

By: Representative Beckett

To: Public Utilities

HOUSE BILL NO. 825
(As Passed the House)

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 ACCESS SERVICE PROVIDED BY PUBLIC UTILITIES; TO REQUIRE
9 THE CHAIRMAN OF THE PUBLIC UTILITIES COMMITTEE OF THE HOUSE OF
10 REPRESENTATIVES TO APPOINT A CERTAIN SUBCOMMITTEE CONCERNING THE
11 IMPLEMENTATION OF CERTAIN PROGRAMS BY THE FEDERAL COMMUNICATIONS
12 COMMISSION; AND FOR RELATED PURPOSES.

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

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

16 77-3-3. As used in this chapter:

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

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

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

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

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



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

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

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

63 The term "public utility" shall not include any person not
64 otherwise a public utility, who furnishes the services or



65 commodity described in this paragraph only to himself, his
66 employees or tenants as an incident of such employee service or
67 tenancy, if such services are not sold or resold to such tenants
68 or employees on a metered or consumption basis other than the
69 submetering authorized under Section 77-3-97.

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

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

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

86 (g) The term "affiliated interest" or "affiliate"
87 includes:

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

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

94 (iii) Any corporation of which fifteen percent
95 (15%) or more of the voting securities is owned or controlled,
96 directly or indirectly, by a public utility;



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

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

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

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

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

128 (i) The term "cost of service" includes operating
129 expenses, taxes, depreciation, net revenue and operating revenue



130 requirement at a claimed rate of return from public utility
131 operations.

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

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

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

151 (l) The term "video services" means video programming
152 services without regard to delivery technology, including Internet
153 protocol technology ("Internet protocol television or "IPTV") and
154 video programming provided as a part of a service that enables
155 users to access content, information, email or other services
156 offered over the public Internet. The term "video programming"
157 means any programming as defined in 47 USCS Section 522(20).

158 (m) The term "voice over Internet protocol services" or
159 "VoIP services" means any service that: (i) enables real-time,
160 two-way voice communications that originate from or terminate to
161 the user's location in Internet protocol or any successor
162 protocol; (ii) uses a broadband connection from the user's



163 location; and (iii) permits users generally to receive calls that
164 originate on the public switched telephone network and to
165 terminate calls to the public switched telephone network.

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

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

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

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

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

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



196 this section, and no person or corporation shall receive or accept
197 any service from any such public utility for a compensation
198 greater or less than prescribed in such schedules.

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

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

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

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

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

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

224 (2) (a) The Legislature recognizes that the maintenance of
225 universal telephone service in Mississippi is a continuing goal of
226 the commission and that the public interest requires that the
227 commission be authorized and encouraged to formulate and adopt
228 rules and policies that will permit the commission, in the



229 exercise of its expertise, to regulate and control the provision
230 of telecommunications services to the public in a changing
231 environment where competition and innovation are becoming more
232 commonplace, giving due regard to the interests of consumers, the
233 public, the providers of telecommunications services and the
234 continued availability of good telecommunications service. The
235 commission is authorized to issue more than one (1) competing
236 certificate of public convenience and necessity to provide local
237 exchange telephone service in the same geographical area;
238 provided, that the issuing of any such additional certificates
239 shall not otherwise affect any certificate of public convenience
240 and necessity heretofore issued to any provider of such services.

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

243 The commission may apply standards adopted by the Federal
244 Communications Commission that are generally applicable to
245 companies that are designated and operate as eligible
246 telecommunications carriers, pursuant to 47 USCS Section 214(e).
247 The commission may exercise its authority to ensure that these
248 carriers, including commercial mobile radio service providers that
249 receive federal eligible telecommunications status, comply with
250 those standards, only to the extent permitted by and consistent
251 with applicable federal laws and regulations.

252 The commission retains the authority to issue orders to
253 implement its rules, regulations and the provisions of this
254 chapter, including the authority to grant and modify, impose
255 conditions upon, or revoke a certificate.

256 (b) The commission may, on its own motion or at the
257 request of any interested party, enter an order, after notice and
258 opportunity for hearing, determining and directing that, in the
259 provision of a service or facility by a utility of the type
260 defined in Section 77-3-3(d) (iii), competition or other market
261 forces adequately protect the public interest, or that a service



262 or facility offered by the utility is discretionary, and that the
263 public interest requires that the utility's rates and charges for
264 such service or facility shall not thereafter be subject to
265 regulation by the commission.

