

By: Representative Ellis

To: Public Utilities

## HOUSE BILL NO. 1252

1 AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE PUBLIC SERVICE COMMISSION MAY ONLY REGULATE THE  
3 RATES, TERMS AND CONDITIONS OF CERTAIN SWITCHED ACCESS SERVICES  
4 AND SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICES; TO PROVIDE  
5 THAT AN INCUMBENT LOCAL EXCHANGE CARRIER SHALL PROVIDE PRIMARY  
6 SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICE TO THE PREMISES  
7 OF A PERMANENT RESIDENCE OR BUSINESS WITHIN ITS FRANCHISED SERVICE  
8 TERRITORY, IF THE COST TO THE REQUESTING PARTY DOES NOT EXCEED A  
9 CERTAIN AMOUNT; TO PROVIDE THAT THE COMMISSION SHALL RETAIN  
10 EXCLUSIVE ORIGINAL JURISDICTION OVER CUSTOMER COMPLAINTS FOR THOSE  
11 SERVICES THAT CONTINUE TO BE REGULATED; TO PROVIDE THAT CERTAIN  
12 TELECOMMUNICATION UTILITIES SHALL ONLY BE REQUIRED TO FILE  
13 FINANCIAL OR SERVICE QUALITY INFORMATION THAT IS REQUIRED TO BE  
14 FILED WITH THE FEDERAL COMMUNICATIONS COMMISSION; AND FOR RELATED  
15 PURPOSES.

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

17 **SECTION 1.** Section 77-3-35, Mississippi Code of 1972, is  
18 amended as follows:

19 77-3-35. (1) Subject to the provisions of subsections (2)  
20 and (4) of this section, under such reasonable rules and  
21 regulations as the commission may prescribe, every public utility,  
22 as to the rates \* \* \* which are subject to regulation under the  
23 provisions of this article, shall file with the commission, within  
24 such time and in such form as the commission may designate,  
25 schedules showing such rates and charges established by it and  
26 collected and enforced, or to be collected or enforced within the  
27 jurisdiction of the commission. The utility shall keep copies of  
28 such schedules open to public inspection under such reasonable  
29 rules and regulations as the commission may prescribe.

30 No such public utility shall directly or indirectly, by any  
31 device whatsoever, or in anywise, charge, demand, collect or  
32 receive from any person or corporation for any service rendered or  
33 to be rendered by such public utility a greater or less

34 compensation than that prescribed in the schedules of such public  
35 utility applicable thereto then filed in the manner provided in  
36 this section, and no person or corporation shall receive or accept  
37 any service from any such public utility for a compensation  
38 greater or less than prescribed in such schedules.

39 \* \* \* Utilities selling commodities or rendering any  
40 service to cooperatives, municipalities or other nonprofit  
41 organizations, shall, at the order of the commission, file  
42 schedules of such rates and charges for information purposes only.

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

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

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

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

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

64 (2) (a) The Legislature recognizes that the maintenance of  
65 universal telephone service in Mississippi is a continuing goal of  
66 the commission and that the public interest requires that the

67 commission be authorized and encouraged to formulate and adopt  
68 rules and policies that will permit the commission, in the  
69 exercise of its expertise, to regulate and control the provision  
70 of telecommunications services to the public in a changing  
71 environment where competition and innovation are becoming more  
72 commonplace, giving due regard to the interests of consumers, the  
73 public, the providers of telecommunications services and the  
74 continued availability of good telecommunications service. The  
75 commission is authorized to issue more than one competing  
76 certificate of public convenience and necessity to provide local  
77 exchange telephone service in the same geographical area;  
78 provided, that the issuing of any such additional certificates  
79 shall not otherwise affect any certificate of public convenience  
80 and necessity heretofore issued to any provider of such services.

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

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

87 (b) \* \* \* The commission may, on its own motion or at  
88 the request of any interested party, enter an order, after notice  
89 and opportunity for hearing, determining and directing that, in  
90 the provision of a service or facility by a utility of the type  
91 defined in Section 77-3-3(d)(iii), competition or other market  
92 forces adequately protect the public interest, or that a service  
93 or facility offered by the utility is discretionary, and that the  
94 public interest requires that the utility's rates and charges for  
95 such service or facility shall not thereafter be subject to  
96 regulation by the commission.

97 (c) In making its determination whether the rates and  
98 charges for a service or facility shall not be subject to

99 regulation by the commission, the commission may consider  
100 individually or collectively:

101 (i) Whether the exercise of commission  
102 jurisdiction produces tangible benefits to the utility's customers  
103 that exceed those available by reliance on market forces or other  
104 factors;

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

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

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

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

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

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

131           (3) (a) \* \* \* The commission is authorized to consider and  
132 adopt alternative methods of regulation proposed by a utility of  
133 the type defined in Section 77-3-3(d)(i), (ii) or (iii) to  
134 establish rates for the services furnished by such utility that  
135 are fair, just and reasonable to the public and that provide fair,  
136 just and reasonable compensation to the utility for such services.

