MISSISSIPPI LEGISLATURE REGULAR SESSION 2003

By: Senator(s) Minor, Browning, Canon, Chamberlin, Chaney, Dawkins, Dickerson, Frazier, Furniss, Gordon, Hamilton, Harden, Hewes, Jordan, King, Kirby, Lee, Little, Mettetal, Nunnelee, Robertson, Ross, Scoper, Stogner, Thames, Tollison, Walden, Williamson, Posey

To: Finance

SENATE BILL NO. 2979
(As Passed the Senate)

AN ACT TO CREATE THE MISSISSIPPI BROADBAND TECHNOLOGY DEVELOPMENT ACT; TO PROVIDE FOR A CREDIT AGAINST THE INCOME AND FRANCHISE TAX LIABILITY OF TELECOMMUNICATION ENTERPRISES IN AN AMOUNT EQUAL TO 5% OF THE COST OF EQUIPMENT USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES IN TIER ONE AREAS, AN AMOUNT EQUAL TO 10% OF THE COST OF EQUIPMENT USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES IN TIER TWO AREAS AND AN AMOUNT EQUAL TO THE 15% OF THE COST OF EQUIPMENT USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES IN TIER THREE AREAS; TO PROVIDE THAT SUCH CREDIT SHALL BE ALLOWED COMMENCING WITH THE YEAR IN WHICH THE PROPERTY IS PLACED IN SERVICE AND CONTINUE FOR NINE CONSECUTIVE YEARS THEREAFTER; TO PROVIDE THAT THE AGGREGATE AMOUNT OF THE CREDIT TAKEN IN ANY ONE TAX YEAR SHALL BE LIMITED TO AN AMOUNT NOT GREATER THAN 50% OF THE TAXPAYER'S INCOME AND FRANCHISE TAX LIABILITY; TO ALLOW CREDITS NOT USED IN ANY TAXABLE YEAR TO BE CARRIED FORWARD FOR TEN YEARS FROM THE CLOSE OF THE TAX YEAR IN WHICH THE CREDITS WERE EARNED; TO PROVIDE THAT EQUIPMENT USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES THAT IS PLACED IN SERVICE AFTER JULY 1, 2003, SHALL BE EXEMPT FROM AD VALOREM TAXATION FOR A PERIOD OF TEN YEARS AFTER THE DATE SUCH EQUIPMENT IS PLACED IN SERVICE; TO AMEND SECTION 27-65-101, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SALES OF EQUIPMENT TO TELECOMMUNICATION ENTERPRISES THAT IS INSTALLED IN TIER ONE AREAS AND USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES SHALL BE EXEMPT FROM 1/2 OF THE SALES TAXES IMPOSED ON SUCH TRANSACTIONS; TO PROVIDE THAT SALES OF EQUIPMENT TO TELECOMMUNICATION ENTERPRISES THAT IS INSTALLED IN TIER TWO AND TIER THREE AREAS AND USED IN THE DEPLOYMENT OF BROADBAND TECHNOLOGIES SHALL BE EXEMPT FROM THE SALES TAXES IMPOSED ON SUCH TRANSACTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be cited as the "Mississippi Broadband Technology Development Act".

SECTION 2. (1) The Legislature finds that the long-standing telecommunications policy of this state has been to ensure that all citizens have access to telephone service. The increasing reliance upon access to computer information services for jobs, housing and other necessities requires that this concept be broadened to include high-speed access to the Internet as well.

(2) The Legislature further finds that the ability of the citizens in all parts of this state to access the Internet, also

known as the information superhighway, is an important component in the ability of the state to remain competitive in the fields of business and education, as well as the ability of government to provide services to these people both now and in the future. The ability of the citizens of Mississippi to access the full potential of the Internet is predicated on having the most advanced telecommunications infrastructure – the backbone to the information superhighway.

(3) The Legislature further finds and declares that it is the policy of the state to provide incentives for "telecommunication enterprises" (as defined in Section 57-73-21(13)) to invest in the infrastructure needed to provide broadband technology throughout the state to keep this state competitive and to promote economic development within the state.

(4) The Legislature further finds that despite the significant growth of computer ownership and usage, the growth has occurred to a greater extent within developed areas within this state, thereby leading to what has been termed a "digital divide" between Tier One areas within the state and areas within this state that are Tier Two and Tier Three areas (as such areas are designated in accordance with Section 57-73-21(1)).

(5) The Legislature further finds that it is in the public interest for people living in Tier Two areas and people living in Tier Three areas of the state to have high-speed access to the Internet and to adequate technology, infrastructure and advanced telecommunications service.