266 (c) In making its determination whether the rates and
267 charges for a service or facility shall not be subject to
268 regulation by the commission, the commission may consider
269 individually or collectively:

270 (i) Whether the exercise of commission
271 jurisdiction produces tangible benefits to the utility's customers
272 that exceed those available by reliance on market forces or other
273 factors;

274 (ii) Whether technological changes, competitive
275 forces, discretionary nature of the service or facility, or
276 regulation by other state and federal regulatory bodies render the
277 exercise of jurisdiction by the Mississippi commission unnecessary
278 or wasteful;

279 (iii) Whether the exercise of commission
280 jurisdiction inhibits a regulated utility from competing with
281 unregulated providers of functionally similar telecommunications
282 services or equipment;

283 (iv) Whether the existence of competition tends to
284 prevent abuses, unjust discrimination and extortion in the charges
285 of telecommunications utilities for the service or facility in
286 question;

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

289 (vi) Any other factors that the commission
290 considers relevant to the public interest.

291 In making the determination as above set forth, the
292 commission may specify the period of time during which the
293 utility's rates and charges for the service or facility shall not
294 thereafter be subject to regulation. Likewise, after notice and



295 opportunity for hearing, the commission may revoke a determination
296 and direction made under this section, when the commission finds
297 that commission regulation of the utility's rates and charges for
298 the service or facility in question is necessary to protect the
299 public interest.

300 (3) (a) The commission is authorized to consider and adopt
301 alternative methods of regulation proposed by a utility of the
302 type defined in Section 77-3-3(d) (i), (ii) or (iii) to establish
303 rates for the services furnished by such utility that are fair,
304 just and reasonable to the public and that provide fair, just and
305 reasonable compensation to the utility for such services.

306 (b) For purposes of this subsection, the phrase
307 "alternative methods of regulation" means the regulation of
308 utility rates and charges by methods other than the rate base or
309 rate of return method of regulation set forth in other provisions
310 of this article.

311 (4) (a) Notwithstanding any other provisions of this
312 article or any other statute to the contrary, and consistent with
313 the provisions herein, for those public utilities of the type
314 defined in Section 77-3-3(d) (iii) that are subject to the
315 competitive requirements set forth in 47 USCS Section 251 or those
316 public utilities that have waived a suspension granted by the
317 commission of the requirements of 47 USCS Section 251(b) and (c)
318 as authorized by 47 USCS Section 251(f) (2), the Legislature has
319 determined that, in the provision of all services, other than
320 switched access service * * *, competition or other market forces
321 adequately protect the public interest. Therefore, the commission
322 no longer has jurisdiction over the services, subject to Section
323 77-3-35(4) (d), other than the provision of intrastate switched
324 access service, provided by such public utilities. * * *

325 (b) For those public utilities of the type defined in
326 Section 77-3-3(d) (iii) that have been granted a suspension by the
327 commission of the requirements of 47 USCS Section 251(b) and (c)



328 as authorized by 47 USCS Section 251(f) (2), the commission, at the
329 request of such public utility, shall enter an order, after notice
330 and opportunity for hearing, determining that such public
331 utility's provision of service will be subject to the same level
332 of regulation as provided in paragraph (a) of this subsection, but
333 only after the commission determines that such public utility has
334 satisfied one (1) of the following conditions:

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

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

343 (iii) At least two (2) competitive
344 telecommunications providers unaffiliated with such requesting
345 public utility are offering service to such public utility's
346 subscribers; or

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

349 A waiver of suspension under paragraph (a) of this subsection
350 shall be effective upon written notification to the commission.
351 The initial rate utilized by such public utility shall be the rate
352 for such service in effect at the time of such waiver under this
353 section. The commission, upon request of the public utility, may
354 return such public utility to a form of regulation permitted under
355 this section.

356 (c) Subject to Section 77-3-35(4)(d), a public utility
357 of the type defined in Section 77-3-3(d)(iii) which is regulated
358 under the provisions of paragraph (a) of this subsection shall not
359 be subject to any rule, regulation, with regard to retail
360 services, or order promulgated by the commission, except for the



361 provision of intrastate switched access service. The provisions
362 of Section 77-3-23 shall not apply to such public utility
363 regulated under the provisions of paragraph (a) of this
364 subsection.

365 * * *

366 (d) Nothing in this chapter shall be construed to
367 affect the duties of an incumbent local exchange carrier arising
368 under 47 USCS Sections 251 and 252 and the Federal Communications
369 Commission's regulations implementing these sections, or the
370 commission's authority to approve, arbitrate and enforce
371 interconnection agreements and to resolve disputes pursuant to 47
372 USCS Sections 251 and 252 and the Federal Communications
373 Commission's regulations implementing these sections or any other
374 applicable federal law or regulation. The commission shall
375 exercise its jurisdiction in its role as a dispute resolution
376 forum to hear complaints between certificated carriers, including
377 complaints to prohibit anti-competitive practices and with respect
378 to enforcement or modification of any wholesale self-effectuating
379 enforcement mechanism plan in place as of July 1, 2011, and to
380 issue orders to resolve such complaints, provided that such
381 actions are consistent with federal telecommunications law. The
382 commission shall interpret and apply federal, not state,
383 substantive law. The commission shall adjudicate and enforce such
384 claims in accordance with state procedural law and rules. No
385 claim shall be brought to the commission as to which the FCC has
386 exclusive jurisdiction. All complaints brought between carriers
387 pursuant to this section shall be resolved by final order of the
388 commission within one hundred eighty (180) days of the filing of
389 the complaint.

