

By: Representative Guice

To: Public Utilities

HOUSE BILL NO. 39

1 AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE CABLE TELEVISION SYSTEMS IN THE DEFINITION OF PUBLIC
3 UTILITIES AS USED TO DESCRIBE THE JURISDICTION OF THE PUBLIC
4 SERVICE COMMISSION; TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF
5 1972, TO CLARIFY THAT THE COMMISSION'S AUTHORITY TO SUSPEND RATE
6 REGULATION APPLIES ONLY TO UTILITIES PROVIDING TELECOMMUNICATIONS
7 SERVICES; AND FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 77-3-3, Mississippi Code of 1972, is
10 amended as follows:

11 77-3-3. As used in this chapter:

12 (a) The term "corporation" includes a private or public
13 corporation, a municipality, an association, a joint stock
14 association or a business trust.

15 (b) The term "person" includes a natural person, a
16 partnership of two (2) or more persons having a joint or common
17 interest, a cooperative, nonprofit, limited dividend or mutual
18 association, a corporation, or any other legal entity.

19 (c) The term "municipality" includes any incorporated
20 city, town or village.

21 (d) The term "public utility" includes persons and
22 corporations, or their lessees, trustees and receivers, now or
23 hereafter owning or operating in this state equipment or
24 facilities for:

25 (i) The generation, manufacture, transmission or
26 distribution of electricity to or for the public for compensation;

27 (ii) The transmission, sale, sale for resale, or
28 distribution of natural, artificial, or mixed natural and

29 artificial gas to the public for compensation by means of
30 transportation, transmission, or distribution facilities and
31 equipment located within this state; however, this term shall not
32 include the production and gathering of natural gas, the sale of
33 natural gas in or within the vicinity of the field where produced,
34 or the distribution or sale of liquefied petroleum gas or the sale
35 to the ultimate consumer of natural gas for use as a motor vehicle
36 fuel;

37 (iii) The transmission, conveyance or reception of
38 any message over a cable system, wire, * * * by radio, or
39 otherwise, of writing, signs, signals, pictures and sounds of all
40 kinds by or for the public, including the transmission to multiple
41 subscribers of video programming or other programming services and
42 subscriber interaction, if any, which is required for the
43 selection of video programming or other programming services,
44 where such service is offered to the public for compensation, and
45 the furnishing, or the furnishing and maintenance, of equipment or
46 facilities to the public, for compensation, for use as a private
47 communications system or part thereof; however, * * * nothing in
48 this chapter shall be construed to apply to television stations,
49 radio stations, * * * community television antenna services or
50 cable systems that serve only to retransmit the television signals
51 of one or more television broadcast stations or serve only
52 subscribers in one or more multiple unit dwellings under common
53 ownership, control or management without using any public
54 right-of-way; and

55 (iv) The transmission, distribution, sale or
56 resale of water to the public for compensation, or the collection,
57 transmission, treatment or disposal of sewage, or otherwise
58 operating a sewage disposal service, to or for the public for
59 compensation.

60 The term "public utility" shall not include any person not
61 otherwise a public utility, who furnishes the services or
62 commodity described in this paragraph (d) only to himself, his
63 employees or tenants as an incident of such employee service or
64 tenancy, provided that such services are not sold or resold to
65 such tenants or employees on a metered or consumption basis.

66 A public utility's business other than of the character
67 defined in subparagraphs (i) to (iv) of this paragraph * * * is
68 not subject to the provisions of this chapter.

69 (e) The term "rate" means and includes every
70 compensation, charge, fare, toll, rental and classification, or
71 the formula or method by which such may be determined, or any of
72 them, demanded, observed, charged or collected by any public
73 utility for any service, product or commodity described in this
74 section, offered by it to the public, and any rules, regulations,
75 practices or contracts relating to any such compensation, charge,
76 fare, toll, rental or classification; however, the term "rate"
77 shall not include charges for electrical current furnished,
78 delivered or sold by one public utility to another for resale.

79 (f) The word "commission" shall refer to the Public
80 Service Commission of the State of Mississippi, as now existing,
81 unless otherwise indicated.

