

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1252*

Short Title: Level Playing Field/Cities/Service Providers. (Public)

Sponsors: Representatives Harrell, Jones, Avila, Tillis (Primary Sponsors); Bell, Cole, Crawford, Current, Dollar, Earle, Guice, Gulley, Hilton, Holliman, Johnson, Justus, Lucas, Neumann, Sager, and Steen.

Referred to: Science and Technology, if favorable, Public Utilities, if favorable, Finance.

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REGULATE COMPETITION BETWEEN LOCAL GOVERNMENT AND PRIVATE BUSINESS BY REQUIRING CITIES THAT PROVIDE COMMUNICATIONS SERVICES TO THE PUBLIC TO COMPLY WITH LAWS APPLICABLE TO PRIVATE PROVIDERS, TO ESTABLISH SEPARATE ENTERPRISE FUNDS, TO NOT CROSS-SUBSIDIZE COMMUNICATIONS SERVICE WITH OTHER GOVERNMENTAL FUNDS, TO IMPUTE THE COSTS THAT WOULD BE INCURRED BY PRIVATE PROVIDERS, TO ANNUALLY REMIT TO THE CITY'S GENERAL FUND THE COSTS THAT WOULD BE INCURRED BY PRIVATE PROVIDERS, AND TO PREPARE AN ANNUAL AUDIT OF COMPETITIVE ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 16 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"§ 160A-329. City owned or operated communications service.

(a) Definitions. – The following definitions apply in this section:

- (1) Communications network. – A wired or wireless network for the provision of communications service.
- (2) Communications service. – The provision of cable, telephone, broadband, or Internet access service to the public or any sector of the public, regardless of the technology used to deliver the service.
- (3) High-speed Internet. – Internet access with transmission speeds that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.

(b) Requirements. – A city that operates a public enterprise under G.S. 160A-311 that provides communications services to the public for a fee over a communications network that is directly or indirectly owned or operated by or provides a financial benefit to the city or another city shall meet the following conditions with respect to the provision of communications service:

- (1) Comply with all local, State, and federal laws, regulations, or other requirements that would apply to the communications services if provided by a private communications service provider.
- (2) Establish a separate enterprise fund for communications service and shall use this fund to separately account for revenues, expenses, property, and



- 1 source of investment dollars associated with the provision of
2 communications service.
- 3 (3) Shall not subsidize the cost of providing communications service with funds
4 from any other noncommunications service, operation, or other revenue
5 source, including any funds or revenue generated from electric, gas, water,
6 sewer, or garbage services. In complying with this requirement, a city owned
7 communications service provider shall not price any communications service
8 below the cost of providing the service.
- 9 (4) Shall, in calculating the cost incurred and in the rates to be charged for the
10 provision of communications services, impute: (i) the cost of the capital
11 component that is equivalent to the cost of capital available to private
12 communications service providers in the same locality; and (ii) an amount
13 equal to all taxes, including property taxes, licenses, fees, and other
14 assessments that would apply to a private communications service provider
15 including federal, state, and local taxes; rights-of-way, franchise, consent, or
16 administrative fees; and pole attachment fees.
- 17 (5) Shall annually remit to the general fund of the city an amount equivalent to
18 all taxes or fees a private communications service provider would be
19 required to pay the city or county in which the city is located, including any
20 applicable tax refunds received by the city owned communications service
21 provider because of its government status and a sum equal to the amount of
22 property tax that would have been due if the city owned communications
23 service provider were a private communications service provider.
- 24 (6) Shall prepare and publish an independent annual audit in accordance with
25 generally accepted accounting principles that reflect the fully allocated cost
26 of providing the communications service, including all direct and indirect
27 costs. The indirect costs shall include amounts for rights-of-way, franchise,
28 consent, or administrative fees, regulatory fees, occupation taxes, pole
29 attachment fees, and ad valorem taxes. The annual accounting shall reflect
30 any direct or indirect subsidies received by the city owned communications
31 service provider, and any buildings, equipment, vehicles, and personnel that
32 are jointly used with other city departments shall be fully allocated to the
33 city owned communications service. The North Carolina Utilities
34 Commission may adopt rules and regulations to ensure compliance with the
35 provisions of this subdivision, and all records demonstrating compliance
36 shall be filed with the North Carolina Utilities Commission and made
37 available for public inspection and copying.
- 38 (c) Exemptions. – :
- 39 (1) The provisions of this section shall not apply to:
- 40 a. The purchase, lease, construction, or operation of facilities by a city
41 to provide communications services within the city's boundaries for
42 the city's internal governmental purposes.
- 43 b. Any city whose jurisdiction is not served by a private provider of
44 high-speed Internet service or whose jurisdiction does not have
45 access to high-speed Internet service. For purposes of this subsection,
46 a city shall be determined to have access to high-speed Internet
47 service if high-speed Internet service is available to at least eighty
48 percent (80%) of the households in the city.
- 49 c. The provision of communications service by a city to the extent the
50 service is limited to areas of the city that are not served by any
51 private communications service provider.

1 (2) The provisions of subsections (b)(3) through (b)(6) of this section shall not
2 apply to communications services duly authorized by a city on or before
3 March 1, 2009, and, in fact, offered to the public on or before September 1,
4 2009.

5 (d) Injunctive Relief. – Any party aggrieved by the actions of a city owned
6 communications service provider may apply to a court of competent jurisdiction for an
7 injunction to enforce the provisions of this section."

8 **SECTION 2.** G.S. 62-3(23) is amended by adding the following new
9 sub-subdivision to read:

10 "l. The term "public utility" shall include any city providing service as
11 defined in G.S. 62-3(23)a.6, and subject to regulation under
12 G.S. 160A-329."

13 **SECTION 3.** Any city that is designated as a public utility under Chapter 62 of the
14 General Statutes when this act becomes law shall not be subject to the provisions of this act
15 with respect to any of its operations that are authorized by that Chapter.

16 **SECTION 4.** If any provision of this act or the application thereof to any person or
17 circumstance is held invalid, the invalidity shall not affect other provisions or applications of
18 this act which can be given effect without the invalid provision or application, and to that end
19 the provisions of this act are declared to be severable.

20 **SECTION 5.** This act is effective when it becomes law and applies to the provision
21 of communications services by a city owned communications services provider after that date.