To: Public Utilities

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2021

By: Representatives Bounds, Gibbs (72nd), Stamps

AN ACT TO AMEND SECTION 77-3-2, MISSISSIPPI CODE OF 1972, TO DECLARE THAT IT IS THE POLICY OF THE STATE OF MISSISSIPPI TO SUPPORT DEPLOYMENT OF EXISTING AND EMERGING TECHNOLOGIES TO FOSTER RELIABLE AND RESILIENT SERVICE AND CUSTOMER ACCESS TO ENHANCED SERVICES; TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION IS AUTHORIZED AND EMPOWERED TO ENTER INTO CONTRACTS WITH FEDERAL AGENCIES, INCLUDING, BUT NOT LIMITED TO, THE UNITED STATES DEPARTMENT OF COMMERCE, THE FEDERAL COMMUNICATIONS COMMISSION AND THE NATIONAL TELECOMMUNICATIONS INFORMATION AGENCY, OR STATE AGENCIES, FOR THE PURPOSES ONLY OF PROVIDING SERVICES FOR THE COLLECTION OF DATA FOR MAPPING OF BROADBAND AVAILABILITY; TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO INCLUDE DEFINITIONS OF "BROADBAND SERVICE PROVIDER," "BROADBAND OPERATOR," "ELECTRIC DELIVERY SYSTEM" AND "ENHANCED GRID INVESTMENTS"; TO AMEND SECTION 77-3-44, MISSISSIPPI CODE OF 1972, TO INCLUDE FIBER-OPTIC INFRASTRUCTURE AND ENHANCED GRID INVESTMENTS AS AN ECONOMIC DEVELOPMENT ACTIVITY, TO ALLOW RATE-REGULATED ELECTRIC UTILITIES TO PERMIT BROADBAND PROVIDERS USE OF THE ELECTRIC DELIVERY SYSTEM TO PROVIDE BROADBAND SERVICES, TO REGULATE EASEMENTS, TO ALLOW CERTAIN ENTITIES TO CONSTRUCT FIBER-OPTIC INFRASTRUCTURE ON PUBLIC UTILITIES' EXISTING RIGHTS-OF-WAY; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 deploy 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 broadband services in unserved and/or underserved areas, as defined in Section 4 of this act, 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.

(5) The Public Service Commission is authorized and empowered to enter into contracts with federal agencies, including, but not limited to, the United States Department of Commerce, the Federal Communications Commission and the National Telecommunications Information Agency, or state agencies, for the purposes only of providing services for the collection of data for mapping of broadband availability and related purposes. For purposes of this subsection, "state agencies" includes any state agency including, but not limited to, state institutions of higher learning.

SECTION 2. 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

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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

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

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

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

(i) The term "cost of service" includes operating expenses, taxes, depreciation, net revenue and operating revenue requirement at a claimed rate of return from public utility 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 as defined in Section 4 of this act and:

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

(m) The term "Voice over Internet Protocol services" or "VoIP 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.

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

(o) The term "Internet Protocol-enabled services" or "IP-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.
(p) "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.

(g) "Broadband operator" means a broadband service
provider that uses the electric delivery system of any
rate-regulated public utility of the type as defined in Section
77-3-3(d)(i) with the public utility's consent to provide
broadband services in unserved and/or underserved areas, as
defined in Section 4 of this act.

(r) "Electric delivery system" means the poles, lines,
fiber, cables, broadband system, materials, equipment, easements
and other facilities or properties used by any rate-regulated
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 3. 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 deployment of fiber-optic infrastructure and enhanced grid investments, including those which provide customer access to broadband services in unserved and/or underserved areas, as defined in Section 4 of this act, or otherwise to positively impact or in some manner promote the sale of electric energy or natural gas within its certificated service area. Any facilities developed, constructed or acquired in support of the activities described in this section, including fiber-optic infrastructure investments and enhanced grid investments, including those which provide customer access to broadband services in unserved and/or underserved areas, as defined in Section 4 of this act, and for which a certificate of public convenience and necessity or other commission approval has been granted after July 1, 2015, as well as any capital investment in natural gas reserves made directly or indirectly by an electric or natural gas public utility to foster long-term stability in the cost of fuel, may be deemed used and useful in the provision of electric or natural gas service regardless of whether or not any end-use customers are taking service from said
facilities or investment and otherwise recoverable through the utility's rates.

