

# Municipal Broadband Systems

This Act implements new regulatory, public information, and financial requirements for cities and joint agencies which provide communication services to the public for a fee. The new regulations require that municipal broadband systems:

- Comply with all state, local and federal laws and regulations adhered to by private communication companies.
- Establish separate enterprise funds for the communications service, and conduct annual audits.
- Limit the communication services to the jurisdictional boundaries of the city.
- Eliminate the practice of requiring individuals or developments subscribe to municipal broadband services.
- Provide other service providers with access to the city's rights-of-way, conduits, and other distribution facilities.
- Prohibit advertisements for municipal broadband on the public, education, and government channels of competing providers.
- Limit the revenue used to finance communication services to the income generated from the service.
- Price municipal communication services at a rate equal to the cost of providing the service. The price should include adjustments for capital costs and taxes incurred in the private sector.

The new public information standards require that municipal broadband companies:

- Hold two public hearings prior to offering services.
- Provide notice for the public hearings in local newspapers and with the Utilities Commission.
- Provide the public with all feasibility studies, business plans, and surveys prior to the hearings.
- Allow private communications providers to participate in the hearing.

New financial standards require municipal broadband companies:

- Eliminate the practice of using certificates of participation to finance the construction of a system.
- Make payments in lieu of property taxes to the county/counties in which the services are contained.
- Remit to the state payments in lieu of taxes an amount set by the state department of revenue equivalent to the income, franchise, vehicle, motor fuel, and other taxes due if operating as a private enterprise.

The Act exempts municipal broadband enterprises operating as of a certain date.

Submitted as:

North Carolina

[Session Law 2011-84](#)

Status: Enacted into law in 2011.

## Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Protect Jobs and Investment by  
2 Regulating Local Government Competition with Private Business.”  
3

4 Section 2. [*Definitions.*] As used in this Act:

5 (1) “City-owned communications service provider” means a city that provides  
6 communications service using a communications network, whether directly, indirectly, or through an  
7 interlocal agreement or a joint agency.

8 (2) “Communications network” means a wired or wireless network for the provision of  
9 communications service.

10 (3) “Communications service” means the provision of cable, video programming,  
11 telecommunications, broadband, or high-speed Internet access service to the public, or any sector of  
12 the public, for a fee, regardless of the technology used to deliver the service. The terms “cable  
13 service,” “telecommunications service,” and “video programming service” have the same meanings  
14 as in [insert citations]. The following is not considered the provision of communications service:

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

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

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

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

24 (5) “Interlocal agreement” means an agreement between units of local government as  
25 authorized by [insert citation].

26 (6) “Joint agency” means an agency created under [insert citation].  
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28 Section 3. [*Notice; Public Hearing.*] A city or joint agency that proposes to provide  
29 communications service shall hold not fewer than [two] public hearings, which shall be held not less  
30 than [30] days apart, for the purpose of gathering information and comment. Notice of the hearings  
31 shall be published at least once a week for four consecutive weeks in the predominant newspaper of  
32 general circulation in the area in which the city is located. The notice shall also be provided to the  
33 [utilities commission], which shall post the notice on its Web site, and to all companies that have  
34 requested service of the notices from the city clerk. The city shall deposit the notice in the U.S. mail  
35 to companies that have requested notice at least [45] days prior to the hearing subject to the notice.  
36 Private communications service providers shall be permitted to participate fully in the public  
37 hearings by presenting testimony and documentation relevant to their service offerings and the city's  
38 plans. Any feasibility study, business plan, or public survey conducted or prepared by the city in  
39 connection with the proposed communications service project is a public record as defined by [insert  
40 citation] and shall be made available to the public prior to the public hearings required by this  
41 section. This section does not apply to the repair, rebuilding, replacement, or improvement of an  
42 existing communications network, or equipment relating thereto.  
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44 Section 4. [*Public-Private Partnerships for Communications Service.*]

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

48 (B) The city shall issue requests for proposals that specify the nature and scope of the  
49 requested communications service, the area in which it is to be provided, any specifications and