390 (e) The commission shall retain exclusive original
391 jurisdiction over customer complaints for those services that
392 continue to be regulated. For services no longer regulated, the
393 commission shall have exclusive original jurisdiction to interpret



394 and enforce the terms and conditions of customer service
395 agreements for telecommunications services, but it shall not
396 alter, set aside or refuse to enforce the rates, terms and
397 conditions thereof, either directly or indirectly. No other party
398 shall be allowed to participate in any such complaint proceeding,
399 except for the customer, legal counsel or other representative of
400 the customer, or the public utility involved.

401 (f) A public utility of the type defined in Section
402 77-3-3(d) (iii) which is regulated under the provisions of
403 paragraph (a) of this subsection shall not be required to file
404 financial, service quality or other information with the
405 commission. * * * The calculation of the public utility
406 regulatory tax established in Section 77-3-87 shall be based upon
407 ninety thousandths of one percent (90/1000 of 1%) per year of on
408 the * * * gross revenues from the intrastate of such public
409 utility which is subject to regulation under the provision of
410 paragraph (a) of this subsection. In addition, such public
411 utility shall only be required to adhere to billing for retail
412 telecommunications services in compliance with the federal truth
413 in billing regulations prescribed by the Federal Communications
414 Commission.

415 (g) (i) In order to transition to the changes
416 effectuated by paragraph (a) of this subsection, the rates, terms
417 and conditions for products and services no longer subject to
418 regulation by the commission which were in effect with a specific
419 term immediately prior to July 1, 2006, shall remain in effect for
420 the duration of the specific term as to customers who subscribed
421 to such products or services prior to July 1, 2006. If no term
422 applied to such products or services at the time such customer
423 subscribed to such products or services, then the rates, terms and
424 conditions governing such products or services shall remain in
425 effect until a written customer service agreement becomes
426 effective as described in subparagraph (ii) of this paragraph (g).



427 (ii) Except as provided in subparagraph (i) of
428 this paragraph (g), the service provider shall offer existing and
429 new customers a written customer service agreement, which in the
430 case of new customers shall be delivered no later than thirty (30)
431 days after the initiation of service. The customer service
432 agreement shall include a provision advising the customer that he
433 has thirty (30) days from receipt in which to elect:

434 1. To terminate service with the service
435 provider by contacting such service provider within the thirty-day
436 time period, in which case the customer shall have the right to
437 pay off the account in the same manner and under the same rates,
438 terms and conditions as set forth in the written customer service
439 agreement provided to the customer, which written customer service
440 agreement shall relate back in its entirety to the date of a new
441 customer's request for service or the date the agreement was sent
442 to an existing customer, as applicable, and shall be in effect
443 until termination through pay off; or

444 2. To use the services of the service
445 provider or to otherwise continue the account with the service
446 provider after the thirty-day time period has elapsed, either of
447 which shall constitute the customer's assent to all the rates,
448 terms and conditions of the written customer service agreement.
449 The customer service agreement shall be deemed received three (3)
450 business days after deposit in the United States mail, first-class
451 delivery.

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

458 1. To terminate service with the service
459 provider by contacting such service provider prior to the



460 effective date, in which case the customer shall have the right to
461 pay off the account in the same manner and under the same rates,
462 terms and conditions as then in effect; or

463 2. To use the services of the service
464 provider or to otherwise continue the account with the service
465 provider on or after the effective date, either of which shall
466 constitute the customer's assent to the modified written customer
467 service agreement. The customer service agreement shall be deemed
468 received three (3) business days after deposit in the United
469 States mail, first-class delivery.

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

474 **SECTION 3.** In light of reforms to intercarrier compensation
475 and to the federal Universal Service Fund Program being
476 implemented by the Federal Communications Commission, the
477 Legislature hereby directs that the chairman of the Public
478 Utilities Committee of the House of Representatives appoint a
479 subcommittee to study the impact of the Federal Communications
480 Commission's actions on telecommunications services provided in
481 Mississippi. The subcommittee shall provide its findings of facts
482 and recommendations to the full Public Utilities Committee no
483 later than December 1, 2012.

484 **SECTION 4.** This act shall take effect and be in force from
485 and after July 1, 2012.