82 (g) The term "affiliated interest" or "affiliate"
83 includes:

84 (i) Any person or corporation owning or holding,
85 directly or indirectly, twenty-five percent (25%) or more of the
86 voting securities of a public utility;

87 (ii) Any person or corporation in any chain of
88 successive ownership of twenty-five percent (25%) or more of the
89 voting securities of a public utility;

90 (iii) Any corporation of which fifteen percent
91 (15%) or more of the voting securities is owned or controlled,
92 directly or indirectly, by a public utility;

93 (iv) Any corporation twenty-five percent (25%) or
94 more of the voting securities of which is owned or controlled,
95 directly or indirectly, by any person or corporation that owns or
96 controls, directly or indirectly, twenty-five percent (25%) or
97 more of the voting securities of any public utility or by any
98 person or corporation in any chain of successive ownership of

99 twenty-five percent (25%) of such securities;

100 (v) Any person who is an officer or director of a
101 public utility or of any corporation in any chain of successive
102 ownership of fifteen percent (15%) or more of voting securities of
103 a public utility; or

104 (vi) Any person or corporation that the
105 commission, after notice and hearing, determines actually
106 exercises any substantial influence or control over the policies
107 and actions of a public utility, or over which a public utility
108 exercises such control, or that is under a common control with a
109 public utility, such control being the possession, directly or
110 indirectly, of the power to direct or cause the discretion of the
111 management and policies of another, whether such power is
112 established through ownership of voting securities or by any other
113 direct or indirect means.

114 * * * However, the term "affiliated interest" or "affiliate"
115 shall not include a joint agency organized pursuant to Sections
116 77-5-701 et seq., as now or hereafter amended, nor a member
117 municipality thereof.

118 (h) The term "facilities" includes all the plant and
119 equipment of a public utility, used or useful in furnishing public
120 utility service, including all real and personal property without
121 limitation, and any and all means and instrumentalities in any
122 manner owned, operated, leased, licensed, used, controlled,
123 furnished or supplied for, by or in connection with its public
124 utility business.

125 (i) The term "cost of service" includes operating
126 expenses, taxes, depreciation, net revenue and operating revenue
127 requirement at a claimed rate of return from public utility
128 operations.

129 (j) The term "lead-lag study" includes an analysis to
130 determine the amount of capital which investors in a public
131 utility, the rates of which are subject to regulation under the

132 provisions of this chapter, must provide to meet the day-to-day
133 operating costs of the public utility prior to the time such costs
134 are recovered from customers, and the measurement of:

135 (i) The lag in collecting from the customer the
136 cost of providing service; and

137 (ii) The lag in paying the cost of providing
138 service by the public utility.

139 SECTION 2. Section 77-3-35, Mississippi Code of 1972, is
140 amended as follows:

141 77-3-35. (1) Subject to the provisions of subsection (2) of
142 this section, under such reasonable rules and regulations as the
143 commission may prescribe, every public utility, the rates of which
144 are subject to regulation under the provisions of this article,
145 shall file with the commission, within such time and in such form
146 as the commission may designate, schedules showing all rates and
147 charges established by it and collected and enforced, or to be
148 collected or enforced within the jurisdiction of the commission.
149 The utility shall keep copies of such schedules open to public
150 inspection under such reasonable rules and regulations as the
151 commission may prescribe.

152 No such public utility shall directly or indirectly, by any
153 device whatsoever, or in anywise, charge, demand, collect or
154 receive from any person or corporation for any service rendered or
155 to be rendered by such public utility a greater or less
156 compensation than that prescribed in the schedules of such public
157 utility applicable thereto then filed in the manner provided in
158 this section, and no person or corporation shall receive or accept
159 any service from any such public utility for a compensation
160 greater or less than prescribed in such schedules.

161 Utilities of the same type as herein covered, engaged in
162 rendering interstate service to and from points and places in the
163 state, shall file with the commission tariffs of rates and charges
164 of such and rates and charges affecting service to or from points

165 and places in the state. Also, utilities selling commodities or
166 rendering any service to cooperatives, municipalities or other
167 nonprofit organizations, shall, at the order of the commission,
168 file schedules of such rates and charges for information purposes
169 only.

170 The commission may provide, by rules and regulations to be
171 adopted by it, the following:

172 (a) That utilities may contract with a manufacturer
173 that is not a utility for furnishing the services or commodities
174 described in Section 77-3-3(d)(i), (ii) and (iii) for use in
175 manufacturing;

176 (b) That utilities described in Section 77-3-3(d)(i)
177 also may contract with a customer that has a minimum yearly
178 electric consumption of two thousand five hundred (2,500) megawatt
179 hours per year or greater for furnishing the services or
180 commodities described in Section 77-3-3(d)(i); and

181 (c) That utilities described in Section 77-3-3(d)(ii)
182 also may contract with a customer that has a minimum yearly
183 consumption of eight million five hundred thousand (8,500,000)
184 cubic feet of gas per year or greater for furnishing the services
185 or commodities described in Section 77-3-3(d)(ii).

