

By: Senator(s) Carter

To: Energy

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3046

1 AN ACT TO CREATE THE "COVID-19 CONNECTIVITY ACT"; TO DEFINE
2 TERMS AS USED IN THE ACT; TO PROVIDE LEGISLATIVE INTENT; TO
3 ESTABLISH THE COVID-19 CONNECTIVITY GRANT PROGRAM TO BE
4 ADMINISTERED BY THE PUBLIC UTILITIES STAFF FOR THE PURPOSE OF
5 EXPANDING BROADBAND SERVICE TO UNSERVED OR UNDERSERVED AREAS IN
6 THE STATE; TO AUTHORIZE THE PUBLIC UTILITIES STAFF TO RETAIN A
7 CERTAIN AMOUNT OF FUNDS AVAILABLE UNDER THIS ACT TO PAY FOR
8 REASONABLE EXPENSES INCURRED IN THE ADMINISTRATION OF THE GRANT
9 PROGRAM; TO PROVIDE THAT THE GRANTS MUST BE ISSUED PURSUANT TO A
10 COMPETITIVE PROCESS AND TO REQUIRE THE PUBLIC UTILITIES STAFF TO
11 PUBLISH ON ITS WEBSITE ITS CRITERIA FOR COMPETITIVELY SCORING
12 APPLICATIONS; TO PROVIDE FOR THE APPLICATION PROCESS; TO REQUIRE
13 SEMIANNUAL REPORTS FROM APPLICANTS AWARDED FUNDS; TO CREATE THE
14 COVID-19 CONNECTIVITY FUND FROM WHICH THE GRANTS AUTHORIZED BY
15 THIS ACT SHALL BE DISBURSED; TO AMEND SECTION 77-3-2, MISSISSIPPI
16 CODE OF 1972, TO DECLARE THAT IT IS THE POLICY OF THE STATE OF
17 MISSISSIPPI TO SUPPORT EXPANSION OF EXISTING AND EMERGING
18 TECHNOLOGIES TO FOSTER RELIABLE AND RESILIENT SERVICE AND CUSTOMER
19 ACCESS TO ENHANCED SERVICES; TO AMEND SECTION 77-3-3, MISSISSIPPI
20 CODE OF 1972, TO INCLUDE DEFINITIONS OF "BROADBAND SERVICE
21 PROVIDER," "BROADBAND OPERATOR," "ELECTRIC DELIVERY SYSTEM" AND
22 "ENHANCED GRID INVESTMENTS"; TO AMEND SECTION 77-3-44, MISSISSIPPI
23 CODE OF 1972, TO INCLUDE FIBER-OPTIC INFRASTRUCTURE AND ENHANCED
24 GRID INVESTMENTS AS AN ECONOMIC DEVELOPMENT ACTIVITY, TO ALLOW
25 INVESTOR-OWNED ELECTRIC UTILITIES TO PERMIT BROADBAND PROVIDERS
26 USE OF THE ELECTRIC DELIVERY SYSTEM TO PROVIDE BROADBAND SERVICES,
27 TO REGULATE EASEMENTS, TO ALLOW CERTAIN ENTITIES TO CONSTRUCT
28 FIBER-OPTIC INFRASTRUCTURE ON PUBLIC UTILITIES' EXISTING
29 RIGHTS-OF-WAY; AND FOR RELATED PURPOSES.

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



31 **SECTION 1. Short title.** Sections 1 through 8 of this act
32 shall be known and may be cited as the "COVID-19 Connectivity
33 Act."

34 **SECTION 2. Definitions.** For purposes of Sections 1 through
35 8 of this act, the following words shall have the meanings
36 ascribed herein unless the context otherwise requires:

37 (a) "Applicant" means an entity authorized to provide
38 broadband service in Mississippi, including cooperatively
39 organized entities, public utilities, or any partnerships formed
40 between cooperatively organized entities, private providers, or
41 any combination thereof, which submits an application for a grant
42 after having collaborated with other persons and the community
43 within the unserved and underserved areas.

44 (b) "Broadband service" means a retail service capable
45 of delivering high-speed internet access at speeds of at least
46 twenty-five (25) megabits per second downstream and three (3)
47 megabits per second upstream.

48 (c) "Census block" means a geographic area defined as a
49 census block by the United States Department of Commerce, Bureau
50 of the Census in conducting the 2010 Decennial Census.

