

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**HOUSE BILL 1521**

Short Title: Conform Mobile Telecommunications Sourcing. (Public)

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Sponsors: Representatives Allen, Luebke (Primary Sponsors); Buchanan, Hill, Holliman, Jarrell, McComas, Wainwright, Alexander, Cox, Edwards, Gibson, Hurley, and Womble.

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Referred to: Finance.

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June 5, 2002

A BILL TO BE ENTITLED

1  
2 AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS  
3 SERVICES TO THE FEDERAL MOBILE TELECOMMUNICATIONS  
4 SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR  
5 OTHER TELECOMMUNICATIONS SERVICES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-164.3 is amended by adding a new subdivision to  
8 read:

9 "**§ 105-164.3. Definitions.**

10 The following definitions apply in this Article:

11 ...

12 (26a) Place of primary use. – The street address representative of where the  
13 use of a customer's telecommunications service primarily occurs. The  
14 street address must be the customer's residential street address or  
15 primary business street address. For mobile telecommunications  
16 service, the street address must be within the licensed service area of  
17 the service provider. If the customer who contracted with the  
18 telecommunications provider for the telecommunications service is not  
19 the end user of the service, the end user is considered the customer for  
20 the purpose of determining the place of primary use."

21 **SECTION 2.** G.S. 105-164.3(27) reads as rewritten:

22 "(27) Prepaid telephone calling ~~arrangement~~-Service. – A right that meets  
23 all of the following requirements:

- 24 a. Authorizes the exclusive purchase of telecommunications  
25 service.  
26 b. Must be paid for in advance.

1 c. Enables the origination of calls by means of an access number,  
2 authorization code, or another similar means, regardless of  
3 whether the access number or authorization code is manually or  
4 electronically dialed.

5 d. Is sold in units or dollars whose number or dollar value declines  
6 with use and is known on a continuous basis."

7 **SECTION 3.** G.S. 105-164.3(39) is repealed.

8 **SECTION 4.** G.S. 105-164.4(a)(4d) reads as rewritten:

9 "(4d) The sale or recharge of prepaid telephone calling ~~arrangements~~ service  
10 is taxable at the general rate of tax. The tax applies regardless of  
11 whether tangible personal property, such as a card or a telephone, is  
12 transferred. Prepaid telephone calling ~~arrangements~~ service is taxable  
13 at the point of sale instead of at the point of use and is sourced in  
14 accordance with G.S. 105-164.4B. Prepaid telephone calling service  
15 taxed under this subdivision are ~~is~~ not subject to tax as a  
16 telecommunications service.

17 ~~Prepaid telephone calling arrangements are taxable at the point of~~  
18 ~~sale instead of at the point of use. If the sale or recharge of a prepaid~~  
19 ~~telephone calling arrangement does not take place at a retailer's place~~  
20 ~~of business, the sale or recharge is considered to have taken place at~~  
21 ~~one of the following:~~

22 a. ~~The customer's shipping address, if an item of tangible personal~~  
23 ~~property is shipped to the customer as part of the transaction.~~

24 b. ~~The customer's billing address or, for mobile~~  
25 ~~telecommunications service, the customer's service address, if~~  
26 ~~no tangible personal property is shipped to the customer as part~~  
27 ~~of the transaction."~~

28 **SECTION 5.** G.S. 105-164.4B(a)(3) reads as rewritten:

29 "(a) Principles. – The following principles apply in determining where to source  
30 the sale of a product. These principles apply regardless of the nature of the product.

31 ...

32 (3) Delivery address unknown. – When a seller of a product does not  
33 know the address where a product is received, the sale is sourced to the  
34 first address or location listed in this ~~subsection~~ subdivision that is  
35 known to the seller:

36 a. The business or home address of the purchaser.

37 b. The billing address of the ~~purchaser~~ purchaser or, if the product  
38 is a prepaid telephone calling service that authorizes the  
39 purchase of mobile telecommunications service, the location  
40 associated with the mobile telephone number.

41 c. The address of the seller."

42 **SECTION 6.** G.S. 105-164.4C(a) reads as rewritten:

43 "(a) General. – The gross receipts derived from providing telecommunications  
44 service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). ~~Mobile~~

1 ~~telecommunications service is provided in this State if the customer's service address is~~  
2 ~~in this State and the call originates or terminates in this State. Telecommunications~~  
3 service is provided in this State if the service is sourced to this State under the sourcing  
4 principles set out in subsections (a1) and (a2) of this section. The definitions and  
5 provisions of the federal Mobile Telecommunications Sourcing Act apply to the  
6 sourcing and taxation of mobile telecommunications services."