50 performance standards, and information as to the city's proposed participation in providing  
51 equipment, infrastructure, or other aspects of the service. The city may prescribe the form and  
52 content of proposals and may require that proposals contain sufficiently detailed information to  
53 allow for an objective evaluation of proposals using the factors stated in subsection (D) of this  
54 section. Each proposal shall at minimum contain all of the following:

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

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

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

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

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

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

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

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

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

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

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

91 (F) If the city is unable to successfully negotiate the terms of a contract with the most  
92 responsive proposer within [60] days of the opening of the proposals, the city may proceed to  
93 negotiate with the firm determined to be the next most responsive proposer if such a proposer exists.  
94 If the city is unable to successfully negotiate the terms of a contract with the next most responsive  
95 proposer within [60] days, it may proceed under this section to provide communications service.

96 (G) All proposals shall be sealed and shall be opened in public, provided that trade secrets  
97 shall remain confidential as provided under [insert citation].

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Section 5. [*Financing.*]

(A) A city or joint agency subject to the provisions of this Act shall not enter into a contract under [insert citation] 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 [insert citation] 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 [insert citation] as a condition to the issuance of bonds shall satisfy the requirements of this section.

(C) The [commission] shall apply additional requirements to an application for financing by a city or a joint agency under this Act for the construction, operation, expansion, or repair of a communications system or other infrastructure for the purpose of offering communications service that is or will be competitive with communications service offered by a private communications service provider. This section does not apply to the repair, rebuilding, replacement, or improvement of an existing communications network, or equipment relating thereto, but does apply to the expansion of such existing network. The additional requirements are the following:

(1) Prior to submitting an application to the [commission], a city or joint agency shall require 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.

(2) 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].

(3) 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.

(4) 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.

(5) 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 6. [*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.

148 (2) In accordance with [insert citation], establish one or more separate enterprise  
149 funds for the provision of communications service, use the enterprise funds to separately account for  
150 revenues, expenses, property, and source of investment dollars associated with the provision of  
151 communications service, and prepare and publish an independent annual report and audit in  
152 accordance with generally accepted accounting principles that reflect the fully allocated cost of  
153 providing the communications service, including all direct and indirect costs. An annual independent  
154 audit conducted under [insert citation] and submitted to the [local government commission] satisfies  
155 the audit requirement of this subdivision.

156 (3) Limit the provision of communications service to within the corporate limits of  
157 the city providing the communications service.

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

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

169 (6) Shall not air advertisements or other promotions for the city-owned  
170 communications service on a public, educational, or governmental access channel if the city requires  
171 another communications service provider to carry the channel. The city shall not use city resources  
172 that are not allocated for cost accounting purposes to the city-owned communications service to  
173 promote city-owned communications service in comparison to private services or, directly or  
174 indirectly, require city employees, officers, or contractors to purchase city services.

175 (7) Shall not subsidize the provision of communications service with funds from any  
176 other noncommunications service, operation, or other revenue source, including any funds or  
177 revenue generated from electric, gas, water, sewer, or garbage services.

178 (8) Shall not price any communications service below the cost of providing the  
179 service, including any direct or indirect subsidies received by the city-owned communications  
180 service provider and allocation of costs associated with any shared use of buildings, equipment,  
181 vehicles, and personnel with other city departments. The city shall, in calculating the costs of  
182 providing the communications service, impute the cost of the capital component that is equivalent to  
183 the cost of capital available to private communications service providers in the same locality and an  
184 amount equal to all taxes, including property taxes, licenses, fees, and other assessments that would  
185 apply to a private communications service provider, including federal, state, and local taxes; rights-  
186 of-way, franchise, consent, or administrative fees; and pole attachment fees. In calculating the costs  
187 of the service the city may amortize the capital assets of the communications system over the useful  
188 life of the assets in accordance with generally accepted principles of governmental accounting.

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

(B) A city-owned communications service provider shall not be required to obtain voter

196 approval under [insert citation] prior to the sale or discontinuance of the city’s communications  
197 network.

