

By: Representative Beckett

To: Public Utilities

HOUSE BILL NO. 825

1 AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERMS "VIDEO SERVICES," "VOICE OVER INTERNET PROTOCOL
3 SERVICES," "COMMERCIAL MOBILE SERVICES" AND "INTERNET PROTOCOL
4 ENABLED SERVICES"; TO PROVIDE THAT SUCH SERVICES SHALL NOT BE
5 INCLUDED IN THE REGULATION OF PUBLIC UTILITIES; TO AMEND SECTION
6 77-3-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PUBLIC
7 SERVICE COMMISSION SHALL HAVE JURISDICTION OVER INTRASTATE
8 SWITCHED SERVICE PROVIDED BY PUBLIC UTILITIES; TO PROVIDE THAT THE
9 RATE STRUCTURE USED FOR THE PROVISION OF INTRASTATE SWITCHED
10 ACCESS SERVICE SHALL BE THE SAME AS THOSE USED FOR THE PROVISION
11 OF INTERSTATE SWITCHED ACCESS SERVICE; AND FOR RELATED PURPOSES.

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

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

15 77-3-3. As used in this chapter:

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

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

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

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

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



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

41 (iii) The transmission, conveyance or reception of
42 any message over wire, or * * * writing, signs, signals, pictures
43 and sounds of all kinds by or for the public, where such service
44 is offered to the public for compensation, and the furnishing, or
45 the furnishing and maintenance, of equipment or facilities to the
46 public, for compensation, for use as a private communications
47 system or part thereof; however, no person or corporation not
48 otherwise a public utility within the meaning of this chapter
49 shall be deemed such solely because of engaging in this state in
50 the furnishing, for private use as last aforementioned, and
51 moreover, nothing in this chapter shall be construed to apply to
52 television stations, radio stations, community television antenna
53 services, video services, voice over Internet protocol services
54 ("VoIP"), commercial mobile services, Internet protocol ("IP")
55 enabled services or broadband services; and

56 (iv) The transmission, distribution, sale or
57 resale of water to the public for compensation, or the collection,
58 transmission, treatment or disposal of sewage, or otherwise
59 operating a sewage disposal service, to or for the public for
60 compensation.

61 The term "public utility" shall not include any person not
62 otherwise a public utility, who furnishes the services or
63 commodity described in this paragraph only to himself, his



64 employees or tenants as an incident of such employee service or
65 tenancy, if such services are not sold or resold to such tenants
66 or employees on a metered or consumption basis other than the
67 submetering authorized under Section 77-3-97.

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

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

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

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

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

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

92 (iii) Any corporation of which fifteen percent
93 (15%) or more of the voting securities is owned or controlled,
94 directly or indirectly, by a public utility;

95 (iv) Any corporation twenty-five percent (25%) or
96 more of the voting securities of which is owned or controlled,



97 directly or indirectly, by any person or corporation that owns or
98 controls, directly or indirectly, twenty-five percent (25%) or
99 more of the voting securities of any public utility or by any
100 person or corporation in any chain of successive ownership of
101 twenty-five percent (25%) of such securities;

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

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

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

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

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



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

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

- 144 (i) Is used to provide access to the Internet, or
- 145 (ii) Provides computer processing, information
146 storage, information content or protocol conversion, including any
147 service applications or information service provided over such
148 high-speed access service.

149 (l) The term "video services" means video programming
150 services without regard to delivery technology, including Internet
151 protocol technology ("Internet protocol television or "IPTV") and
152 video programming provided as a part of a service that enables
153 users to access content, information, email or other services
154 offered over the public Internet.

155 (m) The term "voice over Internet protocol services" or
156 "VoIP services" means any service that: (i) enables real-time,
157 two-way voice communications that originate from or terminate to
158 the user's location in Internet protocol or any successor
159 protocol; (ii) uses a broadband connection from the user's
160 location; and (iii) permits users generally to receive calls that
161 originate on the public switched telephone network and to
162 terminate calls to the public switched telephone network.



163 (n) The term "commercial mobile services" means any
164 services as defined in 47 USCS Section 332 (d).

