

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1004\*

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

Sponsors: Senators Hoyle; and Clary.

Referred to: Commerce.

March 26, 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 source of investment dollars associated with the provision of communications service.



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

1                   March 1, 2009, and, in fact, offered to the public on or before September 1,  
2                   2009.

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

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

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

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

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

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