7 **SECTION 7.** G.S. 105-164.4C(b)(1) reads as rewritten:

8 "(b) Included in Gross Receipts. – Gross receipts derived from  
9 telecommunications service include the following:

10 (1) Receipts from ~~local, intrastate, interstate, toll, private, and mobile~~  
11 ~~telecommunications service.~~ flat rate service, service provided on a  
12 call-by-call basis, mobile telecommunications service, and private  
13 telecommunications service.

14 ..."

15 **SECTION 8.** G.S. 105-164.4C(c)(2) reads as rewritten:

16 "(c) Excluded From Gross Receipts. – Gross receipts derived from  
17 telecommunications service do not include any of the following:

18 ...

19 (2) Telecommunications services that are resold as part of a prepaid  
20 telephone calling ~~arrangement.~~ service.

21 ..."

22 **SECTION 9.** G.S. 105-164.4C is amended by adding two new subsections  
23 to read:

24 "(a1) General Sourcing Principles. – The following general sourcing principles  
25 apply to telecommunications services. If a service falls within one of the exceptions set  
26 out in subsection (a2) of this section, the service is sourced in accordance with the  
27 exception instead of the general principle.

28 (1) Flat rate. – A telecommunications service that is not sold on a call-by-  
29 call basis is sourced to this State if the place of primary use is in this  
30 State.

31 (2) General call-by-call. – A telecommunications service that is sold on a  
32 call-by-call basis and is not a postpaid calling service is sourced to this  
33 State in the following circumstances:

34 a. The call both originates and terminates in this State.

35 b. The call either originates or terminates in this State and the  
36 telecommunications equipment from which the call originates  
37 or terminates and to which the call is charged is located in this  
38 State. This applies regardless of where the call is billed or paid.

39 (3) Postpaid. – A postpaid calling service is sourced in accordance with  
40 either of the following principles, at the election of the seller:

41 a. The principle set out in subdivision (a1)(2) of this section for  
42 call-by-call service.

43 b. The origination point of the telecommunications signal as first  
44 identified by either the seller's telecommunications system or, if

1                   the system used to transport the signal is not the seller's system,  
2                   by information the seller receives from its service provider.

3       (a2) Sourcing Exceptions. – The following telecommunications services and  
4 products are sourced in accordance with the principles set out in this subsection:

- 5           (1) Mobile. – Mobile telecommunications service is sourced to the place  
6 of primary use, unless the service is authorized by a prepaid telephone  
7 calling service or is air-to-ground radiotelephone service. Air-to-  
8 ground radiotelephone service is a postpaid calling service that is  
9 offered by an aircraft common carrier to passengers on its aircraft and  
10 enables a telephone call to be made from the aircraft. The sourcing  
11 principle in this subdivision applies to a service provided as an adjunct  
12 to mobile telecommunications service if the charge for the service is  
13 included within the term 'charges for mobile telecommunications  
14 services' under the federal Mobile Telecommunications Sourcing Act.
- 15           (2) Prepaid. – Prepaid telephone calling service is sourced in accordance  
16 with G.S. 105-164.4B.
- 17           (3) Private. – Private telecommunications service is sourced in accordance  
18 with subsection (e) of this section."

19       **SECTION 10.** G.S. 105-164.4C(e) reads as rewritten:

20       "(e) Interstate-Private Line. – The gross receipts derived from interstate-private  
21 telecommunications service are taxable-sourced as follows:

- 22           (1) One hundred percent (100%) of the charge imposed at each channel  
23 termination point in this State. If all the customer's channel termination  
24 points are located in this State, the service is sourced to this State.
- 25           (2) One hundred percent (100%) of the charge imposed for the total  
26 channel mileage between each channel termination point in this  
27 State. If all the customer's channel termination points are not located in  
28 this State and the service is billed on the basis of channel termination  
29 points, the charge for each channel termination point located in this  
30 State is sourced to this State.
- 31           (3) Fifty percent (50%) of the charge imposed for the total channel  
32 mileage between the first channel termination point in this State and  
33 the nearest channel termination point outside this State. If all the  
34 customer's channel termination points are not located in this State and  
35 the service is billed on the basis of channel mileage, the following  
36 applies:
- 37           a. A charge for a channel segment between two channel  
38 termination points located in this State is sourced to this State.
- 39           b. Fifty percent (50%) of a charge for a channel segment between  
40 a channel termination point located in this State and a channel  
41 termination point located in another state is sourced to this  
42 State.
- 43           (4) If all the customer's channel termination points are not located in this  
44 State and the service is not billed on the basis of channel termination

1 points or channel mileage, a percentage of the charge for the service is  
2 sourced to this State. The percentage is determined by dividing the  
3 number of channel termination points in this State by the total number  
4 of channel termination points."

