

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 511

Short Title: Cities/Communications Service. (Public)

Sponsors: Senators Hartsell, Newton, Meredith; Atwater and Bingham.

Referred to: Rules and Operations of the Senate.

April 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY PROVIDING NEW AND
3 ENHANCED COMMUNICATIONS SERVICES TO THE PUBLIC AND
4 ENCOURAGING THE USE OF PUBLIC-PRIVATE PARTNERSHIPS IN PROVIDING
5 COMMUNICATIONS SERVICES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 160A of the General Statutes is amended by adding a new
8 Article to read as follows:

9 "Article 16A.

10 "Provision of Communications Service by Cities.

11 **"§ 160A-340. Definitions.**

12 The following definitions apply in this Article:

- 13 (1) City-owned communications service provider. – A city that provides
14 communications service using a communications network, whether directly,
15 indirectly, or through an interlocal agreement or a joint agency.
16 (2) Communications network. – A wired or wireless network for the provision
17 of communications service.
18 (3) Communications service. – The provision of cable, video programming,
19 telecommunications, broadband, or high-speed Internet access service to the
20 public, or any sector of the public, for a fee, regardless of the technology
21 used to deliver the service. The terms "cable service," "telecommunications
22 service," and "video programming service" have the same meanings as in
23 G.S. 105-164.3.
24 (4) Firm. – A communications service provider that is not a city providing
25 communications service pursuant to G.S. 160A-340.1 to its own residents.
26 (5) High-Speed Internet access service. – Internet access service with
27 transmission speeds that equal or exceed requirements for basic broadband
28 service as may be defined by the Federal Communications Commission from
29 time to time.
30 (6) Interlocal agreement. – An agreement between units of local government as
31 authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.
32 (7) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter
33 160A of the General Statutes.

34 **"§ 160A-340.1. City-owned communications service provider requirements.**



1 (a) A city may become a city-owned communications service provider in accordance
2 with the provisions of this Article. A city-owned communications service provider shall
3 comply with all of the following:

4 (1) The city shall establish one or more separate enterprise funds for the
5 provision of communications service in accordance with the Local
6 Government Budget and Fiscal Control Act, being Chapter 159 of the
7 General Statutes.

8 (2) The city shall provide other communications service providers access to
9 rights-of-way, poles, and conduits in accordance with G.S. 62-55.

10 (3) The city shall not subsidize the provision of communications service with
11 funds from any other public enterprise unless the communications service is
12 directly related to or included in the services provided by the other public
13 enterprise.

14 (c) Prior to offering communications service as provided in this Article, a city shall
15 comply with the request for proposals requirements provided in G.S. 160A-340.2. If no
16 contract is awarded under G.S. 160A-340.2, the city may proceed under subsections (d) and (e)
17 of this section.

18 (d) The city shall hold at least two public hearings, which shall be held no fewer than
19 30 days apart, for the purpose of gathering information and comment on the proposal. Firms
20 shall be permitted to participate in the public hearings by presenting testimony and
21 documentation relevant to their service offerings and the city's plans. A notice for each hearing
22 shall be published once a week for two consecutive weeks in a newspaper of general circulation
23 in the county in which the city is predominantly located. The notice shall also be provided to
24 the North Carolina Utilities Commission, which shall post the notice on its Web site. Any
25 feasibility study or public survey conducted or prepared by the city in connection with the
26 proposed communications service project is a public record as defined by G.S. 132-1 and shall
27 be made available to the public in the office of the city clerk prior to the date of the first public
28 hearing required by this section.

29 (e) The city council may take action to proceed with the city-owned communications
30 service project at any regular meeting held more than 30 days after the final public hearing
31 required under subsection (d) of this section.

32 (f) A city shall not be required to obtain voter approval under G.S. 160A-321 prior to
33 the sale or discontinuance of a city communications network.

34 **"§ 160A-340.2. Public-private partnerships for communications service.**

35 (a) In recognition of (i) the complex and innovative nature of communications services;
36 (ii) the desirability of a single point of responsibility for contracts that may include
37 combinations of the purchase of equipment, the design, installation, operation, and maintenance
38 of communications networks, and arrangements for the use of public infrastructure; and (iii) the
39 desire to promote public-private partnerships that will best serve the public purpose of
40 providing and enhancing communications services, a city may contract with a firm in order to
41 expand the area or population served by a communications service available to the public or to
42 make an enhanced type or level of communications service available to the public in
43 accordance with this subsection.

