Article 16A.

Provision of Communications Service by Cities.

§ 160A-340. Definitions.

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. The following is not considered the provision of communications service:

a. The sharing of data or voice between governmental entities for internal governmental purposes.

b. The remote reading or polling of data from utility or parking meters, or the provisioning of energy demand reduction or smart grid services for an electric, water, or sewer system.

c. The provision of free services to the public or a subset thereof.

(4) High-speed Internet access service. – Internet access service with transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting.

(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. (2011-84, s. 1(a).)

§ 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 in its provision of communications service with all local, State, and federal laws, regulations, or other requirements applicable to the provision of the communications service if provided by a private communications service provider.

(2) In accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, 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.

An annual independent audit conducted under G.S. 159-34 and submitted to the Local Government Commission satisfies the audit requirement of this subdivision.

(3) Limit the provision of communications service to within the corporate limits 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, or conduits 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 a public, educational, or governmental access channel if the city requires another communications service provider to carry the channel. The city shall not use city resources that are not allocated for cost accounting purposes to the city-owned communications service to promote city-owned communications service 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. In calculating the costs of the service the city may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted principles of governmental accounting.

(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. (2011-84, s. 1(a).)

§ 160A-340.2. Exemptions.

(a) The provisions of G.S. 160A-340.1, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to the purchase, lease, construction, or operation of facilities by a city to provide communications service within the city's corporate limits for the city's internal governmental purposes, including the sharing of data or voice between governmental entities for internal governmental purposes, or within the corporate limits of another unit of local government that is a party with the city to an interlocal agreement under Part 1 of Article 20 of Chapter 160A of the General Statutes for the provision of internal government services.

(b) The provisions of G.S. 160A-340.1, 160A-340.4, and 160A-340.5 do not apply to 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 census block, as designated by the most recent census of the U.S. Census Bureau, in which at least fifty percent (50%) 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 may petition the Commission to serve multiple contiguous unserved areas in the same proceeding.

(c) The provisions of G.S. 160A-340.1, 160A-340.3, 160A-340.4, 160A-340.5, and 160A-340.6 do not apply to a city or joint agency providing communications service as of January 1, 2011, provided the city or joint agency limits the provision of communications service to any one or more of the following:

(1) Persons within the corporate limits of the city providing the communications service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the city as of April 1, 2011, or as expanded through annexation.

(2) Existing customers of the communications service as of April 1, 2011. Service to a customer outside the service area of the city or joint agency who is also a public entity must comply with the open bidding procedures of G.S. 143-129.8 upon the expiration or termination of the existing service contract.

(3) The following service areas:

a. For the joint agency operated by the cities of Davidson and Mooresville, the service area is the combined areas of the city of Cornelius; the town of Troutman; the town of Huntersville; the unincorporated areas of

Mecklenburg County north of a line beginning at Highway 16 along the west boundary of the county, extending eastward along Highway 16, continuing east along Interstate 485, and continuing eastward to the eastern boundary of the county along Eastfield Road; and the unincorporated areas of Iredell County south of Interstate 40, excluding Statesville and the extraterritorial jurisdiction of Statesville.

b. For the city of Salisbury, the service area is the municipalities of Salisbury, Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, Landis and the corridors between those cities. The service area also includes the economic development sites, public safety facilities, governmental facilities, and educational schools and colleges located outside the municipalities and the corridors between the municipalities and these sites, facilities, schools, and colleges. The corridors between Salisbury and these municipalities and these sites, facilities, schools, and colleges includes only the area necessary to provide service to these municipalities and these sites, facilities, schools, and colleges and shall not be wider than 300 feet. The elected bodies of Spencer, East Spencer, Granite Quarry, Rockwell, Faith, Cleveland, China Grove, and Landis shall vote to approve the service extension into each respective municipality before Salisbury can provide service to that municipality. The Rowan County Board of County Commissioners shall vote to approve service extension to any governmental economic development site, governmental facility, school, or college owned by Rowan County. The Rowan Salisbury School Board shall also vote to approve service extension to schools.

c. For the city of Wilson, the service area is the county limits of Wilson County, including the incorporated areas within the County. Notwithstanding any other provision of this Article, the city of Wilson may continue the provision of communication services to persons and businesses in the temporary extension areas under the condition that the provision of communication services in such areas is terminated by a date which is 30 days after the date retail service is first available in the area from a competitive provider of communications service that will provide Fiber to the Premises (FTTP) service. For purposes of this subdivision, "temporary extension areas" shall mean (i) the corporate limits of the Town of Pinetops and (ii) any service connection located within 800 feet of the centerline of Christian Road (State Road No. 1942) between its intersection with Bloomery Road (State Road No. 1996) and West Hornes Church Road (State Road No. 1941). Prior to the cessation of service, the city of Wilson may establish rates, fees, charges, and penalties for the communication services provided in the temporary extension areas in the same manner as communication services provided in the county limits of Wilson County, including the incorporated areas within the County. Service will be deemed available for purposes of this provision upon the certification by a competitive provider to the city that service is available in a temporary extension

area. For purposes of this subdivision, a competitive provider is an incumbent local exchange carrier or cable telecommunications company that is not presently providing Fiber to the Premises (FTTP) service in the temporary extension areas.

d. For all other cities or joint agencies offering communications service, the service area is the area designated in the map filed as part of the initial notice of franchise with the Secretary of State as of January 1, 2011.

