A BILL TO BE ENTITLED
AN ACT TO PROTECT JOBS AND INVESTMENT BY REGULATING LOCAL
GOVERNMENT COMPETITION WITH PRIVATE BUSINESS.

Whereas, certain cities in the State have chosen to compete with private providers of communications services; and
Whereas, these cities have been permitted to enter into competition with private providers as a result of a decision of the North Carolina Court of Appeals rather than legislation enacted by the General Assembly; and
Whereas, the communications industry is an industry of economic growth and job creation; and
Whereas, as expressed in G.S. 66-58, known as the Umstead Act, it is against the public policy of this State for any unit, department, or agency of the State, or any division or subdivision of a unit, department, or agency of the State to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the State; and
Whereas, to protect jobs and to promote investment, it is necessary to ensure that the State does not indirectly subsidize competition with private industry through actions by cities and to ensure that where there is competition between the private sector and the State, directly or through its subdivisions, it exists under a framework that does not discourage private investment and job creation; Now, therefore,
The General Assembly of North Carolina enacts:

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

"Article 16A. Provision of Communications Service by Cities.

The following definitions apply in this Article:

(1) City-owned communications service provider. – A city that provides communications service using a communications network, whether directly, indirectly, or through an interlocal agreement or a joint agency.
(2) Communications network. – A wired or wireless network for the provision of communications service.
(3) Communications service. – The provision of cable, video programming, telecommunications, broadband, or high-speed Internet access service to the public, or any sector of the public, for a fee, regardless of the technology used to deliver the service. The terms "cable service," "telecommunications
service," and "video programming service" have the same meanings as in G.S. 105-164.3.

(4) High-speed Internet access service. – Internet access service with transmission speeds that are consistent with requirements for basic broadband service as defined by the Federal Communications Commission.

(5) Interlocal agreement. – An agreement between units of local government as authorized by Part 1 of Article 20 of Chapter 160A of the General Statutes.

(6) Joint agency. – A joint agency created under Part 1 of Article 20 of Chapter 160A of the General Statutes.

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

(a) A city-owned communications service provider shall meet all of the following requirements:

(1) Comply with all local, State, and federal laws, regulations, or other requirements that would apply to the communications service if provided by a private communications service provider.

(2) In accordance with the provisions of the Local Government Finance Act, being Chapter 159 of the General Statutes, establish one or more separate enterprise funds for the provision of communications service, use the enterprise funds to separately account for revenues, expenses, property, and source of investment dollars associated with the provision of communications service, and prepare and publish an independent annual report and audit in accordance with generally accepted accounting principles that reflect the fully allocated cost of providing the communications service, including all direct and indirect costs.

(3) Provide communications service only within the jurisdictional boundaries of the city providing the communications service.

(4) Shall not, directly or indirectly, under the powers of a city, exercise power or authority in any area, including zoning or land-use regulation, or exercise power to withhold or delay the provision of monopoly utility service, to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.

(5) Shall provide nondiscriminatory access to private communications service providers on a first-come, first-served basis to rights-of-way, poles, conduits, or other permanent distribution facilities owned, leased, or operated by the city unless the facilities have insufficient capacity for the access and additional capacity cannot reasonably be added to the facilities. For purposes of this subdivision, the term "nondiscriminatory access" means that, at a minimum, access shall be granted on the same terms and conditions as that given to a city-owned communications service provider.

(6) Shall not air advertisements or other promotions for the city-owned communications service on the city's public, educational, or governmental access channel, use city resources that are not allocated for cost accounting purposes to the city-owned communications service to promote city services in comparison to private services or, directly or indirectly, require city employees, officers, or contractors to purchase city services.

(7) Shall not subsidize the provision of communications service with funds from any other noncommunications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.
(8) Shall not price any communications service below the cost of providing the
service, including any direct or indirect subsidies received by the city-owned
communications service provider and allocation of costs associated with any
shared use of buildings, equipment, vehicles, and personnel with other city
departments. The city shall, in calculating the costs of providing the
communications service, impute (i) the cost of the capital component that is
equivalent to the cost of capital available to private communications service
providers in the same locality and (ii) an amount equal to all taxes, including
property taxes, licenses, fees, and other assessments that would apply to a
private communications service provider including federal, State, and local
taxes; rights-of-way, franchise, consent, or administrative fees; and pole
attachment fees.

(9) The city shall annually remit to the general fund of the city an amount
equivalent to all taxes or fees a private communications service provider
would be required to pay the city or county in which the city is located,
including any applicable tax refunds received by the city-owned
communications service provider because of its government status and a sum
equal to the amount of property tax that would have been due if the
city-owned communications service provider were a private communications
service provider.

(b) A city-owned communications service provider shall not be required to obtain voter
approval under G.S. 160A-321 prior to the sale or discontinuance of the city's communications
network.