51 (d) "Public Utilities Staff" means the Mississippi
52 Public Utilities Staff.

53 (e) "Department" means the Mississippi Department of
54 Finance and Administration.



55 (f) "Household" means a house, apartment, single room,
56 or other group of rooms, if occupied or intended for occupancy as
57 a separate living quarters, and where occupants do not live with
58 any other persons in the structure and there is direct access from
59 the outside or through a common hall.

60 (g) "Unserved or underserved area" means either a
61 census block without at least one (1) provider providing broadband
62 service within the census block, or a delineated area within a
63 census block without at least one (1) provider providing broadband
64 service as established as part of the application approval process
65 set forth in Section 4 of this act.

66 (h) "Person" includes an individual, a community
67 organization, cooperative association, corporation, federally
68 recognized Indian tribe, limited liability company, nonprofit
69 corporation, partnership, or political subdivision of this state.

70 (i) "Project" means extending broadband service into
71 unserved or underserved census blocks in Mississippi pursuant to
72 the federal Coronavirus Aid, Relief, and Economic Security Act.

73 **SECTION 3. Legislative intent.** (1) The Legislature finds
74 the State of Emergency and ongoing public health crisis related to
75 COVID-19 has caused significant challenges in the immediate
76 delivery of educational and healthcare services. The Legislature
77 also finds that the availability of unprecedented federal funding
78 for COVID-19 expenses has created a unique opportunity for
79 entities in Mississippi approved to provide broadband service to



citizens to immediately improve primary, secondary and post-secondary distance learning and telehealth capabilities necessary for citizens to continue their education, receive necessary services, and work in a healthy and safe manner.

(2) In order to assist the Public Utilities Staff and entities in Mississippi approved to provide broadband service in immediately expanding access to broadband, the Legislature finds that the COVID-19 Connectivity Grant Program established under this act is intended to provide for broadband infrastructure in unserved and underserved areas of the state, provided expenditures are lawful and fall within relevant guidelines, guidance, rules, regulations and other criteria. In recognition of the economic crisis the state is experiencing related to COVID-19, the Legislature finds the grants provided under this act shall not be used for duplicative infrastructure, technology or other resources. In order to expedite the delivery of expanded broadband access, the Legislature finds the Public Utilities Staff should minimize unnecessary administrative costs and delays.

SECTION 4. Application requirements. (1) There is

established the COVID-19 Connectivity Grant Program. The grant program shall be administered by the Public Utilities Staff for the purpose of making grants to applicants to expand broadband service to unserved or underserved areas in the state. The Public Utilities Staff may retain up to One Hundred Thousand Dollars (\$100,000.00) of funds available under this act to pay for



reasonable expenses incurred in the administration of the grant program.

(2) Grants awarded under this program must be issued pursuant to a competitive process. The competitive process shall be technology neutral, and shall result in awards to applicants proposing projects based on an objective and efficient one-hundred-maximum-point-scoring process developed by the Public Utilities Staff. The criteria for scoring applications and determining the award of a grant shall include the following:

(a) The applicant and any relevant contractor's experience and financial wherewithal, including a commitment to provide matching funds for the proposed project, as provided in subsection (5) of this section;

(b) The immediate readiness to build, operate, and maintain the project;

(c) The long-term viability of the project;

(d) The scalability of the network;

(e) The speed of the network;

(f) The affordability of the cost of broadband service to the consumer;

(g) The number of unserved or underserved households the applicant demonstrates it is able to serve in the immediate future with the project;

(h) The applicant's ability to demonstrate collaboration to achieve community investment, distance learning,



and telehealth goals of the area impacted, and that are able to demonstrate that they have the managerial, financial, and technical ability to build, operate and manage a broadband network;

(i) The applicant's ability to provide services at a free or de minimis cost for K-12 students to engage in distance learning. For purposes of this act, distance learning shall include only those services necessary for a student to complete required coursework as determined by their relevant public school district; and

(j) The project's capacity for continued future expansion of broadband services in surrounding unserved or underserved areas.

(3) Within twenty (20) calendar days of the effective date of the enactment of this program and after notice and opportunity to comment, the Public Utilities Staff shall establish and publish on its website its criteria for competitively scoring applications. After publishing the criteria, there shall be a thirty-calendar-day period for applicants to submit their applications for funding for a proposed project.