(d) The exemptions provided in this section do not exempt a city or joint agency from laws and rules of general applicability to governmental services, including nondiscriminatory obligations.

(e) In the event a city subject to the exemption set forth in subsection (c) of this section provides communications service to a customer outside the limits set forth in that subsection, the city shall have 30 days from the date of notice or discovery to cease providing service to the customer without loss of the exemption. (2011-84, s. 1(a); 2017-180, s. 1.)

§ 160A-340.3. Notice; public hearing.

A city or joint agency that proposes to provide communications service shall hold not fewer than two public hearings, which shall be held not less 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. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto. (2011-84, s. 1(a).)

§ 160A-340.4. Financing.

(a) 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 the purchase of property for use in a communications network or to finance the construction of fixtures or improvements for use in a communications network unless it complies with subsection (b) of this section. The provisions of this section shall not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto.

(b) A city shall not incur debt for the purpose of constructing a communications system without first holding a special election under G.S. 163-297 on the question of whether the city may provide communications service. If a majority of the votes cast in the special election are for the city providing communications service, the city may incur the debt for the service. If a majority of the votes cast in the special election are against the city providing communications service, the city shall not incur the debt. However, nothing in this section shall prohibit a city from revising its plan

to offer communications service and calling another special election on the question prior to providing or offering to provide the service. A special election required under Chapter 159 of the General Statutes as a condition to the issuance of bonds shall satisfy the requirements of this section. (2011-84, s. 1(a); 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 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. A city-owned communications service provider must provide information requested by the Secretary of Revenue necessary for calculation of the assessment. The Department must inform each city-owned communications service provider of the amount of the assessment by January 1 of each year. The assessment is due by March 15 of each year. 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. (2011-84, s. 1(a).)

§ 160A-340.6. Public-private partnerships for communications service.

(a) Prior to undertaking to construct a communications network for the provision of communications service, a city shall first solicit proposals from private business in accordance with the procedures of this section.

(b) The city shall issue requests for proposals that specify the nature and scope of the requested communications service, the area in which it is to be provided, any specifications and performance standards, and information as to the city's proposed participation in providing equipment, infrastructure, or other aspects of the service. The city may prescribe the form and content of proposals and may require that proposals contain sufficiently detailed information to allow for an objective evaluation of proposals using the factors stated in subsection (d) of this section. Each proposal shall at minimum contain all of the following:

(1) Information regarding the proposer's experience and qualifications to perform the requirements of the proposal.

(2) Information demonstrating the proposer's ability to secure financing needed to perform the requirements of the proposal.

(3) Information demonstrating the proposer's ability to provide staffing, implement work tasks, and carry out all other responsibilities necessary to perform the requirements of the proposal.

(4) Information clearly identifying and specifying all elements of cost of the proposal for the term of the proposed contract, including the cost of the purchase or lease of equipment and supplies, design, installation, operation, management, and maintenance of any system, and any proposed services.

(5) Any other information the city determines has a material bearing on its ability to evaluate the proposal.

(c) The city shall provide notice that it is requesting proposals in accordance with this subsection. The notice shall state the time and place where plans and specifications for the proposed service may be obtained and the time and place for opening proposals. Any notice given under this subsection shall reserve to the city the right to reject any or all proposals. Notice of request for proposals shall be given by all of the following methods:

(1) By mailing a notice of request for proposals to each firm that has obtained a license or permit to use the public rights-of-way in the city to provide a communications service within the city by depositing such notices in the U.S. mail at least 30 days prior to the date specified for the opening of proposals. In identifying firms, the city may rely upon lists provided by the Office of the Secretary of State and the North Carolina Utilities Commission.

(2) By posting a notice of request for proposals on the city's Web site at least 30 days before the time specified for the opening of proposals.

(3) By publishing a notice of request for proposals in a newspaper of general circulation in the county in which the city is predominantly located at least 30 days before the time specified for the opening of proposals.

(d) In evaluating proposals, the city may consider any relevant factors, including system design, system reliability, operational experience, operational costs, compatibility with existing systems and equipment, and emerging technology. The city may negotiate aspects of any proposal with any responsible proposer with regard to these factors to determine which proposal is the most responsive. A determination of most responsive proposer by the city shall be final.

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

(f) If the city is unable to successfully negotiate the terms of a contract with the most responsive proposer within 60 days of the opening of the proposals, the city may proceed to negotiate with the firm determined to be the next most responsive proposer if such a proposer exists. If the city is unable to successfully negotiate the terms of a contract with the next most responsive proposer within 60 days, it may proceed under this Article to provide communications service.

(g) All proposals shall be sealed and shall be opened in public. Provided, that trade secrets shall remain confidential as provided under G.S. 132-1.2. (2011-84, s. 1(a).)