44 (b) To contract with a firm as provided in subsection (a) of this section, a city shall
45 issue a request for proposals which specifies the nature and scope of the requested
46 communications service, the area in which the communications service is to be provided, any
47 specifications and performance standards, and information as to the city's proposed
48 participation in providing equipment, infrastructure, or other aspects of the communications
49 service. The city may prescribe the form and content of proposals and may require that
50 proposals contain sufficiently detailed information to allow for an objective evaluation of

1 proposals using the factors stated in subsection (d) of this section. At a minimum, each
2 proposal shall contain the following:

- 3 (1) Information regarding the proposer's experience and qualifications to
4 perform the requirements of the proposal.
- 5 (2) Information demonstrating the proposer's ability to secure the financing
6 needed to perform the requirements of the proposal.
- 7 (3) Information demonstrating the proposer's ability to provide staffing,
8 implement work tasks, and carry out all other responsibilities necessary to
9 perform the requirements of the proposal.
- 10 (4) Information clearly identifying and specifying all elements of the cost of the
11 proposal for the term of the proposed contract, including the cost of (i) the
12 purchase or lease of equipment and supplies; (ii) design, installation,
13 operation, management, and maintenance of any system; and (iii) any
14 proposed services.
- 15 (5) Any other information the city determines has a material bearing on its
16 ability to evaluate the proposal.

17 (c) The city shall provide notice that it is requesting proposals by all of the following
18 methods:

- 19 (1) By mailing a notice of request for proposals to each firm that has obtained a
20 license or permit to use the public rights-of-way in the city to provide a
21 communications service within the city by depositing the notice in the U.S.
22 mail at least 30 days prior to the date specified for the opening of proposals.
23 In identifying firms, the city may rely upon lists provided by the Office of
24 the Secretary of State and the North Carolina Utilities Commission.
- 25 (2) By posting a notice of request for proposals on the city's Web site at least 30
26 days before the time specified for the opening of proposals.
- 27 (3) By publishing a notice of request for proposals in a newspaper of general
28 circulation in the county in which the city is predominantly located at least
29 30 days before the time specified for the opening of proposals.

30 The notice shall state the time and place where plans and specifications for the proposed
31 service may be obtained and the time and place for opening proposals. Any notice given under
32 this subsection shall reserve to the city the right to reject any or all proposals.

33 (d) All proposals shall be sealed and shall be opened in public. In evaluating proposals,
34 the city may consider any relevant factors, including system design, system reliability,
35 operational experience, operational costs, compatibility with existing systems and equipment,
36 and emerging technology. The city may negotiate aspects of any proposal with any responsible
37 proposer with regard to the factors listed in this subsection to determine which proposal is the
38 most responsive. The city's determination of most responsive proposer shall be final.

39 (e) The city may negotiate a contract with the most responsive proposer for the
40 performance of communications service specified in the request for proposals. All contracts
41 entered into pursuant to this section shall be approved and awarded by the governing body of
42 the city.

43 (f) If the city is unable to successfully negotiate the terms of a contract with the most
44 responsive proposer within 60 days of the opening of the proposals, the city may proceed to
45 negotiate with the firm determined to be the next most responsive proposer if such a proposer
46 exists. If the city is unable to successfully negotiate the terms of a contract with the next most
47 responsive proposer within 60 days, the city may proceed under G.S. 160A-340.1(d) and
48 G.S. 160A-340.1(e).

49 **"§ 160A-340.3. Exemptions.**

50 The provisions of G.S. 160A-340.1 and G.S. 160A-340.2 shall not apply to any of the
51 following:

- 1 (1) The provision of any communications service or communications network
2 by a city that is used for public safety purposes.
- 3 (2) The provision of any communications service or communications network
4 by a city that is used only for the internal use of the city or for
5 communications between the city and another public entity.
- 6 (3) The provision of any communications service or communications network
7 by a city if the city was providing any communications service or
8 communications network on or before January 1, 2011.
- 9 (4) The provision of any communications service or communications network
10 by a city if the city has contracted with an outside party for a feasibility
11 study for the service or network on or before January 1, 2011.
- 12 (5) The provision of any communications service or communications network
13 by a city that is financed in whole or in part by a federal grant or loan.
- 14 (6) The provision of any communications service or communications network
15 by a city if the service or network is part of Google's Fiber Project."

16 **SECTION 2.** This act is effective when it becomes law and applies to the provision
17 of communications service by a city or joint agency under Part 1 of Article 20 of Chapter 160A
18 of the General Statutes on or after that date.