

By: Representative Powell

To: Public Utilities

HOUSE BILL NO. 1134

1 AN ACT TO AMEND SECTION 77-17-15, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE BROADBAND ENABLING ACT TO REQUIRE ELECTRIC
3 COOPERATIVES TO ANNUALLY FILE CERTAIN DOCUMENTS WITH THE PUBLIC
4 SERVICE COMMISSION AND THE STATE AUDITOR; TO BRING FORWARD
5 SECTIONS 77-17-3 THROUGH 77-17-13, MISSISSIPPI CODE OF 1972, FOR
6 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 77-17-15, Mississippi Code of 1972, is
9 amended as follows:

10 77-17-15. (1) Every electric cooperative shall conduct an
11 annual audit of compliance with this chapter, which shall be made
12 publicly available. Any electric cooperative electing to operate
13 under the provisions of this chapter must send notice by mail to
14 its members of its elections for board of directors separately
15 from any bill, and must send notice by mail to its members of (i)
16 application for candidacy to the board of directors, and (ii)
17 annual meetings at least ninety (90) days before an election or
18 annual meeting. Any electric cooperative electing to operate
19 under the provisions of this chapter must publish, by paid
20 advertisement in a newspaper or newspapers of general circulation



21 in the electric cooperative's certificated area, results of its
22 elections to each member.

23 (2) Every electric cooperative shall annually file the
24 following documents with the Public Service Commission and the
25 State Auditor:

26 (a) Audited financial records;

27 (b) Form 990/tax return;

28 (c) Filing of the rates and number of pole attachments
29 that it charges broadband affiliates and any other entity that
30 attaches to its poles;

31 (d) Itemization of all investments, loans and
32 guarantees of loans with rates and terms thereof;

33 (e) Full disclosure of agreements and arrangements with
34 affiliate and the terms thereof, including every transaction the
35 cooperative enters into with the affiliate; and

36 (f) A confidential feasibility study for broadband
37 services made available to ratepayers.

38 **SECTION 2.** Section 77-17-3, Mississippi Code of 1972, is
39 brought forward as follows:

40 77-17-3. As used in this chapter, the following terms shall
41 have the following meanings unless the context clearly indicates
42 otherwise:

43 (a) "Broadband affiliate" or "affiliate" means any
44 entity that is (i) wholly or partially owned by an electric



45 cooperative, and (ii) formed to own or operate a broadband system
46 or provide broadband services.

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

50 (c) "Broadband operator" means a broadband service
51 provider that owns or operates a broadband system on an electric
52 cooperative's electric delivery system with the electric
53 cooperative's consent.

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

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

68 (f) "Electric delivery system" means the poles, lines,
69 fiber, cables, broadband system, materials, equipment, easements



70 and other facilities or properties used by an electric cooperative
71 to deliver or facilitate the delivery, sale or use of electric
72 energy.

73 (g) "Electric cooperative" means an electric power
74 association formed or operating under Sections 77-5-201, et seq.

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

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

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

91 (k) "Voice over Internet protocol services" means any
92 service that: (i) enables real-time, two-way voice communications
93 that originate from or terminate to the user's location in
94 Internet protocol or any successor protocol; (ii) uses a broadband



95 connection from the user's location; and (iii) permits users
96 generally to receive calls that originate on the public switched
97 telephone network and to terminate calls to the public switched
98 telephone network.

99 **SECTION 3.** Section 77-17-5, Mississippi Code of 1972, is
100 brought forward as follows:

101 77-17-5. (1) Every electric cooperative is authorized to
102 establish, acquire, and wholly or partially own one or more
103 broadband affiliates.

104 (2) An electric cooperative may allow its broadband
105 affiliate(s) or an unaffiliated broadband operator to own, lease,
106 construct, maintain and operate a broadband system on the electric
107 cooperative's electric delivery system and to provide broadband
108 services to the public utilizing the electric cooperative's
109 broadband system or other parts of its electric delivery system.

110 (3) An electric cooperative is not required to implement a
111 broadband system or allow others to use broadband capacity on the
112 electric cooperative's electric delivery system to provide
113 broadband services.

114 (4) An electric cooperative may determine, in its sole
115 discretion, which broadband operators, if any, may have access to
116 broadband capacity on the electric cooperative's broadband system;
117 and it shall be lawful for an electric cooperative to provide an
118 affiliate or other broadband operator exclusive access to
119 broadband capacity on the electric cooperative's broadband system.



120 (5) (a) An electric cooperative may charge an affiliate or
121 an unaffiliated broadband operator for the construction,
122 installation, operation, use, and maintenance of those parts of
123 its electric delivery system that are used or may be reserved for
124 use by the affiliate or unaffiliated broadband operator for the
125 provision of broadband services. Any lease of facilities by an
126 electric cooperative to a broadband affiliate that includes the
127 use of the electric cooperative's poles shall specifically include
128 pole attachment fees to be paid by the broadband affiliate to the
129 electric cooperative equal to pole attachment fees charged by the
130 electric cooperative to like unaffiliated, private entities.

