

By: Representative Guice

To: Public Utilities

HOUSE BILL NO. 1425

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 CABLE COMPANIES AND UTILITIES PROVIDING  
7 TELECOMMUNICATIONS 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, the 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, or by radio, or otherwise,  
39 of writing, signs, signals, pictures and sounds of all kinds by or  
40 for the public, including the transmission to multiple subscribers  
41 of video programming or other programming services and subscriber  
42 interaction, if any, which is required for the selection of video  
43 programming or other programming services, where such service is  
44 offered to the public for compensation, and the furnishing, or the  
45 furnishing and maintenance, of equipment or facilities to the  
46 public, for compensation, for use as a private communications  
47 system or part thereof; however, no person or corporation not  
48 otherwise a public utility within the meaning of this chapter  
49 shall be deemed such solely because of engaging in this state in  
50 the furnishing, for private use as last aforementioned, and  
51 moreover, nothing in this chapter shall be construed to apply to  
52 television stations, radio stations or community television  
53 antenna services or cable systems that serve only to retransmit  
54 the television signals of one or more television broadcast  
55 stations or serve only subscribers in one or more multiple unit  
56 dwelling under common ownership, control or management without  
57 using any public right-of-way; and

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



63           The term "public utility" shall not include any person not  
64 otherwise a public utility, who furnishes the services or  
65 commodity described in this paragraph only to himself, his  
66 employees or tenants as an incident of such employee service or  
67 tenancy, if such services are not sold or resold to such tenants  
68 or employees on a metered or consumption basis other than the  
69 submetering authorized under Section 77-3-97.

70           A public utility's business other than of the character  
71 defined in subparagraphs (i) through (iv) of this paragraph is not  
72 subject to the provisions of this chapter.

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

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

86           (g) The term "affiliated interest" or "affiliate"  
87 includes:

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

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



94 (iii) Any corporation of which fifteen percent  
95 (15%) or more of the voting securities is owned or controlled,  
96 directly or indirectly, by a public utility;

97 (iv) Any corporation twenty-five percent (25%) or  
98 more of the voting securities of which is owned or controlled,  
99 directly or indirectly, by any person or corporation that owns or  
100 controls, directly or indirectly, twenty-five percent (25%) or  
101 more of the voting securities of any public utility or by any  
102 person or corporation in any chain of successive ownership of  
103 twenty-five percent (25%) of such securities;

104 (v) Any person who is an officer or director of a  
105 public utility or of any corporation in any chain of successive  
106 ownership of fifteen percent (15%) or more of voting securities of  
107 a public utility; or

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

118 However, the term "affiliated interest" or "affiliate" shall  
119 not include a joint agency organized pursuant to Sections 77-5-701  
120 et seq. nor a member municipality thereof.

121 (h) The term "facilities" includes all the plant and  
122 equipment of a public utility, used or useful in furnishing public  
123 utility service, including all real and personal property without  
124 limitation, and any and all means and instrumentalities in any  
125 manner owned, operated, leased, licensed, used, controlled,



126 furnished or supplied for, by or in connection with its public  
127 utility business.

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

132 (j) The term "lead-lag study" includes an analysis to  
133 determine the amount of capital which investors in a public  
134 utility, the rates of which are subject to regulation under the  
135 provisions of this chapter, must provide to meet the day-to-day  
136 operating costs of the public utility prior to the time such costs  
137 are recovered from customers, and the measurement of (i) the lag  
138 in collecting from the customer the cost of providing service, and  
139 (ii) the lag in paying the cost of providing service by the public  
140 utility.

141 **SECTION 2.** Section 77-3-35, Mississippi Code of 1972, is  
142 amended as follows:

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

154 No such public utility shall directly or indirectly, by any  
155 device whatsoever, or in anywise, charge, demand, collect or  
156 receive from any person or corporation for any service rendered or  
157 to be rendered by such public utility a greater or less  
158 compensation than that prescribed in the schedules of such public



159 utility applicable thereto then filed in the manner provided in  
160 this section, and no person or corporation shall receive or accept  
161 any service from any such public utility for a compensation  
162 greater or less than prescribed in such schedules.

