

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

Sixth Edition Engrossed 9/2/98

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. The rate of such service charge shall initially be set at eighty cents
15 (80¢) per month per each CMRS connection beginning October 1, 1998. The service
16 charge shall have uniform application and shall be imposed throughout the State.

17 (b) The service charge may be adjusted by the Board beginning July 1, 2000 and
18 every two years thereafter. The Board is to set the service charge at such a rate as to
19 ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of
20 time, of the costs associated with developing and maintaining a wireless Enhanced 911
21 system. If necessary to ensure full recovery of costs for both CMRS providers and
22 PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service
23 charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-
24 5(b).

25 (c) The service charge shall not exceed eighty cents (80¢) per month.

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

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

31 **"§ 62B-4. Management of funds.**

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

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

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

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

5 **"§ 62B-5. Use of funds.**

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

15 (b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-
16 2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund').
17 Money from the 40% Fund shall be used only to pay for the lease, purchase, or
18 maintenance of emergency telephone equipment for the wireless Enhanced 911 system,
19 including necessary computer hardware, software and database provisioning, and
20 nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the
21 40% Fund shall also be used to pay the rates associated with the local telephone
22 companies' charges related to the operation of the wireless Enhanced 911 system. The
23 40% Fund shall be distributed as follows:

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

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

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

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

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

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

30 **"§ 62B-6. Administrative fee.**

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

33 **"§ 62B-7. Provision of services.**

34 In accordance with the FCC Order, no CMRS provider shall be required to provide
35 wireless Enhanced 911 service until such time as (i) the provider receives a request for
36 such service from the administrator of a PSAP that is capable of receiving and utilizing
37 the data elements associated with the service; (ii) funds are available pursuant to G.S.
38 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911
39 system.

40 **"§ 62B-8. Audit.**

41 The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the
42 General Statutes to ensure that funds in the Wireless Fund are being managed in
43 accordance with the provisions of this Chapter and shall perform an audit at least every

1 two years. The State Auditor shall provide the audit to the Board when it meets to
2 consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be
3 reimbursed to the State Auditor by the Board.

4 **"§ 62B-9. Customer records.**

5 Each CMRS provider shall provide its 10,000 number groups to the PSAPs upon
6 request. This information shall remain the property of the disclosing CMRS provider and
7 shall be used only in providing emergency response services to 911 calls. CMRS
8 connection information obtained by PSAP personnel for public safety purposes is not
9 public information under Chapter 132 of the General Statutes. No person shall disclose
10 or use, for any purpose other than for the wireless 911 calling system, information
11 contained in the database of the telephone network portion of a wireless 911 calling
12 system established pursuant to this Chapter.

13 **"§ 62B-10. Proprietary information.**

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

25 **"§ 62B-11. Limitation of liability.**

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

33 **"§ 62B-12. Misuse of wireless 911 system; penalty.**

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

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

43 **"§ 62A-10. Limitation of liability.**

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

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

10 **"§ 146-29.2. Lease provisions for communications towers.**

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

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

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

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

29 (4) The State shall not lease lands of the State Parks System for such
30 purposes.

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

33 City and county ordinances apply to communications towers and antennas authorized
34 under this section."

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

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

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

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

42 Section 6. 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 7. Section 5 of this act is effective for taxable years beginning on or
4 after October 1, 1998. The remainder of this act is effective when it becomes law.