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

142           (4) (a) Notwithstanding any other provisions of this  
143 article or any other statute to the contrary, and consistent with  
144 the provisions herein, for those public utilities of the type  
145 defined in Section 77-3-3(d)(iii) that are subject to the  
146 competitive requirements set forth in 47 USCS Section 251 or those  
147 public utilities that have waived a suspension granted by the  
148 commission of the requirements of 47 USCS Section 251(b) and (c)  
149 as authorized by 47 USCS Section 251(f)(2), the Legislature has  
150 determined that, in the provision of all services other than  
151 switched access service and single-line flat rate voice  
152 communication service, competition or other market forces  
153 adequately protect the public interest. Therefore, the commission  
154 is only authorized to regulate the rates, terms and conditions of  
155 switched access service and single-line flat rate voice  
156 communication service within a traditional local calling area,  
157 with access to 911, with touch tone dialing and with access to  
158 long distance, so long as such single-line flat rate service is  
159 not combined with any other service, feature or product. The  
160 retail rates for such single-line flat rate voice communication  
161 service beginning January 1, 2007, and every succeeding January 1  
162 may only be increased during the calendar year by an amount that  
163 does not exceed the rates for such service on January 1 of the

164 previous year, plus the increase in the Consumer Price Index for  
165 all Urban Consumers as reported by the United States Department of  
166 Labor, Bureau of Labor Statistics.

167 (b) For those public utilities of the type defined in  
168 Section 77-3-3(d)(iii) that have been granted a suspension by the  
169 commission of the requirements of 47 USCS Section 251(b) and (c)  
170 as authorized by 47 USCS Section 251(f)(2), the commission, at the  
171 request of such public utility, shall enter an order, after notice  
172 and opportunity for hearing, determining that such public  
173 utility's provision of service will be subject to the same level  
174 of regulation as provided in paragraph (a) of this subsection, but  
175 only after the commission determines that such public utility has  
176 satisfied one (1) of the following conditions:

177 (i) Has executed interconnection agreements  
178 which have been approved by the commission to the extent required  
179 under law with two (2) or more local exchange carriers  
180 unaffiliated with such public utility;

181 (ii) Offers for resale at wholesale rates,  
182 pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public  
183 utility's retail telecommunications services provided to  
184 subscribers who are not telecommunications carriers;

185 (iii) At least two (2) competitive  
186 telecommunications providers unaffiliated with such requesting  
187 public utility are offering service to such public utility's  
188 subscribers; or

189 (iv) Has experienced a material reduction in  
190 access lines or minutes of use in two (2) consecutive years.

191 A waiver of suspension under paragraph (a) of this subsection  
192 shall be effective upon written notification to the commission.  
193 The initial rate utilized by such public utility shall be the rate  
194 for such service in effect at the time of such waiver under this  
195 section. The commission, upon request of the public utility, may

196 return such public utility to return to a form of regulation  
197 permitted under Section 77-3-35.

198 (c) (i) An incumbent local exchange carrier shall  
199 provide, upon reasonable request, primary single-line flat rate  
200 voice communication service to the premises of a permanent  
201 residence or business within its franchised service territory, if  
202 the costs, including, but not limited to, the costs of facilities,  
203 rights-of-way and equipment, of providing such service to the  
204 requesting party do not exceed Five Thousand Dollars (\$5,000.00).  
205 This requirement shall not apply where there is an alternative  
206 provider of service to the premises of the residence or business  
207 customer, or where the incumbent local exchange carrier has been  
208 prohibited from providing service to the premises.

209 (ii) If the costs exceeds Five Thousand Dollars  
210 (\$5,000.00), as provided in and subject to subparagraph (i) of  
211 this paragraph (c), an incumbent local exchange carrier may not  
212 deny service on the basis of costs so long as sufficient funds to  
213 provide that services are available from contributions to aid in  
214 construction or the Mississippi portion of the applicable federal  
215 universal service fund program as administered by the commission.

216 (d) Nothing in this chapter shall be construed to  
217 affect the duties of an incumbent local exchange carrier to  
218 provide unbundled access to network elements to the extent  
219 required under 47 USCS Sections 251 and 252 and the Federal  
220 Communications Commission's regulations implementing these  
221 sections, or the commission's authority to arbitrate and enforce  
222 interconnection agreements pursuant to 47 USCS Sections 251 and  
223 252 and the Federal Communications Commission's regulations  
224 implementing these sections.

