HOUSE BILL NO. 1174

AN ACT TO AMEND SECTIONS 77-3-29 AND 77-17-3, MISSISSIPPI CODE OF 1972, TO INCLUDE CERTAIN INVESTOR OWNED PUBLIC UTILITIES THE SAME AS ELECTRIC COOPERATIVES FOR THE PURPOSES OF THE BROADBAND ENABLING ACT; TO BRING FORWARD SECTIONS 77-17-9 AND 77-17-11, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 77-3-29, Mississippi Code of 1972, is amended as follows:

77-3-29. (1) The commission may, after hearing, upon notice, by order in writing, require every public utility to establish, construct, maintain and operate any reasonable extension of its existing facilities within the certificated area upon findings and order that such extension is reasonable and practicable, and provided further, that in the case of gas and water a sufficient supply is available and obtainable therefor.

(2) In addition to the other rights granted in this article, the provisions of Section 77-17-11 of the Mississippi Broadband Enabling Act granting certain rights, privileges and protections to electric cooperatives, their affiliates and other broadband
service providers shall be applicable to any investor owned public utility of the type as defined in Section 77-3-3(d)(i), the electricity rates of which are subject to the jurisdiction of the commission in connection with such public utility's use of its electric delivery system to provide broadband services on a wholesale basis, and such public utility may utilize its facilities consistent with Section 77-17-11, subject to the limitations contained in this subsection (2) and Section 77-17-9 of the Mississippi Broadband Enabling Act.

SECTION 2. Section 77-17-3, Mississippi Code of 1972, is amended as follows:

77-17-3. As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(a) "Broadband affiliate" or "affiliate" means any entity that is (i) wholly or partially owned by an electric cooperative, and (ii) formed to own or operate a broadband system or provide broadband services.

(b) "Broadband service provider" means an entity that provides broadband services to others on a wholesale basis or to end-user customers on a retail basis.

(c) "Broadband operator" means a broadband service provider that owns or operates a broadband system on an electric cooperative's electric delivery system with the electric cooperative's consent.
(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources and that either: (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. As used herein, "broadband services" also includes video services, voice over Internet protocol services, any wireless services, and Internet protocol-enabled services.

(e) "Broadband system" means the fiber, cables, materials, equipment and other facilities that are used or useful for the provision of broadband services.

(f) "Electric delivery system" means the poles, lines, fiber, cables, broadband system, materials, equipment, easements and other facilities or properties used by an electric cooperative to deliver or facilitate the delivery, sale or use of electric energy.

(g) "Electric cooperative" means an electric power association formed or operating under Sections 77-5-201, et seq., and any investor owned public utility of the type as defined in Section 77-3-3(d)(i).

(h) "Internet protocol-enabled services" means any service, capability, functionality or application provided using
Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

(i) "Landowner" includes any person or entity holding an interest in real property.

(j) "Video services" means video programming services without regard to delivery technology, including Internet protocol technology ("Internet Protocol television or IPTV") and video programming provided as a part of a service that enables users to access content, information, email or other services offered over the public Internet. The term "video programming" means any programming generally considered comparable to programming provided by a television broadcast station or others.

(k) "Voice over Internet protocol services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

SECTION 3. Section 77-17-9, Mississippi Code of 1972, is brought forward as follows:
77-17-9. (1) An electric cooperative shall not allow the installation or operation of a broadband system on its electric delivery system by an affiliate or other broadband operator to diminish the reliability of the electric delivery system.

(2) An electric cooperative shall not require any person to purchase broadband services from an affiliate or other broadband operator as a condition of receiving or continuing to receive electric energy from the electric cooperative.

(3) An electric cooperative shall not disconnect, nor threaten to disconnect, its electric service to any customer due to the customer's failure to pay for broadband services provided to the customer by an affiliate or other broadband operator.

SECTION 4. Section 77-17-11, Mississippi Code of 1972, is brought forward as follows:

77-17-11. (1) An electric cooperative may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative to provide broadband services. The use of the electric cooperative's electric delivery system for the provision of broadband services by the affiliate or other broadband operator shall not be considered an additional burden on the real property upon which the electric cooperative's electric delivery system is located and shall not require the affiliate or other broadband operator to obtain the consent of anyone having an interest in the real property upon which the electric cooperative's electric delivery system is located.
(2) If a portion of an electric cooperative's electric delivery system is used by an affiliate or other broadband operator for the provision of broadband services and the landowner of the real property on which such portion is located believes his property has been damaged by such use, the landowner may petition the circuit court of the county in which the property is situated for any damages to which the landowner may be entitled under this subsection.

(a) The petition allowed and damages recoverable under this subsection (2) shall be the landowner's exclusive remedy, and the landowner shall not be entitled to assert any other theory, claims or causes of action nor recover any other damages, punitive damages, costs, attorneys' fees, or other relief.

(b) The recoverable damages, if any, shall be recoverable only from the affiliate or other broadband operator and not from the electric cooperative.

(c) The damages recoverable shall be an amount equal to the difference between (i) the fair market value of the landowner's interest in the real property immediately before the electric cooperative's electric delivery system on the owner's property was first used by an affiliate or other broadband operator for the provision of broadband services, and (ii) the fair market value of the landowner's interest in the real property immediately after the electric cooperative's electric delivery system on the landowner's property was first used by an affiliate
or other broadband operator for the provision of broadband services. The before and after values must be established by the testimony of a qualified real estate appraiser. The damages, if any, shall be fixed and shall not be deemed to continue, accumulate, or accrue. The court shall as part of its judgment vest a permanent easement in favor of the affiliate or other broadband operator and their respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the affiliate or other broadband operator in the land records of the county in which the subject property is located.

(d) Evidence of past, current or future revenues or profits derived or to be derived by an affiliate or other broadband operator from providing broadband services is not admissible for any purpose in any such proceeding.

(e) The landowner shall not be entitled to any damages or other relief relating to any broadband system or portion thereof that is located on the landowner's property and is used or could be used by the electric cooperative for its own operations.

(f) The landowner shall not be entitled to any relief or damages if an easement has been granted to the affiliate or other broadband operator or if the landowner has, either directly or through his membership in the electric cooperative, authorized
the electric cooperative to use or allow others to use its
electric delivery system for the provision of broadband services.

SECTION 5. This act shall take effect and be in force from
and after its passage.