

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
House Committee Substitute Favorable 8/5/98

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

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

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

17 **"§ 62B-2. Wireless 911 Board.**

18 (a) There is created a Wireless 911 Board ('Board'), consisting of thirteen
19 members as follows:

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

39 A quorum of the Board shall consist of seven members. The Board shall meet upon
40 the call of the chair.

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

1 (c) There is established with the Treasurer the Wireless Fund into which the Board
2 shall deposit all revenues derived from the service charge levied on CMRS connections
3 in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate
4 fund restricted to the uses set forth in this Chapter. (d)Consistent with the provisions of
5 G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the
6 manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of
7 these revenues and advise the CMRS providers and eligible counties of such procedures
8 within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

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

11 **"§ 62B-3. Amount of service charge.**

12 (a) The Board shall levy a monthly wireless Enhanced 911 service charge on each
13 CMRS connection. The rate of such service charge shall initially be set at eighty cents
14 (80¢) per month per each CMRS connection beginning October 1, 1998. The service
15 charge shall have uniform application and shall be imposed throughout the State.

16 (b) The service charge may be adjusted by the Board beginning July 1, 2000 and
17 every two years thereafter. The Board is to set the service charge at such a rate as to
18 ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of
19 time, of the costs associated with developing and maintaining a wireless Enhanced 911
20 system. If necessary to ensure full recovery of costs for both CMRS providers and
21 PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service
22 charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-
23 5(b).

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

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

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

30 **"§ 62B-4. Management of funds.**

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

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

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

42 (d) All service charges collected by the CMRS providers, less the administrative
43 fee described in subsection (c) of this section, are to be remitted to the Wireless Fund, not

1 later than 30 days after the end of the calendar month in which such service charges are
2 collected.

3 **"§ 62B-5. Use of funds.**

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

13 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-
14 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund').
15 Money from the 40% Fund shall be used only to pay for the lease, purchase, or
16 maintenance of emergency telephone equipment for the wireless Enhanced 911 system,
17 including necessary computer hardware, software and database provisioning, and
18 nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the
19 40% Fund shall also be used to pay the rates associated with the local telephone
20 companies' charges related to the operation of the wireless Enhanced 911 system. The
21 40% Fund shall be distributed as follows:

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

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

41 (c) Sworn invoices shall be presented by CMRS providers in connection with any
42 request for reimbursement under this section. In no event shall any invoice for
43 reimbursement be approved for the payment of costs that are not related to compliance

1 with the wireless Enhanced 911 service requirements established by the FCC Order and
2 any rules and regulations which are or may be adopted by the FCC pursuant to the FCC
3 Order.

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

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

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

27 **"§ 62B-6. Administrative fee.**

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

30 **"§ 62B-7. Provision of services.**

31 In accordance with the FCC Order, no CMRS provider shall be required to provide
32 wireless Enhanced 911 service until such time as (i) the provider receives a request for
33 such service from the administrator of a PSAP that is capable of receiving and utilizing
34 the data elements associated with the service; (ii) funds are available pursuant to G.S.
35 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911
36 system.

37 **"§ 62B-8. Audit.**

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

1 **"§ 62B-9. Customer records.**

2 Each CMRS provider shall provide its ten thousand number groups to the PSAPs
3 upon request. This information shall remain the property of the disclosing CMRS
4 provider and shall be used only in providing emergency response services to 911 calls.
5 CMRS connection information obtained by PSAP personnel for public safety purposes is
6 not public information under Chapter 132 of the General Statutes. No person shall
7 disclose or use, for any purpose other than for the wireless 911 calling system,
8 information contained in the data base of the telephone network portion of a wireless 911
9 calling system established pursuant to this Chapter.

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

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

22 **"§ 62B-11. Limitation of liability.**

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

30 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

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

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

40 **"§ 62A-10. Limitation of liability.**

41 A service supplier, including any telephone company and its employees, directors,
42 officers and agents, is not liable for any damages in a civil action for injuries, death, or
43 loss to persons or property incurred by any person as a result of any act or omission of a

1 service supplier or of any of its employees, directors, officers, or agents, except for
2 willful or wanton misconduct, in connection with developing, adopting, implementing,
3 maintaining, or operating any 911 system. This section shall not apply to actions arising
4 out of the operation or ownership of a motor vehicle."

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

7 "**§ 146-29.2. Lease provisions for communications towers.**

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

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

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

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

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

28 City and county ordinances apply to communications towers and antennas authorized
29 under this section."

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

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

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

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

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

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