

By: Senator(s) King, Mettetal, Robertson,  
Burton

To: Public Utilities

SENATE BILL NO. 2636

1 AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO  
2 DEFINE "BROADBAND SERVICES" AND TO CLARIFY THAT BROADBAND SERVICES  
3 ARE EXEMPT FROM REGULATIONS BY THE PUBLIC SERVICE COMMISSION; AND  
4 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 (i) is used to provide access to the Internet, or (ii)  
136 provides computer processing, information storage, information  
137 content or protocol conversion, including any service applications  
138 or information service provided over such high-speed access  
139 service. Nothing contained in this paragraph shall apply to  
140 retail services that are tariffed by the commission.

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