

By: Representative Ellis (By Request)

To: Public Utilities; Ways and Means

HOUSE BILL NO. 1239

1 AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT BROADBAND SERVICES FROM REGULATION OF THE PUBLIC SERVICE
3 COMMISSION, AND TO PROVIDE A DEFINITION FOR THE TERM "BROADBAND
4 SERVICES"; AND FOR RELATED PURPOSES.

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

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

8 77-3-3. As used in this chapter:

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

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

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

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

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

24 (ii) The transmission, sale, sale for resale, or
25 distribution of natural, artificial, or mixed natural and
26 artificial gas to the public for compensation by means of
27 transportation, transmission, or distribution facilities and
28 equipment located within this state; however, the term shall not

29 include the production and gathering of natural gas, the sale of
30 natural gas in or within the vicinity of the field where produced,
31 or the distribution or sale of liquefied petroleum gas or the sale
32 to the ultimate consumer of natural gas for use as a motor vehicle
33 fuel;

34 (iii) The transmission, conveyance or reception of
35 any message over wire, or by radio, or otherwise, of writing,
36 signs, signals, pictures and sounds of all kinds by or for the
37 public, where such service is offered to the public for
38 compensation, and the furnishing, or the furnishing and
39 maintenance, of equipment or facilities to the public, for
40 compensation, for use as a private communications system or part
41 thereof; however, no person or corporation not otherwise a public
42 utility within the meaning of this chapter shall be deemed such
43 solely because of engaging in this state in the furnishing, for
44 private use as last aforementioned, and moreover, nothing in this
45 chapter shall be construed to apply to television stations, radio
46 stations, community television antenna services or broadband
47 services; and

48 (iv) The transmission, distribution, sale or
49 resale of water to the public for compensation, or the collection,
50 transmission, treatment or disposal of sewage, or otherwise
51 operating a sewage disposal service, to or for the public for
52 compensation.

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

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

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

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

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

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

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

84 (iii) Any corporation of which fifteen percent
85 (15%) or more of the voting securities is owned or controlled,
86 directly or indirectly, by a public utility;

87 (iv) Any corporation twenty-five percent (25%) or
88 more of the voting securities of which is owned or controlled,
89 directly or indirectly, by any person or corporation that owns or
90 controls, directly or indirectly, twenty-five percent (25%) or
91 more of the voting securities of any public utility or by any

92 person or corporation in any chain of successive ownership of
93 twenty-five percent (25%) of such securities;

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

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

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

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

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

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

125 provisions of this chapter, must provide to meet the day-to-day
126 operating costs of the public utility prior to the time such costs
127 are recovered from customers, and the measurement of (i) the lag
128 in collecting from the customer the cost of providing service, and
129 (ii) the lag in paying the cost of providing service by the public
130 utility.

131 (k) The term "broadband services" means any service
132 that consists of or includes a high-speed access capability to
133 transmit at a rate that is not less than two hundred (200)
134 kilobits per second either in the upstream or downstream direction
135 and either:

136 (i) Is used to provide access to the Internet, or

137 (ii) Provides computer processing, information
138 storage, information content or protocol conversion, including any
139 service applications or information service provided over such
140 high-speed access service.

141 Nothing contained in this paragraph shall apply to retail
142 services that are tariffed by the commission.

143 **SECTION 2.** This act shall take effect and be in force from
144 and after its passage.