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199 Section 7. [*Payments in Lieu of Taxes.*]

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

207 (B) A city-owned communications service provider shall pay to the State, on an annual basis,  
208 an amount in lieu of taxes that would otherwise be due the State if the communications service was  
209 provided by a private communications service provider, including State income, franchise, vehicle,  
210 motor fuel, and other similar taxes. The amount of the payment in lieu of taxes shall be set annually  
211 by the [department of revenue] and shall approximate the taxes that would be due if the  
212 communications service was undertaken by a private communications service provider. A city-  
213 owned communications service provider must provide information requested by the [secretary of  
214 revenue] necessary for calculation of the assessment. The [department] must inform each city-owned  
215 communications service provider of the amount of the assessment by [January 1] of each year. The  
216 assessment is due by [March 15] of each year. If the assessment is unpaid, the State may withhold  
217 the amount due, including interest on late payments, from distributions otherwise due the city under  
218 [insert citation].

219 (C) A city-owned communications service provider or a joint agency that provides  
220 communications service shall not be eligible for a refund under [insert citation] for sales and use  
221 taxes paid on purchases of tangible personal property and services related to the provision of  
222 communications service, except to the extent a private communications service provider would be  
223 exempt from taxation.

224 (D) A city subject to the provisions of this section is not allowed a refund of sales and use  
225 taxes paid by it under [insert citation] for purchases related to the provision of communications  
226 service as defined in this Act.

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228 Section 8. [*Exemptions.*]

229 (A) This Act does not apply to the purchase, lease, construction, or operation of facilities by a  
230 city to provide communications service within the city’s corporate limits for the city’s internal  
231 governmental purposes, including the sharing of data or voice between governmental entities for  
232 internal governmental purposes, or within the corporate limits of another unit of local government  
233 that is a party with the city to an interlocal agreement under [insert citation] for the provision of  
234 internal government services.

235 (B) This Act does not apply to the provision of communications service in an unserved area.  
236 A city seeking to provide communications service in an unserved area shall petition the state  
237 [utilities commission] for a determination that an area is unserved. The petition shall identify with  
238 specificity the geographic area for which the designation is sought. Any private communications  
239 service provider, or any other interested party, may, within a time established by order of the  
240 [commission], which time shall be no fewer than [30] days, file with the [commission] an objection  
241 to the designation on the grounds that one or more areas designated in the petition is not an unserved  
242 area or that the city is not otherwise eligible to provide the service. For purposes of this subsection,  
243 the term “unserved area” means a census block, as designated by the most recent census of the U.S.  
244 Census Bureau, in which at least [fifty percent (50%)] of households either have no access to high-

245 speed Internet service or have access to high-speed Internet service only from a satellite provider. A  
246 city may petition the [commission] to serve multiple contiguous unserved areas in the same  
247 proceeding.

248 (C) This Act does not apply to a city or joint agency providing communications service as of  
249 [insert date], provided the city or joint agency limits the provision of communications service to any  
250 one or more of the following:

251 (1) People within the corporate limits of the city providing the communications  
252 service. For the purposes of this subsection, corporate limits shall mean the corporate limits of the  
253 city as of [insert date], or as expanded through annexation.

254 (2) Existing customers of the communications service as of [insert date]. Service to a  
255 customer outside the service area of the city or joint agency who is also a public entity must comply  
256 with the open bidding procedures of [insert citation] upon the expiration or termination of the  
257 existing service contract.

258 (3) The following service areas: [insert service areas.]

259 (D) In the event a city subject to the exemption set forth in subsection (C) of this section  
260 provides communications service to a customer outside the limits set forth in that subsection, the city  
261 shall have [30] days from the date of notice or discovery to cease providing service to the customer  
262 without loss of the exemption.

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264 Section 9. [*Severability.*] [Insert severability clause.]

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266 Section 10. [*Repealer.*] [Insert repealer clause.]

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268 Section 11. [*Effective Date.*] [Insert effective date.]