(4) An applicant for a grant under this act shall provide the following information on the application:

(a) The location of the project by census block or a request to delineate an area within a census block as being



unserved or underserved pursuant to subsection (9) of this section;

(b) The kind and amount of broadband infrastructure to be purchased for the project;

(c) Evidence regarding the unserved or underserved nature of the community in which the project is to be located;

(d) The number of households that will have immediate access to broadband service as a result of the project, or whose internet access service will be upgraded to broadband service as a result of the project;

(e) Evidence of community support for the project with a narrative on the impact that the investment will have on distance learning and telehealth efforts in the area;

(f) The total cost of the project and a detailed budget and schedule for the project;

(g) All sources of funding or in-kind contributions for the project in addition to any grant award, including the source of matching funds as required by subsection (5) of this section; and

(h) The internet service provider and any relevant contractor's experience and financial wherewithal.

(5) (a) Applicants awarded a grant are required to provide matching funds based upon the scoring process developed by the Public Utilities Staff in the following minimum amounts:

Score

Matching Requirement



179	70 points or less	65%
180	Greater than 70 but less than 80	60%
181	Greater than 80 but less than 90	55%
182	90 or greater	50%

183 (b) Up to fifty percent (50%) of matching funds paid by
184 the applicant may be comprised of third-party funding, and other
185 grant programs. Universal Service Fund, Connect American Fund, or
186 other grants awarded for broadband expansion through a separate
187 state or federal program shall not be used for the required
188 matching funds. This limitation shall not include any loans of
189 any kind.

190 (6) After scoring and considering all grant applications,
191 the Public Utilities Staff shall make grant award recommendations
192 within fifteen (15) calendar days. Within seven (7) calendar days
193 after the award recommendations have been made, the Public
194 Utilities Staff shall publish on its website grant applications,
195 redacted to the extent allowable under the Mississippi Open
196 Records Act, the proposed geographic broadband service area by
197 census block or the areas within a census block if approved
198 pursuant to subsection (9) of this section, and the proposed
199 broadband service speeds for each application that receives an
200 award recommendation.

201 (7) Before granting an award to any applicant, the Public
202 Utilities Staff shall establish a period of at least twenty (20)
203 calendar days from the date the award recommendations are



published on the Public Utilities Staff's website, during which time the Public Utilities Staff will accept comments or objections concerning each application. The Public Utilities Staff shall consider all comments or objections received in deciding whether an applicant is eligible for a grant. If an objection submitted by an applicant or other internet service provider is determined to contain information that results in an investigation by the Public Utilities Staff and the objection is found to be inaccurate, the provider shall reimburse the Public Utilities Staff for the cost of verifying the information.

(8) The Public Utilities Staff shall not award a grant to an applicant if verifiable information is made available that shows any of the following:

(a) The proposed project includes an area that is already being served by at least one (1) provider offering broadband service;

(b) The proposed project includes an area where construction of a network to provide broadband service is underway, and the construction is scheduled to be completed within two (2) years of the date of the application; or

(c) The applicant is unable to provide the required amount of matching funds for the project.

(9) As part of an application, the applicant may request that the Public Utilities Staff specifically delineate an area within a census block as being an unserved or underserved area.



To tentatively establish an unserved or underserved area within a census block, an applicant must attest to all of the following:

(a) The delineated area within the census block is unserved or underserved and does not have access to broadband service;

(b) To the best of the applicant's knowledge, construction of a network to provide broadband service is not already underway, with plans to complete construction within the delineated area within two (2) years; and

(c) If a delineated area within a census block is tentatively determined by the department to be an unserved and underserved area, the recommended grant award for the application is still subject to a challenge by internet service providers pursuant to subsection (7) of this section.

(10) At the time an award is given to an applicant, the Public Utilities Staff shall immediately provide notice on its website of each application receiving funds, including the name of the entity, the amount of funds being received, the broadband speed, and the unserved or underserved location indicated by census blocks or the delineated area within a census block as established by subsection (9) of this section for which the applicant is receiving the funds.

SECTION 5. Limitations. (1) Grants under the COVID-19 Connectivity Grant Program shall be awarded by the Public Utilities Staff to applicants for projects that exclusively extend



broadband service into unserved or underserved areas in
Mississippi.

