

By: Representative Anderson (122nd)

To: Public Utilities

HOUSE BILL NO. 1174

1 AN ACT TO AMEND SECTIONS 77-3-29 AND 77-17-3, MISSISSIPPI
2 CODE OF 1972, TO INCLUDE CERTAIN INVESTOR OWNED PUBLIC UTILITIES
3 THE SAME AS ELECTRIC COOPERATIVES FOR THE PURPOSES OF THE
4 BROADBAND ENABLING ACT; TO BRING FORWARD SECTIONS 77-17-9 AND
5 77-17-11, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE
6 AMENDMENT; AND FOR RELATED PURPOSES.

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

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

10 77-3-29. (1) The commission may, after hearing, upon
11 notice, by order in writing, require every public utility to
12 establish, construct, maintain and operate any reasonable
13 extension of its existing facilities within the certificated area
14 upon findings and order that such extension is reasonable and
15 practicable, and provided further, that in the case of gas and
16 water a sufficient supply is available and obtainable therefor.

17 (2) In addition to the other rights granted in this article,
18 the provisions of Section 77-17-11 of the Mississippi Broadband
19 Enabling Act granting certain rights, privileges and protections
20 to electric cooperatives, their affiliates and other broadband



21 service providers shall be applicable to any investor owned public
22 utility of the type as defined in Section 77-3-3(d) (i), the
23 electricity rates of which are subject to the jurisdiction of the
24 commission in connection with such public utility's use of its
25 electric delivery system to provide broadband services on a
26 wholesale basis, and such public utility may utilize its
27 facilities consistent with Section 77-17-11, subject to the
28 limitations contained in this subsection (2) and Section 77-17-9
29 of the Mississippi Broadband Enabling Act.

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

32 77-17-3. As used in this chapter, the following terms shall
33 have the following meanings unless the context clearly indicates
34 otherwise:

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

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

42 (c) "Broadband operator" means a broadband service
43 provider that owns or operates a broadband system on an electric
44 cooperative's electric delivery system with the electric
45 cooperative's consent.



46 (d) "Broadband services" means any service that
47 consists of or includes the provision of or connectivity to a
48 high-speed, high-capacity transmission medium that can carry
49 signals from or to multiple sources and that either: (i) is used
50 to provide access to the Internet, or (ii) provides computer
51 processing, information storage, information content or protocol
52 conversion, including any service applications or information
53 service provided over such high-speed access service. As used
54 herein, "broadband services" also includes video services, voice
55 over Internet protocol services, any wireless services, and
56 Internet protocol-enabled services.

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

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

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

69 (h) "Internet protocol-enabled services" means any
70 service, capability, functionality or application provided using



71 Internet protocol, or any successor protocol, that enables an end
72 user to send or receive a communication in Internet protocol
73 format, or any successor format, regardless of whether the
74 communications is voice, data or video.

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

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

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

93 **SECTION 3.** Section 77-17-9, Mississippi Code of 1972, is
94 brought forward as follows:



95 77-17-9. (1) An electric cooperative shall not allow the
96 installation or operation of a broadband system on its electric
97 delivery system by an affiliate or other broadband operator to
98 diminish the reliability of the electric delivery system.

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

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

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

109 77-17-11. (1) An electric cooperative may grant permission
110 to an affiliate or other broadband operator to use the electric
111 delivery system of the electric cooperative to provide broadband
112 services. The use of the electric cooperative's electric delivery
113 system for the provision of broadband services by the affiliate or
114 other broadband operator shall not be considered an additional
115 burden on the real property upon which the electric cooperative's
116 electric delivery system is located and shall not require the
117 affiliate or other broadband operator to obtain the consent of
118 anyone having an interest in the real property upon which the
119 electric cooperative's electric delivery system is located.



120 (2) If a portion of an electric cooperative's electric
121 delivery system is used by an affiliate or other broadband
122 operator for the provision of broadband services and the landowner
123 of the real property on which such portion is located believes his
124 property has been damaged by such use, the landowner may petition
125 the circuit court of the county in which the property is situated
126 for any damages to which the landowner may be entitled under this
127 subsection.

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

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

136 (c) The damages recoverable shall be an amount equal to
137 the difference between (i) the fair market value of the
138 landowner's interest in the real property immediately before the
139 electric cooperative's electric delivery system on the owner's
140 property was first used by an affiliate or other broadband
141 operator for the provision of broadband services, and (ii) the
142 fair market value of the landowner's interest in the real property
143 immediately after the electric cooperative's electric delivery
144 system on the landowner's property was first used by an affiliate



145 or other broadband operator for the provision of broadband
146 services. The before and after values must be established by the
147 testimony of a qualified real estate appraiser. The damages, if
148 any, shall be fixed and shall not be deemed to continue,
149 accumulate, or accrue. The court shall as part of its judgment
150 vest a permanent easement in favor of the affiliate or other
151 broadband operator and their respective successors and assigns for
152 the placement or use of a broadband system on or as part of the
153 electric delivery system. The judgment will have the same effect
154 of a conveyance executed in due form of law and shall run with the
155 land; and a certified copy of said judgment may be filed by the
156 affiliate or other broadband operator in the land records of the
157 county in which the subject property is located.

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

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

166 (f) The landowner shall not be entitled to any relief
167 or damages if an easement has been granted to the affiliate or
168 other broadband operator or if the landowner has, either directly
169 or through his membership in the electric cooperative, authorized



170 the electric cooperative to use or allow others to use its
171 electric delivery system for the provision of broadband services.

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