(6) The Legislature further finds and declares that additional incentives are warranted to encourage telecommunication enterprises to invest in the infrastructure needed to provide broadband technology in Tier Two and Tier Three areas of the state.

SECTION 3. (1) For purposes of this section:

(a) "Telecommunication enterprises" shall have the meaning ascribed to such term in Section 57-73-21(13);

(b) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21(1);

(c) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21(1);

(d) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21(1); and

(e) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty (384) kilobits per second in at least one direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(2) With respect to the investment in each year by a telecommunication enterprise, there shall be allowed annually as a credit against the tax imposed by Chapters 7 and 13 of Title 27, Mississippi Code of 1972, an amount equal to:

(a) Five percent (5%) of the cost of equipment used in the deployment of broadband technologies in Tier One areas;

(b) Ten percent (10%) of the cost of equipment used in the deployment of broadband technologies in Tier Two areas; and

(c) Fifteen percent (15%) of the cost of equipment used in the deployment of broadband technologies in Tier Three areas.

(3) Such annual credits shall be allowed commencing with the taxable year in which such property is placed in service and continue for nine (9) consecutive years thereafter. The aggregate credit established by this section taken in any one tax year shall be limited to an amount not greater than fifty percent (50%) of the taxpayer's tax liabilities under Chapters 7 and 13 of Title

27, Mississippi Code of 1972; however, any tax credit claimed under this section, but not used in any taxable year, may be carried forward for ten (10) consecutive years from the close of the tax year in which the credits were earned.

SECTION 4. Equipment used in the deployment of broadband technologies that is placed in service after July 1, 2003, shall be exempt from ad valorem taxation for a period of ten (10) years after the date such equipment is placed in service. For purposes of this section, "equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

SECTION 5. Section 27-65-101, Mississippi Code of 1972, is amended as follows:

27-65-101. (1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the United States or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section. No exemption provided in this section shall apply to taxes levied by Section 27-65-15 or 27-65-21.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as containers or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of containers or shipping materials for use in ships engaged in international commerce.

(b) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) to a manufacturer for use directly in manufacturing or processing a product for sale or rental or repairing or reconditioning vessels or barges of fifty (50) tons load displacement and over. This exemption shall not apply to any property used as fuel except to the extent that such fuel comprises by-products which have no market value.

(c) The gross proceeds of sales of dry docks, offshore drilling equipment for use in oil exploitation or production, vessels or barges of fifty (50) tons load displacement and over, when sold by the manufacturer or builder thereof.

(d) Sales to commercial fishermen of commercial fishing boats of over five (5) tons load displacement and not more than fifty (50) tons load displacement as registered with the United States Coast Guard and licensed by the Mississippi Commission on Marine Resources.

(e) The gross income from repairs to vessels and barges engaged in foreign trade or interstate transportation.

(f) Sales of petroleum products to vessels or barges for consumption in marine international commerce or interstate transportation businesses.

(g) Sales and rentals of rail rolling stock (and component parts thereof) for ultimate use in interstate commerce and gross income from services with respect to manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof).

(h) Sales of raw materials, catalysts, processing chemicals, welding gases or other industrial processing gases (except natural gas) used or consumed directly in manufacturing, repairing, cleaning, altering, reconditioning or improving such rail rolling stock (and component parts thereof). This exemption shall not apply to any property used as fuel.

(i) Sales of machinery or tools or repair parts therefor or replacements thereof, fuel or supplies used directly in manufacturing, converting or repairing ships of three thousand (3,000) tons load displacement and over, but not to include office and plant supplies or other equipment not directly used on the ship being built, converted or repaired.

(j) Sales of tangible personal property to persons operating ships in international commerce for use or consumption on board such ships. This exemption shall be limited to cases in which procedures satisfactory to the commissioner, ensuring against use in this state other than on such ships, are established.

(k) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-51-5, which are located in a county or portion thereof designated as an enterprise zone pursuant to Sections 57-51-1 through 57-51-15.

(l) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified businesses, as defined in Section 57-54-5.

(m) Income from storage and handling of perishable goods by a public storage warehouse.

(n) The value of natural gas lawfully injected into the earth for cycling, repressuring or lifting of oil, or lawfully vented or flared in connection with the production of oil; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be exempt.

(o) The gross collections from self-service commercial laundering, drying, cleaning and pressing equipment.