(2) Applicants shall be limited to the remedies provided in
Section 4(7) of this act, and any award decision made by the
Public Utilities Staff after the comment period and, if
applicable, investigation shall be final.

(3) Monies in the COVID-19 Connectivity Fund created in
Section 7 of this act shall be administered and disbursed by the
department.

(4) Grants awarded under this program shall not be directly
or indirectly awarded to a governmental entity or educational
institution or an affiliate, to own, purchase, construct, operate,
or maintain a communications network, or to provide service to any
residential or commercial premises.

(5) Grants awarded under this program may not be conditional
on an open network architecture requirement, rate regulation, or
other terms or conditions of service that differ from the
applicant's terms and conditions of service in its other service
areas.

(6) The Public Utilities Staff shall not award more than Ten
Million Dollars (\$10,000,000.00) of the program funds to any one
(1) application for a project.

SECTION 6. Reporting requirements. (1) The Public
Utilities Staff shall require any applicant awarded funds to
submit a semiannual report from the time it receives the funds to



279 five (5) years after completion of the project. The semiannual
280 reports shall be made available on the Public Utilities Staff's
281 website with any proprietary information redacted. The reports
282 shall be in a format specified by the Public Utilities Staff and
283 shall give an accounting by the applicant of the use of the funds
284 received and the progress toward fulfilling the objectives for
285 which the funds were granted, including all of the following:

286 (a) The number and location of residences and
287 businesses that will receive the broadband service;
288 (b) The speed of broadband service;
289 (c) The average price of broadband service; and
290 (d) The broadband service adoption rates within each
291 census block or the delineated area within a census block as
292 established by Section 4(9) of this act.

293 (2) The Public Utilities Staff shall provide an update on
294 projects approved under this grant program, to include the
295 information in subsection (1) of this section, including
296 proprietary information on a monthly basis to the Lieutenant
297 Governor, the Speaker of the House, the Chairman of the Senate
298 Energy Committee, the Chairman of the Senate Technology Committee,
299 Chairman of the House Energy Committee and Chairman of the House
300 Public Utilities Committee.

301 **SECTION 7.** (1) There is created a special fund in the State
302 Treasury, to be known as the "COVID-19 Connectivity Fund," from
303 which the grants authorized by this act shall be disbursed by the



department, with applications approved by the Public Utilities Staff. All monies shall be disbursed from the fund in compliance with the guidelines, guidance, rules, regulations and other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established by the CARES Act. Any unobligated monies in the fund on October 1, 2020, shall be transferred to the Unemployment Insurance Fund.

(2) The use of funds allocated under this grant program shall be subject to audit by the United States Department of the Treasury, Office of Inspector General, and the Mississippi Office of the State Auditor. Each applicant awarded a grant, or other entity or person receiving funds under this grant program, found to be fully or partially noncompliant with the requirements in this act, shall return to the state all or a portion of the funds received.

SECTION 8. If any section, paragraph, sentence, clause, phrase or part of this act is declared to be in conflict with federal law, or if any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts shall be in no matter affected but shall remain in full force and effect.

SECTION 9. Section 77-3-2, Mississippi Code of 1972, is amended as follows:



77-3-2. (1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

(a) To provide fair regulation of public utilities in the interest of the public;

(b) To promote the inherent advantage of regulated public utilities;

(c) To promote adequate, reliable and economical service to all citizens and residents of the state;

(d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(e) To encourage and promote harmony between public utilities, their users and the environment;

(f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;



(g) To cooperate with other states and the federal government in promoting and coordinating interstate and intrastate public utility service and reliability;

(h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities, and where possible reduce the costs of the rate-making process; and

(i) With respect to rate-regulated public utilities, to foster, encourage, enable and facilitate economic development in the State of Mississippi, * * * to support and augment economic development activities, * * * to expand deployment of existing and emerging technologies, including fiber-optic infrastructure and enhanced grid investments which will foster a more reliable and resilient utility delivery system and provide customer access to enhanced services, to authorize and empower the Public Service Commission * * * in carrying out its statutory responsibilities, and to take every opportunity to advance the economic development of the state.

(2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities in accordance with the provisions of this title.

(3) (a) The commission shall, in addition to its other powers and duties, be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to:



(i) Periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits;

(ii) Review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; and

(iii) Use such other provisions which may be permitted by this chapter.

