SENATE BILL NO. 3009

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF OKOLONA TO UTILIZE ITS ELECTRIC POWER DELIVERY SYSTEM IN CHICKASAW, MONROE, LEE AND CLAY COUNTIES, MISSISSIPPI, TO PROVIDE BROADBAND SERVICE TO ITS CUSTOMERS; AND FOR RELATED PURPOSES.

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

SECTION 1. As used in this act, 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 the City of Okolona, 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-use customers on a retail basis.

(c) "Broadband operator" means a broadband service provider that owns or operates a broadband system on the City of Okolona's electric delivery system with the city'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 the City of Okolona to deliver or facilitate the delivery, sale or use of electric energy.

(g) "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 communication is voice, data or video.
(h) "Landowner" includes any person or entity holding an interest in real property.

(i) "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.

(j) "Voice over Internet Protocol services" means any service that: (i) enables real-time, two-way voice communications originating from or terminating at 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 originating on the public switched telephone network and to terminate calls to the public switched telephone network.

SECTION 2. (1) The City of Okolona is authorized to establish, acquire and wholly or partially own one or more broadband affiliates.

(2) The City of Okolona may allow its broadband affiliate(s) or an unaffiliated broadband operator to own, lease, construct, maintain and operate a broadband system on the City of Okolona's electric delivery system and to provide broadband services to the
public utilizing the City of Okolona's broadband system or other parts of its electric delivery system.

(3) The City of Okolona may determine, in its sole discretion, which broadband operators, if any, may have access to broadband capacity on the City of Okolona's broadband system; and it shall be lawful for the City of Okolona to provide an affiliate or other broadband operator exclusive access to broadband capacity on the City of Okolona's broadband system.

(4) (a) The City of Okolona may charge an affiliate or an unaffiliated broadband operator for the construction, installation, operation, use and maintenance of those parts of its electric delivery system that are used or may be reserved for use by the affiliate or unaffiliated broadband operator for the provision of broadband services. Any lease of facilities by the City of Okolona to a broadband affiliate that includes the use of the City of Okolona's poles shall specifically include pole attachment fees to be paid by the broadband affiliate to the City of Okolona equal to pole attachment fees charged by the City of Okolona to like unaffiliated, private entities.

(b) The City of Okolona shall not:

(i) Charge an affiliate under this act an amount less than the electric cooperative charges an unaffiliated entity for the same item or class of items; or
(ii) Pay an affiliate under this act an amount more than the affiliate charges an unaffiliated entity for the same item or class of items.

(5) The City of Okolona shall not use its electric energy sales revenues to subsidize the provision by an affiliate or unaffiliated broadband operator of broadband services to the public. The City of Okolona may, however, make capital investments in an affiliate, make loans to an affiliate at a fair market rate and enter loan guarantees for the benefit of an affiliate, all of which may be in such amounts and on such terms as the City of Okolona authorizes and determines to be prudent.

(6) Before broadband services may be offered under this act, the City of Okolona must, by resolution of the board of aldermen and spread upon its minutes, have an economic feasibility study conducted and adopt a plan that will provide service to its entire certificated area. Such feasibility study shall be made available to the City of Okolona electric customers upon request.

SECTION 3. (1) The City of Okolona 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) The City of Okolona 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 City of Okolona.
(3) The City of Okolona 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. The City of Okolona may grant permission to an affiliate or other broadband operator to use the electric delivery system of the City of Okolona to provide broadband services. The use of the City of Okolona'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 City of Okolona'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 City of Okolona's electric delivery system is located.

SECTION 5. This act is to be liberally construed, and the enumeration of any object, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things. Nothing in this act shall be interpreted or construed to infringe upon or otherwise encumber the property or property interests used by any investor-owned electric public utility to provide electric service to its customers.

SECTION 6. This act shall take effect and be in force from and after its passage.