(p) Sales of materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of construction of the building, or any addition thereon, to be used therein, to qualified companies, certified as such by the Mississippi Development Authority under Section 57-53-1.

(q) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Three areas (as such term is defined in Section 57-73-21), which businesses are certified by the State Tax Commission as being eligible for the exemption granted in this paragraph (q).

(r) Sales of component materials used in the construction of a building, or any addition or improvement thereon, and sales of any machinery and equipment not later than three (3) months after the completion of the building, addition or improvement thereon, to be used therein, for any company establishing or transferring its national or regional headquarters from within or outside the State of Mississippi and creating a minimum of thirty-five (35) jobs at the new headquarters in this state. The Tax Commission shall establish criteria and prescribe procedures to determine if a company qualifies as a national or regional headquarters for the purpose of receiving the exemption provided in this paragraph.

(s) The gross proceeds from the sale of semitrailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles if exported from this state within forty-eight (48) hours and registered and first used in another state.

(t) Gross income from the storage and handling of natural gas in underground salt domes and in other underground reservoirs, caverns, structures and formations suitable for such storage.

(u) Sales of machinery and equipment to nonprofit organizations if the organization: (i) is tax-exempt pursuant to Section 501(c)(4) of the Internal Revenue Code of 1986, as amended; (ii) assists in the implementation of the national contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, Public Law 101-380; and (iii) engages primarily in programs to contain, clean up and otherwise mitigate spills of oil or other substances occurring in the United States coastal and tidal waters. For purposes of this exemption, "machinery and equipment" means any ocean-going vessels, barges, booms, skimmers and other capital equipment used primarily in the operations of nonprofit organizations referred to herein.

(v) Sales of component materials and equipment to approved business enterprises as provided under the Growth and Prosperity Act.

(w) From and after July 1, 2001, sales of pollution control equipment to manufacturers or custom processors for industrial use. For the purposes of this exemption, "pollution control equipment" means equipment, devices, machinery or systems used or acquired to prevent, control, monitor or reduce air, water or groundwater pollution, or solid or hazardous waste as required by federal or state law or regulation.

(x) Sales or leases to a manufacturer of motor vehicles operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1 of machinery and equipment; special tooling such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes; or repair parts therefor or replacements thereof; repair services thereon; fuel, supplies, electricity, coal and natural gas used directly in the manufacture of motor vehicles or motor vehicle parts or used to provide climate control for manufacturing areas.

(y) Sales or leases of component materials, machinery and equipment used in the construction of a building, or any addition or improvement thereon to an enterprise operating a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(iv)1 and any other sales or leases required to establish or operate such project.

(z) Sales of component materials and equipment to a business enterprise as provided under Section 57-64-33.

(2) Sales of component materials used in the construction of a building, or any addition or improvement thereon, sales of machinery and equipment to be used therein, and sales of manufacturing or processing machinery and equipment which is permanently attached to the ground or to a permanent foundation and which is not by its nature intended to be housed within a building structure, not later than three (3) months after the

initial start-up date, to permanent business enterprises engaging in manufacturing or processing in Tier Two areas and Tier One areas (as such areas are designated in accordance with Section 57-73-21), which businesses are certified by the State Tax Commission as being eligible for the exemption granted in this paragraph, shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

(3) (a) For purposes of this subsection:

(i) "Telecommunication enterprises" shall have the meaning ascribed to such term in Section 57-73-21(13);

(ii) "Tier One areas" mean counties designated as Tier One areas pursuant to Section 57-73-21(1);

(iii) "Tier Two areas" mean counties designated as Tier Two areas pursuant to Section 57-73-21(1);

(iv) "Tier Three areas" mean counties designated as Tier Three areas pursuant to Section 57-73-21(1); and

(v) "Equipment used in the deployment of broadband technologies" means any equipment capable of being used for or in connection with the transmission of information at a rate, prior to taking into account the effects of any signal degradation, that is not less than three hundred eighty-four (384) kilobits per second in at least one direction, including, but not limited to, asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics and related equipment.

(b) Sales of equipment to telecommunication enterprises that is installed in Tier One areas and used in the deployment of broadband technologies shall be exempt from one-half (1/2) of the taxes imposed on such transactions under this chapter.

(c) Sales of equipment to telecommunication enterprises that is installed in Tier Two and Tier Three areas and used in the deployment of broadband technologies shall be exempt from the taxes imposed on such transactions under this chapter.

SECTION 6. This act shall take effect and be in force from and after July 1, 2003.

ST: Taxation; provide various tax credits and exemptions for companies that provide broadband technologies.