

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

House Committee Substitute #2 Favorable 8/12/98

Short Title: Wireless Telephone Service/Tower Act.

(Public)

Sponsors:

Referred to:

May 21, 1998

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

The General Assembly of North Carolina enacts:

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

**"CHAPTER 62B.**

**"WIRELESS TELEPHONE SERVICE.**

**"§ 62B-1. Definitions.**

As used in this Chapter:

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

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

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

12 **"§ 62B-3. Amount of service charge.**

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

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

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

22 **"§ 62B-4. Management of funds.**

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

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

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

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

38 **"§ 62B-5. Use of funds.**

39 (a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-  
40 2(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted  
41 to the Board, for the actual costs incurred by the CMRS providers in complying with the  
42 wireless 911 requirements established by the FCC Order and any rules and regulations  
43 which are or may be adopted by the FCC pursuant to the FCC Order, including costs and

1 expenses incurred for designing, upgrading, purchasing, leasing, programming, installing,  
2 testing, or maintaining all necessary data, hardware, and software required in order to  
3 provide such service as well as the recurring and nonrecurring costs of operating such  
4 service. All costs and expenses must be commercially reasonable.

5 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-  
6 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund').  
7 Money from the 40% Fund shall be used only to pay for the lease, purchase, or  
8 maintenance of emergency telephone equipment for the wireless Enhanced 911 system,  
9 including necessary computer hardware, software and database provisioning, and  
10 nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the  
11 40% Fund shall also be used to pay the rates associated with the local telephone  
12 companies' charges related to the operation of the wireless Enhanced 911 system. 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. However,  
24 monthly distribution shall be made only to those PSAPs that have  
25 complied with the provisions of this Chapter. Distribution to each  
26 eligible PSAP will begin the month following its compliance with the  
27 provisions of this Chapter. The population data to be used shall be the  
28 latest certified county and official municipal estimates of population  
29 published by the Office of State Planning. All monies remaining in this  
30 portion of the 40% Fund on January 31 of each year will then be  
31 distributed to each of the eligible PSAPs based on the population served  
32 by the PSAP.

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

39 (d) In no event shall any invoice for reimbursement be approved for payment of  
40 costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the  
41 service charges remitted by such CMRS provider unless prior approval for such  
42 expenditures is received from the Board. If the total amount of invoices submitted to the  
43 Board and approved for payment exceeds the amount in the Wireless Fund in any month,

1 CMRS providers that have invoices approved for payment shall receive a pro rata share  
2 of the Wireless Fund, based on the relative amount of their approved invoices available  
3 that month, and the balance of the payments will be carried over to the following month  
4 or months and shall include interest at the rate set out in G.S. 24-1 until all of the  
5 approved payments are made.

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

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

19 **"§ 62B-6. Administrative fee.**

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

22 **"§ 62B-7. Provision of services.**

23 In accordance with the FCC Order, no CMRS provider shall be required to provide  
24 wireless Enhanced 911 service until such time as (i) the provider receives a request for  
25 such service from the administrator of a PSAP that is capable of receiving and utilizing  
26 the data elements associated with the service; (ii) funds are available pursuant to G.S.  
27 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911  
28 system.

29 **"§ 62B-8. Audit.**

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

36 **"§ 62B-9. Customer records.**

37 Each CMRS provider shall provide its 10,000 number groups to the PSAPs upon  
38 request. This information shall remain the property of the disclosing CMRS provider and  
39 shall be used only in providing emergency response services to 911 calls. CMRS  
40 connection information obtained by PSAP personnel for public safety purposes is not  
41 public information under Chapter 132 of the General Statutes. No person shall disclose  
42 or use, for any purpose other than for the wireless 911 calling system, information

1 contained in the database of the telephone network portion of a wireless 911 calling  
2 system established pursuant to this Chapter.

3 **"§ 62B-10. Proprietary information.**

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

15 **"§ 62B-11. Limitation of liability.**

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

23 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

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

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

33 **"§ 62A-10. Limitation of liability.**

34 A service supplier, including any telephone company and its employees, directors,  
35 officers and agents, is not liable for any damages in a civil action for injuries, death, or  
36 loss to persons or property incurred by any person as a result of any act or omission of a  
37 service supplier or of any of its employees, directors, officers, or agents, except for  
38 willful or wanton misconduct, in connection with developing, adopting, implementing,  
39 maintaining, or operating any 911 system. This section shall not apply to actions arising  
40 out of the operation or ownership of a motor vehicle."

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

43 **"§ 146-29.2. Lease provisions for communications towers.**

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

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

12           (2) The State shall, in determining the location of lands to be leased for  
13 communications towers, encourage communications towers to be  
14 located near other communications towers to the extent technically  
15 desirable.

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

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

21       City and county ordinances apply to communications towers and antennas authorized  
22 under this section."

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

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

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

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

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

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