163 Utilities of the same type as herein covered, engaged in  
164 rendering interstate service to and from points and places in the  
165 state, shall file with the commission tariffs of rates and charges  
166 of such and rates and charges affecting service to or from points  
167 and places in the state. Also, utilities selling commodities or  
168 rendering any service to cooperatives, municipalities or other  
169 nonprofit organizations, shall, at the order of the commission,  
170 file schedules of such rates and charges for information purposes  
171 only.

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

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

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

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

188 These contracts may be entered into without reference to the  
189 rates or other conditions which may be established or fixed  
190 pursuant to other provisions of this article. Such regulations



191 shall provide that before becoming effective any such contract  
192 shall be approved by the commission.

193           (2) (a) The Legislature recognizes that the maintenance of  
194 universal telephone service in Mississippi is a continuing goal of  
195 the commission and that the public interest requires that the  
196 commission be authorized and encouraged to formulate and adopt  
197 rules and policies that will permit the commission, in the  
198 exercise of its expertise, to regulate and control the provision  
199 of telecommunications services to the public in a changing  
200 environment where competition and innovation are becoming more  
201 commonplace, giving due regard to the interests of consumers, the  
202 public, the providers of telecommunications services and the  
203 continued availability of good telecommunications service. The  
204 commission is authorized to issue more than one competing  
205 certificate of public convenience and necessity to provide local  
206 exchange telephone service in the same geographical area;  
207 provided, that the issuing of any such additional certificates  
208 shall not otherwise affect any certificate of public convenience  
209 and necessity heretofore issued to any provider of such services.

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

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

216           (b) Notwithstanding any provisions of this chapter or  
217 any other statute, the commission \* \* \*, on its own motion or at  
218 the request of any interested party, may enter an order, after  
219 notice and opportunity for hearing, determining and directing  
220 that, in the provision of a service or facility by a cable company  
221 or telecommunications utility \* \* \*, competition or other market  
222 forces adequately protect the public interest, or that a service  
223 or facility offered by the cable company or telecommunications



224 utility is discretionary, and that the public interest requires  
225 that the utility's rates and charges for such service or facility  
226 shall not thereafter be subject to regulation by the commission.

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

231 (i) Whether the exercise of commission  
232 jurisdiction produces tangible benefits to the customers of both  
233 cable companies and telecommunications utilities that exceed those  
234 available by reliance on market forces or other factors;

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

240 (iii) Whether the exercise of commission  
241 jurisdiction inhibits a regulated cable company or  
242 telecommunications utility from competing with unregulated  
243 providers of functionally similar telecommunications services or  
244 equipment;

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

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

251 (vi) Any other factors that the commission  
252 considers relevant to the public interest.

253 In making the determination as above set forth, the  
254 commission may specify the period of time during which the cable  
255 company's or telecommunications utility's rates and charges for  
256 the service or facility shall not thereafter be subject to





257 regulation. Likewise, after notice and opportunity for hearing,  
258 the commission may revoke a determination and direction made under  
259 this section, when the commission finds that commission regulation  
260 of the utility's rates and charges for the service or facility in  
261 question is necessary to protect the public interest.

262 (3) (a) Notwithstanding any other provisions of this  
263 article or any other statute to the contrary, the commission is  
264 authorized to consider and adopt alternative methods of regulation  
265 proposed by a utility of the type defined in Section 77-3-3(d)(i),  
266 (ii) or (iii) to establish rates for the services furnished by  
267 such utility that are fair, just and reasonable to the public and  
268 that provide fair, just and reasonable compensation to the utility  
269 for such services.

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

275 **SECTION 3.** This act shall take effect and be in force from  
276 and after July 1, 2003.