165 (o) The term "Internet protocol-enabled services" or
166 "IP-enabled services" means any service, capability,
167 functionality, or application provided using Internet protocol, or
168 any successor protocol, that enables an end user to send or
169 receive a communication in Internet protocol format, or any
170 successor format, regardless of whether the communications is
171 voice, data or video.

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

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

176 77-3-35. (1) Subject to the provisions of subsections (2)
177 and (4) of this section, under such reasonable rules and
178 regulations as the commission may prescribe, every public utility,
179 as to the rates which are subject to regulation under the
180 provisions of this article, shall file with the commission, within
181 such time and in such form as the commission may designate,
182 schedules showing such rates and charges established by it and
183 collected and enforced, or to be collected or enforced within the
184 jurisdiction of the commission. The utility shall keep copies of
185 such schedules open to public inspection under such reasonable
186 rules and regulations as the commission may prescribe.

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



196 Utilities selling commodities or rendering any service to
197 cooperatives, municipalities or other nonprofit organizations,
198 shall, at the order of the commission, file schedules of such
199 rates and charges for information purposes only.

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

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

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

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

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

221 (2) (a) * * * The commission is authorized to issue more
222 than one (1) competing certificate of public convenience and
223 necessity to provide local exchange telephone service in the same
224 geographical area; provided, that the issuing of any such
225 additional certificates shall not otherwise affect any certificate
226 of public convenience and necessity heretofore issued to any
227 provider of such services.



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

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

234 (b) The commission may, on its own motion or at the
235 request of any interested party, enter an order, after notice and
236 opportunity for hearing, determining and directing that, in the
237 provision of a service or facility by a utility of the type
238 defined in Section 77-3-3(d) (iii), competition or other market
239 forces adequately protect the public interest, or that a service
240 or facility offered by the utility is discretionary, and that the
241 public interest requires that the utility's rates and charges for
242 such service or facility shall not thereafter be subject to
243 regulation by the commission.

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

248 (i) Whether the exercise of commission
249 jurisdiction produces tangible benefits to the utility's customers
250 that exceed those available by reliance on market forces or other
251 factors;

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

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



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

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

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

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

278 (3) (a) The commission is authorized to consider and adopt
279 alternative methods of regulation proposed by a utility of the
280 type defined in Section 77-3-3(d) (i), (ii) or (iii) to establish
281 rates for the services furnished by such utility that are fair,
282 just and reasonable to the public and that provide fair, just and
283 reasonable compensation to the utility for such services.

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

289 (4) (a) Notwithstanding any other provisions of this
290 article or any other statute to the contrary, and consistent with
291 the provisions herein, for those public utilities of the type
292 defined in Section 77-3-3(d) (iii) that are subject to the
293 competitive requirements set forth in 47 USCS Section 251 or those



294 public utilities that have waived a suspension granted by the
295 commission of the requirements of 47 USCS Section 251(b) and (c)
296 as authorized by 47 USCS Section 251(f) (2), the Legislature has
297 determined that, in the provision of all services, other than
298 switched access service * * *, competition or other market forces
299 adequately protect the public interest. Therefore, the commission
300 no longer has jurisdiction over the services, other than the
301 provision of intrastate switched access service, provided by such
302 public utilities, and the Legislature has determined that the
303 rates and rate structure used for the provision of intrastate
304 switched access service shall be the same as those used for the
305 provision of interstate switched access service.

306 (b) For those public utilities of the type defined in
307 Section 77-3-3(d) (iii) that have been granted a suspension by the
308 commission of the requirements of 47 USCS Section 251(b) and (c)
309 as authorized by 47 USCS Section 251(f) (2), the commission, at the
310 request of such public utility, shall enter an order, after notice
311 and opportunity for hearing, determining that such public
312 utility's provision of service will be subject to the same level
313 of regulation as provided in paragraph (a) of this subsection, but
314 only after the commission determines that such public utility has
315 satisfied one (1) of the following conditions:

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

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

324 (iii) At least two (2) competitive
325 telecommunications providers unaffiliated with such requesting



326 public utility are offering service to such public utility's
327 subscribers; or

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

330 A waiver of suspension under paragraph (a) of this subsection
331 shall be effective upon written notification to the commission.
332 The initial rate utilized by such public utility shall be the rate
333 for such service in effect at the time of such waiver under this
334 section. The commission, upon request of the public utility, may
335 return such public utility to a form of regulation permitted under
336 this section.