225 (e) The commission shall retain exclusive original  
226 jurisdiction over customer complaints for those services that  
227 continue to be regulated. For services no longer regulated, the  
228 commission shall have exclusive original jurisdiction to interpret

229 and enforce the terms and conditions of customer service  
230 agreements for telecommunications services, but it shall not  
231 alter, set aside or refuse to enforce the rates, terms and  
232 conditions thereof, either directly or indirectly. No other party  
233 shall be allowed to participate in any such complaint proceeding,  
234 except for the customer, legal counsel or other representative of  
235 the customer, or the public utility involved.

236 (f) A public utility of the type defined in Section  
237 77-3-3(d)(iii) which is regulated under the provisions of  
238 paragraph (a) of this subsection shall only be required to file  
239 financial or service quality information that such public  
240 utilities are required to file with the Federal Communications  
241 Commission so long as such financial information includes data  
242 specific to Mississippi. As to all other data and information,  
243 the requirements of Section 77-3-79 continue to apply. If any  
244 such public utility is not required to file such financial  
245 information with the Federal Communications Commission, the  
246 requirements of Section 77-3-79 continue to apply. The public  
247 utility regulatory tax established in Section 77-3-87 shall be  
248 based on the financial information contained in such federal  
249 financial reports filed by such public utilities. The calculation  
250 of such tax for such public utilities shall continue to be based  
251 upon the gross revenues from the intrastate operations of such  
252 public utility in the same manner as such tax was calculated  
253 before July 1, 2006. Nothing herein shall change the obligation  
254 of such public utilities described in Section 77-3-3(d)(iii) to  
255 pay the public utilities regulatory tax established in Section  
256 77-3-87. In addition, such public utility shall only be required  
257 to adhere to billing for retail telecommunications services in  
258 compliance with the federal truth in billing regulations  
259 prescribed by the Federal Communications Commission.

260 (g) (i) In order to transition to the changes  
261 effectuated by paragraph (a) of this subsection, the rates, terms



262 and conditions for products and services no longer subject to  
263 regulation by the commission which were in effect with a specific  
264 term immediately prior to the effective date of this section shall  
265 remain in effect for the duration of the specific term as to  
266 customers who subscribed to such products or services prior to the  
267 effective date of this section. If no term applied to such  
268 products or services at the time such customer subscribed to such  
269 products or services, then the rates, terms and conditions  
270 governing such products or services shall remain in effect until a  
271 written customer service agreement becomes effective as described  
272 in subparagraph (ii) of this paragraph (g).

273 (ii) Except as provided in subparagraph (i) of  
274 this paragraph (g), the service provider shall offer existing and  
275 new customers a written customer service agreement, which in the  
276 case of new customers shall be delivered no later than thirty (30)  
277 days after the initiation of service. The customer service  
278 agreement shall include a provision advising the customer that he  
279 has thirty (30) days from receipt in which to elect:

280 1. To terminate service with the service  
281 provider by contacting such service provider within the thirty-day  
282 time period, in which case the customer shall have the right to  
283 pay off the account in the same manner and under the same rates,  
284 terms and conditions as set forth in the written customer service  
285 agreement provided to the customer, which written customer service  
286 agreement shall relate back in its entirety to the date of a new  
287 customer's request for service or the date the agreement was sent  
288 to an existing customer, as applicable, and shall be in effect  
289 until termination through pay off; or

290 2. To use the services of the service  
291 provider or to otherwise continue the account with the service  
292 provider after the thirty-day time period has elapsed, either of  
293 which shall constitute the customer's assent to all the rates,  
294 terms and conditions of the written customer service agreement.

295 The customer service agreement shall be deemed received three (3)  
296 business days after deposit in the United States mail, first-class  
297 delivery.

298 (iii) If any service provider desires to modify in  
299 any respect any rates, terms or conditions of a customer service  
300 agreement, it shall provide at least thirty (30) days' prior  
301 written notice of the modification and the proposed effective date  
302 to the customer. The customer service agreement shall include a  
303 provision advising the customer that he has the option:

304 1. To terminate service with the service  
305 provider by contacting such service provider prior to the  
306 effective date, in which case the customer shall have the right to  
307 pay off the account in the same manner and under the same rates,  
308 terms and conditions as then in effect; or

309 2. To use the services of the service  
310 provider or to otherwise continue the account with the service  
311 provider on or after the effective date, either of which shall  
312 constitute the customer's assent to the modified written customer  
313 service agreement. The customer service agreement shall be deemed  
314 received three (3) business days after deposit in the United  
315 States mail, first-class delivery.

316 (h) Nothing herein shall change the obligation of those  
317 public utilities described in Section 77-3-3(d)(iii) to obtain a  
318 certificate of public convenience and necessity pursuant to this  
319 chapter.

320 **SECTION 2.** This act shall take effect and be in force from  
321 and after July 1, 2006.