(2) (a) In addition, to further expand fiber-optic infrastructure in the state, any rate-regulated public utility of the type as defined in Section 77-3-3(d)(i) may grant permission to broadband service providers to use the electric delivery system, including without limitation the fiber-optic infrastructure and enhanced grid investments, of the rate-regulated public utility to provide broadband services or other similar services as defined in Section 77-3-3(k) through (o). To the extent a rate-regulated public utility grants permission to any broadband service provider to use any part of the utility's electric delivery system, including without limitation its fiber optic infrastructure and enhanced grid investments, it must do so under just and reasonable rates, terms and conditions and it must grant such permission to all other broadband operators and broadband service providers on a nondiscriminatory basis.

(b) The rate-regulated public utility shall not: (i) allow the use of 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; (iii) disconnect, or threaten to disconnect, electric service to any
customer due to the customer's failure to pay for broadband
services; or (iv) provide for a discount on electric rates when a
customer purchases broadband services from a broadband service
provider. Any complaint related to a rate-regulated 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.

(d) In instances where a landowner has previously been
compensated for the use of their land through a right-of-way
instrument with a rate-regulated public utility, the use of the
rate-regulated public utility's electric delivery system for the
provision of broadband services to a broadband operator, to a
broadband service provider or use of the rate-regulated 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
rate-regulated public utility's electric delivery system is located and shall not require the rate-regulated public utility, the broadband operator or retail customer to obtain the consent of anyone having an interest in the real property upon which the rate-regulated public utility's electric delivery system is located.

(e) If a portion of a rate-regulated public utility's electric delivery system is used by a broadband operator for the provision of broadband services or a portion of a rate-regulated 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 rate-regulated 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 rate-regulated 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 rate-regulated 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 rate-regulated 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 or 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
retail customer from providing broadband services is not
admissible for any purpose in any such proceeding.

(v) 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 or any
fiber-optic infrastructure by the retail customer that is located
on the landowner's property and is used or could be used by the
rate-regulated public utility for its own operations.

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

(f) Nothing in this section shall affect, abrogate, or
eliminate in any way any obligation of a rate-regulated public
utility or broadband operator, as defined in Section 77-3-3(q) to
comply with any applicable safety and permitting requirements of
any railroad company or any state governmental body or agency with
respect to property that is held or controlled by such railroad
company or state governmental body or agency, as the case may be,
and in, on, over, or across which an easement is located.
(g) All costs paid by a rate-regulated public utility to acquire right-of-way shall be considered cost of service and recovered through rates, and all revenue collected by a rate-regulated public utility from third-party use of a rate-regulated public utility right-of-way shall be credited back to customers in a comparable manner.

The Public Service Commission shall establish a mechanism for electric utility revenues deriving from the provision of competitive broadband services such that electric service customers receive an annual credit, adjusted annually, for any wholesale revenues derived from fiber optic infrastructure and enhanced grid investments.

SECTION 4. (1) For purposes of this act, "unserved and/or underserved areas" means areas lacking access to broadband service capable of delivering high-speed Internet access of at least twenty-five (25) megabits per second downstream and three (3) megabits per second upstream, from at least one (1) provider of broadband service, until such time as the Federal Communications Commission (FCC) updates the national broadband definition when the Public Service Commission may set a new definition of "unserved and/or underserved areas" based on the updated FCC standard.

(2) Except for Section 77-3-44(2)(c), nothing in this act shall be interpreted to affect the provisions of Sections 77-17-1 through 77-17-15 (the Mississippi Broadband Enabling Act).
SECTION 5. This act shall take effect and be in force from and after July 1, 2021.