337 (c) A public utility of the type defined in Section
338 77-3-3 (d) (iii) which is regulated under the provisions of
339 paragraph (a) of this subsection shall not be subject to any rule,
340 regulation, or order promulgated by the commission, except for the
341 provision of intrastate switched access service. The provisions
342 of Section 77-3-23 shall not apply to such public utility
343 regulated under the provisions of paragraph (a) of this
344 subsection.

345 * * *

346 (d) Nothing in this chapter shall be construed to
347 affect the duties of an incumbent local exchange carrier to
348 provide unbundled access to network elements to the extent
349 required under 47 USCS Sections 251 and 252 and the Federal
350 Communications Commission's regulations implementing these
351 sections, or the commission's authority to arbitrate and enforce
352 interconnection agreements pursuant to 47 USCS Sections 251 and
353 252 and the Federal Communications Commission's regulations
354 implementing these sections.

355 * * *

356 (e) A public utility of the type defined in Section
357 77-3-3(d) (iii) which is regulated under the provisions of
358 paragraph (a) of this subsection shall not be required to file



359 financial, service quality or other information with the
360 commission. * * * The calculation of the public utility regulatory
361 tax established in Section 77-3-87 shall be based solely on
362 the * * * gross revenues from the provision of intrastate switched
363 access service by such public utility subject to regulation under
364 the provision of paragraph (a) of this subsection. In addition,
365 such public utility shall only be required to adhere to billing
366 for retail telecommunications services in compliance with the
367 federal truth in billing regulations prescribed by the Federal
368 Communications Commission.

369 (f) (i) In order to transition to the changes
370 effectuated by paragraph (a) of this subsection, the rates, terms
371 and conditions for products and services no longer subject to
372 regulation by the commission which were in effect with a specific
373 term immediately prior to July 1, 2006, shall remain in effect for
374 the duration of the specific term as to customers who subscribed
375 to such products or services prior to July 1, 2006. If no term
376 applied to such products or services at the time such customer
377 subscribed to such products or services, then the rates, terms and
378 conditions governing such products or services shall remain in
379 effect until a written customer service agreement becomes
380 effective as described in subparagraph (ii) of this paragraph (g).

381 (ii) Except as provided in subparagraph (i) of
382 this paragraph (g), the service provider shall offer existing and
383 new customers a written customer service agreement, which in the
384 case of new customers shall be delivered no later than thirty (30)
385 days after the initiation of service. The customer service
386 agreement shall include a provision advising the customer that he
387 has thirty (30) days from receipt in which to elect:

388 1. To terminate service with the service
389 provider by contacting such service provider within the thirty-day
390 time period, in which case the customer shall have the right to
391 pay off the account in the same manner and under the same rates,



392 terms and conditions as set forth in the written customer service
393 agreement provided to the customer, which written customer service
394 agreement shall relate back in its entirety to the date of a new
395 customer's request for service or the date the agreement was sent
396 to an existing customer, as applicable, and shall be in effect
397 until termination through pay off; or

398 2. To use the services of the service
399 provider or to otherwise continue the account with the service
400 provider after the thirty-day time period has elapsed, either of
401 which shall constitute the customer's assent to all the rates,
402 terms and conditions of the written customer service agreement.
403 The customer service agreement shall be deemed received three (3)
404 business days after deposit in the United States mail, first-class
405 delivery.

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

412 1. To terminate service with the service
413 provider by contacting such service provider prior to the
414 effective date, in which case the customer shall have the right to
415 pay off the account in the same manner and under the same rates,
416 terms and conditions as then in effect; or

417 2. To use the services of the service
418 provider or to otherwise continue the account with the service
419 provider on or after the effective date, either of which shall
420 constitute the customer's assent to the modified written customer
421 service agreement. The customer service agreement shall be deemed
422 received three (3) business days after deposit in the United
423 States mail, first-class delivery.



424 (g) Nothing herein shall change the obligation of those
425 public utilities described in Section 77-3-3(d)(iii) to obtain a
426 certificate of public convenience and necessity pursuant to this
427 chapter.

428 **SECTION 3.** This act shall take effect and be in force from
429 and July 1, 2012.