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

(c) In administering any such formula type rate of return evaluation rate, the following procedures shall be observed by the commission:

(i) Each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data



specified in the formula rate adopted by the commission, and such data shall be verified by the commission; and

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%) of the annual revenues of the utility.

(d) The requirements of paragraphs (a), (b) and (c) of this subsection and other applicable provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, which are observed by the commission in administering such rate, are hereby declared to be procedural but are not required to be included in the rate itself.

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to



conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided, however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

SECTION 10. Section 77-3-3, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of



transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

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

(iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection,



transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

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

(e) The term "rate" means and includes every compensation, charge, fare, toll, customer deposit, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity described in this section, offered by it to the public, and any rules, regulations, practices or contracts relating to any such compensation, charge, fare, toll, rental or classification; however, the term "rate" shall not include charges for electrical current furnished, delivered or sold by one (1) public utility to another for resale.



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

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

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

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

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

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

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



526 (vi) Any person or corporation that the
527 commission, after notice and hearing, determines actually
528 exercises any substantial influence or control over the policies
529 and actions of a public utility, or over which a public utility
530 exercises such control, or that is under a common control with a
531 public utility, such control being the possession, directly or
532 indirectly, of the power to direct or cause the discretion of the
533 management and policies of another, whether such power is
534 established through ownership of voting securities or by any other
535 direct or indirect means.

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

539 (h) The term "facilities" includes all the plant and
540 equipment of a public utility, used or useful in furnishing public
541 utility service, including all real and personal property without
542 limitation, and any and all means and instrumentalities in any
543 manner owned, operated, leased, licensed, used, controlled,
544 furnished or supplied for, by or in connection with its public
545 utility business.

546 (i) The term "cost of service" includes operating
547 expenses, taxes, depreciation, net revenue and operating revenue
548 requirement at a claimed rate of return from public utility
549 operations.



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

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

(l) The term "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



574 offered over the public internet. The term "video programming"
575 means any programming as defined in 47 USCS Section 522(20).

576 (m) The term "Voice over Internet Protocol services" or
577 "VoIP services" means any service that: (i) enables real-time,
578 two-way voice communications that originate from or terminate to
579 the user's location in Internet Protocol or any successor
580 protocol; (ii) uses a broadband connection from the user's
581 location; and (iii) permits users generally to receive calls that
582 originate on the Public Switched Telephone Network and to
583 terminate calls to the Public Switched Telephone Network.

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

586 (o) The term "Internet Protocol-enabled services" or
587 "IP-enabled services" means any service, capability,
588 functionality, or application provided using Internet Protocol, or
589 any successor protocol, that enables an end user to send or
590 receive a communication in Internet Protocol format, or any
591 successor format, regardless of whether the communications is
592 voice, data or video.

593 (p) "Broadband service provider" means an entity that
594 provides broadband services to others on a wholesale basis or to
595 end-use customers on a retail basis.

596 (q) "Broadband operator" means a broadband service
597 provider that uses the electric delivery system of any public



utility of the type as defined in Section 77-3-3(d) (i) with the public utility's consent to provide broadband services.

(r) "Electric delivery system" means the poles, lines, fiber, cables, broadband system, materials, equipment, easements and other facilities or properties used by any public utility of the type as defined in Section 77-3-3(d) (i) to deliver or facilitate the delivery, sale or use of electric energy.

(s) The term "enhanced grid investments" means investments in technologies and services that support and improve the operational performance, service reliability, resiliency and security of the electric delivery system.

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

SECTION 11. Section 77-3-44, Mississippi Code of 1972, is amended as follows:

77-3-44. (1) Any rate-regulated electric or natural gas public utility with certificated service area in Mississippi may undertake economic development activities, whether directly or indirectly, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or expansion of fiber-optic infrastructure and enhanced grid investments, including those which provide customer access to modern-enhanced



623 services, or otherwise to positively impact or in some manner
624 promote the sale of electric energy or natural gas within its
625 certificated service area. Any facilities developed, constructed
626 or acquired in support of the activities described in this
627 section, including fiber-optic infrastructure investments and
628 enhanced grid investments, including those which provide customer
629 access to modern-enhanced services, for which a certificate of
630 public convenience and necessity or other commission approval has
631 been granted after July 1, 2015, as well as any capital investment
632 in natural gas reserves made directly or indirectly by an electric
633 or natural gas public utility to foster long-term stability in the
634 cost of fuel, may be deemed used and useful in the provision of
635 electric or natural gas service regardless of whether or not any
636 end-use customers are taking service from said facilities or
637 investment and otherwise recoverable through the utility's rates.