186 These contracts may be entered into without reference to the
187 rates or other conditions which may be established or fixed
188 pursuant to other provisions of this article. Such regulations
189 shall provide that before becoming effective any such contract
190 shall be approved by the commission.

191 (2) (a) The Legislature recognizes that the maintenance of
192 universal telephone service in Mississippi is a continuing goal of
193 the commission and that the public interest requires that the
194 commission be authorized and encouraged to formulate and adopt
195 rules and policies that will permit the commission, in the
196 exercise of its expertise, to regulate and control the provision
197 of telecommunications services to the public in a changing

198 environment where competition and innovation are becoming more
199 commonplace, giving due regard to the interests of consumers, the
200 public, the providers of telecommunications services and the
201 continued availability of good telecommunications service. The
202 commission is authorized to issue more than one competing
203 certificate of public convenience and necessity to provide local
204 exchange telephone service in the same geographical area;
205 provided, that the issuing of any such additional certificates
206 shall not otherwise affect any certificate of public convenience
207 and necessity heretofore issued to any provider of such services.

208 The commission shall adopt all rules and regulations
209 necessary for implementing this subsection (2)(a).

210 The commission retains the authority to issue orders to
211 implement its rules, regulations and the provisions of this
212 chapter, including the authority to grant and modify, impose
213 conditions upon, or revoke a certificate.

214 (b) Notwithstanding any provisions of this chapter or
215 any other statute, the commission * * *, on its own motion or at
216 the request of any interested party, may enter an order, after
217 notice and opportunity for hearing, determining and directing
218 that, in the provision of a service or facility by a
219 telecommunications utility * * *, competition or other market
220 forces adequately protect the public interest, or that a service
221 or facility offered by the telecommunications utility is
222 discretionary, and that the public interest requires that the
223 utility's rates and charges for such service or facility shall not
224 thereafter be subject to regulation by the commission.

225 (c) In making its determination whether the rates and
226 charges for a service or facility shall not be subject to
227 regulation by the commission, the commission may consider
228 individually or collectively:

229 (i) Whether the exercise of commission
230 jurisdiction produces tangible benefits to the telecommunications

231 utility's customers that exceed those available by reliance on
232 market forces or other factors;

233 (ii) Whether technological changes, competitive
234 forces, discretionary nature of the service or facility, or
235 regulation by other state and federal regulatory bodies render the
236 exercise of jurisdiction by the Mississippi commission unnecessary
237 or wasteful;

238 (iii) Whether the exercise of commission
239 jurisdiction inhibits a regulated telecommunications utility from
240 competing with unregulated providers of functionally similar
241 telecommunications services or equipment;

242 (iv) Whether the existence of competition tends to
243 prevent abuses, unjust discrimination and extortion in the charges
244 of telecommunications utilities for the service or facility in
245 question;

246 (v) The availability of the service or facility
247 from other persons and corporations; or

248 (vi) Any other factors that the commission
249 considers relevant to the public interest.

250 In making the determination as above set forth, the
251 commission may specify the period of time during which the
252 telecommunications utility's rates and charges for the service or
253 facility shall not thereafter be subject to regulation. Likewise,
254 after notice and opportunity for hearing, the commission may
255 revoke a determination and direction made under this section, when
256 the commission finds that commission regulation of the utility's
257 rates and charges for the service or facility in question is
258 necessary to protect the public interest.

259 (3) (a) Notwithstanding any other provisions of this
260 article or any other statute to the contrary, the commission is
261 authorized to consider and adopt alternative methods of regulation
262 proposed by a utility of the type defined in Section 77-3-3(d)(i),
263 (ii) or (iii) to establish rates for the services furnished by

264 such utility that are fair, just and reasonable to the public and
265 that provide fair, just and reasonable compensation to the utility
266 for such services.

267 (b) For purposes of this subsection, the phrase
268 "alternative methods of regulation" means the regulation of
269 utility rates and charges by methods other than the rate base or
270 rate of return method of regulation set forth in other provisions
271 of this article.

272 SECTION 3. This act shall take effect and be in force from
273 and after July 1, 1999.