37 application, and to this end the provisions of this act are severable.

38 Section 7. Section 5 of this act is effective for taxable years beginning on or
39 after October 1, 1998. The remainder of this act is effective when it becomes law.