HOUSE BILL NO. 1425

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

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

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

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

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

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

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

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

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

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of
transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

(iii) The transmission, conveyance or reception of any message over a cable system, wire, or by radio, or otherwise, of writing, signs, signals, pictures and sounds of all kinds by or for the public, including the transmission to multiple subscribers of video programming or other programming services and subscriber interaction, if any, which is required for the selection of video programming or other programming services, where such service is offered to the public for compensation, and the furnishing, or the furnishing and maintenance, of equipment or facilities to the public, for compensation, for use as a private communications system or part thereof; however, no person or corporation not otherwise a public utility within the meaning of this chapter shall be deemed such solely because of engaging in this state in the furnishing, for private use as last aforementioned, and moreover, nothing in this chapter shall be construed to apply to television stations, radio stations or community television antenna services or cable systems that serve only to retransmit the television signals of one or more television broadcast stations or serve only subscribers in one or more multiple unit dwellings under common ownership, control or management without using any public right-of-way; and

(iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection, transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.
The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

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

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

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

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

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

(ii) Any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities of a public utility;
(iii) Any corporation of which fifteen percent (15%) or more of the voting securities is owned or controlled, directly or indirectly, by a public utility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services. The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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