131 (b) An electric cooperative shall not:

132 (i) Charge an affiliate under this chapter an
133 amount less than the electric cooperative charges an unaffiliated
134 entity for the same item or class of items; or

135 (ii) Pay an affiliate under this chapter an amount
136 more than the affiliate charges an unaffiliated entity for the
137 same item or class of items.

138 (6) An electric cooperative shall not use its electric
139 energy sales revenues to subsidize the provision by an affiliate
140 or unaffiliated broadband operator of broadband services to the
141 public. An electric cooperative may, however, make capital
142 investments in an affiliate, make loans to an affiliate at fair
143 market rate, and enter loan guarantees for the benefit of an
144 affiliate, all of which may be in such amounts and on such terms



145 as the electric cooperative's board of directors determines to be
146 prudent and authorizes.

147 (7) Electric cooperatives exercising their authority granted
148 by this chapter shall comply with all financial performance and
149 loan covenant obligations required by the United States Department
150 of Agriculture/Rural Utilities Service and/or National Rural
151 Utility Cooperative Finance Corporation or other like entities.

152 (8) Before broadband services may be offered under this
153 chapter, an electric cooperative must, by resolution of the board
154 of directors and spread upon its minutes, have an economic
155 feasibility study conducted and adopt a plan that will provide
156 service to its entire certificated area. Such feasibility study
157 shall be made available to electric cooperative members upon
158 request.

159 **SECTION 4.** Section 77-17-7, Mississippi Code of 1972, is
160 brought forward as follows:

161 77-17-7. The passage of Chapter 301, Laws of 2019, does not
162 expand the regulatory authority of any state agency,
163 instrumentality or political subdivision of the State of
164 Mississippi beyond the existing state or federal law and
165 regulations in place on January 30, 2019.

166 **SECTION 5.** Section 77-17-9, Mississippi Code of 1972, is
167 brought forward as follows:

168 77-17-9. (1) An electric cooperative shall not allow the
169 installation or operation of a broadband system on its electric



170 delivery system by an affiliate or other broadband operator to
171 diminish the reliability of the electric delivery system.

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

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

180 **SECTION 6.** Section 77-17-11, Mississippi Code of 1972, is
181 brought forward as follows:

182 77-17-11. (1) An electric cooperative may grant permission
183 to an affiliate or other broadband operator to use the electric
184 delivery system of the electric cooperative to provide broadband
185 services. The use of the electric cooperative's electric delivery
186 system for the provision of broadband services by the affiliate or
187 other broadband operator shall not be considered an additional
188 burden on the real property upon which the electric cooperative's
189 electric delivery system is located and shall not require the
190 affiliate or other broadband operator to obtain the consent of
191 anyone having an interest in the real property upon which the
192 electric cooperative's electric delivery system is located.

193 (2) If a portion of an electric cooperative's electric
194 delivery system is used by an affiliate or other broadband



195 operator for the provision of broadband services and the landowner
196 of the real property on which such portion is located believes his
197 property has been damaged by such use, the landowner may petition
198 the circuit court of the county in which the property is situated
199 for any damages to which the landowner may be entitled under this
200 subsection.

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

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

209 (c) The damages recoverable shall be an amount equal to
210 the difference between (i) the fair market value of the
211 landowner's interest in the real property immediately before the
212 electric cooperative's electric delivery system on the owner's
213 property was first used by an affiliate or other broadband
214 operator for the provision of broadband services, and (ii) the
215 fair market value of the landowner's interest in the real property
216 immediately after the electric cooperative's electric delivery
217 system on the landowner's property was first used by an affiliate
218 or other broadband operator for the provision of broadband
219 services. The before and after values must be established by the



220 testimony of a qualified real estate appraiser. The damages, if
221 any, shall be fixed and shall not be deemed to continue,
222 accumulate, or accrue. The court shall as part of its judgment
223 vest a permanent easement in favor of the affiliate or other
224 broadband operator and their respective successors and assigns for
225 the placement or use of a broadband system on or as part of the
226 electric delivery system. The judgment will have the same effect
227 of a conveyance executed in due form of law and shall run with the
228 land; and a certified copy of said judgment may be filed by the
229 affiliate or other broadband operator in the land records of the
230 county in which the subject property is located.

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

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

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



245 **SECTION 7.** Section 77-17-13, Mississippi Code of 1972, is
246 brought forward as follows:

247 77-17-13. This chapter is to be liberally construed, and the
248 enumeration of any object, power, manner, method or thing shall
249 not be deemed to exclude like or similar objects, purposes,
250 powers, manners, methods or things. Nothing in this chapter shall
251 be interpreted or construed to infringe upon nor otherwise
252 encumber the property or property interests used by any
253 investor-owned electric public utility to provide electric service
254 to its customers.

255 **SECTION 8.** This act shall take effect and be in force from
256 and after July 1, 2021.