5 **SECTION 11.** G.S. 105-164.4C(h) reads as rewritten:

6 "(h) Definitions. – The following definitions apply in this section:

7 (1) ~~Call center. – Defined in G.S. 105-164.27A.~~

8 (2) ~~Interstate telecommunications service. – Telecommunications service~~  
9 ~~that originates or terminates in this State, but does not both originate~~  
10 ~~and terminate in this State, and is charged to a service address in this~~  
11 ~~State.~~

12 (3) ~~Intrastate telecommunications service. – Telecommunications service~~  
13 ~~that both originates and terminates in this State.~~

14 (4) ~~Local telecommunications service. – Telecommunications service that~~  
15 ~~provides access to a local telephone network and enables a user to~~  
16 ~~communicate with substantially everyone who has a telephone or~~  
17 ~~radiotelephone station that is part of the local telephone network.~~

18 (5) ~~Mobile telecommunications service. – Defined in G.S. 105-164.3.~~

19 (6) ~~Private telecommunications service. – Telecommunications service that~~  
20 ~~entitles a subscriber of the service to exclusive or priority use of a~~  
21 ~~communications channel or group of channels.~~

22 (7) ~~Service address. – Defined in G.S. 105-164.3.~~

23 (8) ~~Telecommunications service. – Defined in G.S. 105-164.3.~~

24 (9) ~~Toll telecommunications service. – Any of the following:~~

25 a. ~~A service for which there is a toll charge that varies in amount~~  
26 ~~with the distance or elapsed transmission time of each~~  
27 ~~individual communication.~~

28 b. ~~A service that entitles the subscriber, upon payment of a~~  
29 ~~periodic charge, determined as a flat amount or on the basis of~~  
30 ~~total elapsed transmission time, to an unlimited number of~~  
31 ~~communications to or from all or a substantial portion of those~~  
32 ~~who have a telephone or radiotelephone station in an area~~  
33 ~~outside the local telephone network.~~

34 (1) Call-by-call basis. – A method of charging for a telecommunications  
35 service whereby the price of the service is measured by individual  
36 calls.

37 (2) Call center. – Defined in G.S. 105-164.27A.

38 (3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

39 (4) Place of primary use. – Defined in G.S. 105-164.3.

40 (5) Postpaid calling service. – A telecommunications service that is  
41 charged on a call-by-call basis and is obtained by making payment at  
42 the time of the call either through the use of a credit or payment  
43 mechanism, such as a bank card, travel card, credit card, or debit card,  
44 or by charging the call to a telephone number that is not associated

1 with the origination or termination of the telecommunications service.  
2 A postpaid calling service includes a service that meets all the  
3 requirements of a prepaid telephone calling service, except the  
4 exclusive use requirement.

5 (6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

6 (7) Private telecommunications service. – Telecommunications service  
7 that entitles a subscriber of the service to exclusive or priority use of a  
8 communications channel or group of channels.

9 (8) Telecommunications service. – Defined in G.S. 105-164.3."

10 **SECTION 12.** G.S. 105-467(b)(6) reads as rewritten:

11 "(6) The sales price of prepaid telephone calling ~~arrangements~~service  
12 taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

13 **SECTION 13.** Subdivision (6) of the first paragraph of Section 4 of Chapter  
14 1096 of the 1967 Session Laws reads as rewritten:

15 "(6) The sales price of prepaid telephone calling ~~arrangements~~service  
16 taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

17 **SECTION 14.** G.S. 105-164.4C(a1)(3), as enacted by this act, reads as  
18 rewritten:

19 "(3) ~~Post-paid.~~Postpaid. – A ~~post-paid~~postpaid calling service is sourced ~~in~~  
20 ~~accordance with either of the following principles, at the election of~~  
21 ~~the seller:~~

22 a. ~~The principle set out in subdivision (a1)(2) of this section for~~  
23 ~~call by call service.~~

24 b. ~~The~~  
25 to the origination point of the telecommunications signal as first  
26 identified by either the seller's telecommunications system or, if the  
27 system used to transport the signal is not the seller's system, by  
28 information the seller receives from its service provider."

29 **SECTION 15.** G.S. 62A-21(4) reads as rewritten:

30 "(4) "CMRS connection" means each mobile handset telephone number  
31 assigned to a CMRS customer with a ~~billing address~~place of primary  
32 use in North Carolina."

33 **SECTION 16.** G.S. 105-164.4C(e)(4), as enacted by Section 10 of this act,  
34 and Section 14 of this act become effective January 1, 2004, and apply to taxable  
35 services reflected on bills dated on or after January 1, 2004. The remainder of this act  
36 becomes effective August 1, 2002, and applies to taxable services reflected on bills  
37 dated after August 1, 2002.