638 (2) (a) In addition, to further expand fiber-optic
639 infrastructure in the state, any rate-regulated public utility of
640 the type as defined in Section 77-3-3(d) (i) may grant permission
641 to broadband service providers to use the electric delivery
642 system, including without limitation the fiber-optic
643 infrastructure and enhanced grid investments, of the public
644 utility to provide broadband services or other similar services as
645 defined in Section 77-3-3(k) through (o).

646 (b) The public utility shall not: (i) allow the use of
647 its electric delivery system by a broadband operator to provide



broadband services as defined above to diminish the reliability of
the electric delivery system; (ii) require any person to purchase
broadband services as a condition of receiving or continuing to
receive electric service; or (iii) disconnect, or threaten to
disconnect, electric service to any customer due to the customer's
failure to pay for broadband services. Any complaint related to a
public utility's permissive offer of use pursuant to this
paragraph (b) shall be brought before and resolved by the Public
Service Commission.

(c) In addition, to further expand fiber-optic
infrastructure and economic development in the state, any public
utility, including electric cooperatives, of the type as defined
in Section 77-3-3(d) (i) may grant permission to a retail customer
with a nonaggregated load greater than twenty (20) megawatts to
construct, install, or maintain above or underground fiber-optic
infrastructure on the public utility's existing right-of-way of
its electric delivery system if some portion is made available for
broadband services.

(d) In instances where a landowner has previously been
compensated for the use of their land through a right-of-way
instrument with a public utility, the use of the public utility's
electric delivery system for the provision of broadband services
to a broadband operator or use of the public utility's existing
right-of-way on its electric delivery system by a retail customer
to construct, install, or maintain above or underground



fiber-optic infrastructure shall not be considered an additional
burden on the real property upon which the public utility's
electric delivery system is located and shall not require the
public utility, the broadband operator or retail customer to
obtain the consent of anyone having an interest in the real
property upon which the public utility's electric delivery system
is located.

(e) If a portion of a public utility's electric
delivery system is used by a broadband operator for the provision
of broadband services or a portion of a public utility's
right-of-way is used by a retail customer to construct, install,
or maintain above or underground fiber-optic infrastructure 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:

(i) The petition allowed and damages recoverable
under this subsection 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.

(ii) The recoverable damages, if any, shall be
recoverable only from the broadband operator or retail customer
and not from the public utility.



(iii) The damages recoverable shall be an amount equal to the difference between 1. the fair market value of the landowner's interest in the real property immediately before the public utility's electric delivery system on the owner's property was first used by the broadband operator or retail customer for the provision of broadband services, and 2. the fair market value of the landowner's interest in the real property immediately after the public utility's electric delivery system on the landowner's property was first used by the broadband operator or retail customer 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, confirm the rights granted by the public utility to the broadband operator or retail customer 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 broadband operator retail customer in the land records of the county in which the subject property is located.

(iv) Evidence of past, current or future revenues or profits derived or to be derived by a broadband operator or



722 retail customer from providing broadband services is not
723 admissible for any purpose in any such proceeding.

724 (v) The landowner shall not be entitled to any
725 damages or other relief relating to any broadband system or
726 portion thereof that is located on the landowner's property or any
727 fiber-optic infrastructure by the retail customer that is located
728 on the landowner's property and is used or could be used by the
729 electric public utility for its own operations.

730 (vi) The landowner shall not be entitled to any
731 relief or damages if an easement has been granted to the broadband
732 operator or retail customer, if the landowner has authorized the
733 public utility to use or allow others to use its electric delivery
734 system for the provision of broadband services, or if the
735 landowner has authorized the public utility to use its existing
736 right-of-way to construct, install, or maintain above or
737 underground fiber-optic infrastructure.

738 (f) All costs paid by an investor-owned public utility
739 to acquire right-of-way shall be considered cost of service and
740 recovered through rates, and all revenue collected by an
741 investor-owned public utility from third-party use of public
742 utility right-of-way shall be credited back to customers in a
743 comparable manner.

744 **SECTION 12.** This act shall take effect and be in force from
745 and after July 1, 2020, and shall stand repealed on June 30, 2020.