(c) G.S. 160A-340.1(a)(7) through (9) shall not apply to communications service
provided by a city on or before January 1, 2011.


the purchase, lease, construction, or operation of facilities by a city to provide communications
service within the city's jurisdictional boundaries for the city's internal governmental purposes.

the provision of communications service in an unserved area. A city seeking to provide
communications service in an unserved area shall petition the North Carolina Utilities
Commission for a determination that an area is unserved. The petition shall identify with
specificity the geographic area for which the designation is sought. Any private
communications service provider, or any other interested party, may, within a time established
by order of the Commission, which time shall be no fewer than 30 days, file with the
Commission an objection to the designation on the grounds that one or more areas designated
in the petition is not an unserved area or that the city is not otherwise eligible to provide the
service. For purposes of this subsection, the term "unserved area" means a geographical area in
which at least ninety percent (90%) of households either have no access to high-speed Internet
service or have access to high-speed Internet service only from a satellite provider.


A city that proposes to provide communications service shall hold not less than two public
hearings, which shall be held not fewer than 30 days apart, for the purpose of gathering
information and comment. Notice of the hearings shall be published at least once a week for
four consecutive weeks in the predominant newspaper of general circulation in the area in
which the city is located. The notice shall also be provided to the North Carolina Utilities
Commission, which shall post the notice on its Web site, and to all companies that have
requested service of the notices from the city clerk. The city shall deposit the notice in the U.S.
mail to companies that have requested notice at least 45 days prior to the hearing subject to the
notice. Private communications service providers shall be permitted to participate fully in the
public hearings by presenting testimony and documentation relevant to their service offerings and the city's plans. Any feasibility study, business plan, or public survey conducted or prepared by the city in connection with the proposed communications service project is a public record as defined by G.S. 132-1 and shall be made available to the public prior to the public hearings required by this section.


A city or joint agency subject to the provisions of G.S. 160A-340.1 shall not enter into a contract under G.S. 160A-19 or G.S. 160A-20 to purchase or to finance or refinance the purchase of property for use in a communications network or to finance or refinance the construction of fixtures or improvements for use in a communications network. The provisions of this section shall not apply to the repair or improvement of an existing communications network.

"§ 160A-340.5. Taxes; payments in lieu of taxes.

(a) A communications network owned or operated by a city or joint agency shall be exempt from property taxes. However, each city possessing an ownership share of a communications network and a joint agency owning a communications network shall, in lieu of property taxes, pay to any county authorized to levy property taxes the amount which would be assessed as taxes on real and personal property if the communications network were otherwise subject to valuation and assessment. Any payments in lieu of taxes shall be due and shall bear interest, if unpaid, as in the case of taxes on other property.

(b) A city-owned communications service provider shall pay to the State, on an annual basis, an amount in lieu of taxes that would otherwise be due the State if the communications service was provided by a private communications service provider, including State income, franchise, vehicle, motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually by the Department of Revenue and shall approximate the taxes that would be due if the communications service was undertaken by a private communications service provider. If the assessment is unpaid, the State may withhold the amount due, including interest on late payments, from distributions otherwise due the city under G.S. 105-164.44I.

(c) A city-owned communications service provider or a joint agency that provides communications service shall not be eligible for a refund under G.S. 105-164.14(c) for sales and use taxes paid on purchases of tangible personal property and services related to the provision of communications service, except to the extent a private communications service provider would be exempt from taxation."

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

"1. The term "public utility" shall include a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes that provides service as defined in G.S. 62-3(23)a.6. and is subject to the provisions of G.S. 160A-340.1."

SECTION 3. Subchapter IV of Chapter 159 of the General Statutes is amended by adding a new Article to read as follows:

"Article 9A. Borrowing by Cities for Competitive Purposes.

§ 159-175.10. Additional requirements for review of city financing application; communications service.

The Commission shall apply the following additional requirements to an application for financing by a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes for the construction, operation, expansion, or repair of a communications system or other infrastructure for the purpose of offering communications service, as that term is defined in G.S. 160A-340(2), that is or will be competitive with communications service offered by a private communications service provider:
Prior to submitting an application to the Commission, a city or joint agency shall comply with the provisions of G.S. 160A-340.3 requiring at least two public hearings on the proposed communications service project and notice of the hearings to private communications service providers who have requested notice.

At the same time the application is submitted to the Commission, the city or joint agency shall serve a copy of the application on each person that provides competitive communications service within the city's jurisdictional boundaries or in areas adjacent to the city. No hearing on the application shall be heard by the Commission until at least 60 days after the application is submitted to the Commission.

Upon the request of a communications service provider, the Commission shall accept written and oral comments from competitive private communications service providers in connection with any hearing or other review of the application.

In considering the probable net revenues of the proposed communications service project, the Commission shall consider and make written findings on the reasonableness of the city or joint agency's revenue projections in light of the current and projected competitive environment for the services to be provided, taking into consideration the potential impact of technological innovation and change on the proposed service offerings and the level of demonstrated community support for the project.

The city or joint agency making the application to the Commission shall bear the burden of persuasion with respect to subdivisions (1) through (4) of this section.

SECTION 4. Any city that is designated as a public utility under Chapter 62 of the General Statutes when this act becomes law shall not be subject to the provisions of this act with respect to any of its operations that are authorized by that Chapter.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act is effective when it becomes law and applies to the provision of communications service by a city or joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes on and after that date.