

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-158
SENATE BILL 1242

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) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.
- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.
- (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

- (4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.
- (5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- (6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.
- (7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- (8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.
- (9) 'Mobile set telephone number' means the number assigned to a CMRS connection.
- (10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.
- (11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.
- (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.
- (13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.
- (14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.
- (15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.
- (16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"§ 62B-2. Wireless 911 Board.

(a) There is created a Wireless 911 Board ('Board'), consisting of 13 members as follows:

- (1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;
- (2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);
- (3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and
- (4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter.

(d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

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

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

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

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

"§ 62B-4. Management of funds.

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

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

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

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

"§ 62B-5. Use of funds.

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

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase, or

maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the 40% Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The 40% Fund shall be distributed as follows:

- (1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.
- (2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Planning. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be distributed to each of the eligible PSAPs based on the population served by the PSAP.

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

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

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs

must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system.

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

"§ 62B-6. Administrative fee.

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

"§ 62B-7. Provision of services.

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

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

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

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Proprietary information submitted pursuant to this Chapter shall not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise released to any person other than to the submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act,

Article 24 of Chapter 66 of the General Statutes. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

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

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

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

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

"§ 62A-10. Limitation of liability.

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

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

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

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

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

- (2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.
- (3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.
- (4) The State shall not lease lands of the State Parks System for such purposes.

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

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

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

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

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

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

Section 6. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

In the General Assembly read three times and ratified this the 14th day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:00 p.m. this 25th day of September, 1998