MISSISSIPPI LEGISLATURE

REGULAR SESSION 2021

By: Representative Powell

To: Public Utilities

HOUSE BILL NO. 1134

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

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

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

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

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

   (a) Audited financial records;
   (b) Form 990/tax return;
   (c) Filing of the rates and number of pole attachments that it charges broadband affiliates and any other entity that attaches to its poles;
   (d) Itemization of all investments, loans and guarantees of loans with rates and terms thereof;
   (e) Full disclosure of agreements and arrangements with affiliate and the terms thereof, including every transaction the cooperative enters into with the affiliate; and
   (f) A confidential feasibility study for broadband services made available to ratepayers.

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

77-17-3. As used in this chapter, 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 an electric
cooperative, 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 an electric cooperative's electric delivery system with the electric cooperative'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 an electric cooperative to deliver or facilitate the delivery, sale or use of electric energy.

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

(h) "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 communications is voice, data or video.

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

(j) "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 or others.

(k) "Voice over Internet protocol 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.

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

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

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

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

(4) An electric cooperative may determine, in its sole
discretion, which broadband operators, if any, may have access to
broadband capacity on the electric cooperative's broadband system;
and it shall be lawful for an electric cooperative to provide an
affiliate or other broadband operator exclusive access to
broadband capacity on the electric cooperative's broadband system.
(5) (a) An electric cooperative 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 an electric cooperative to a broadband affiliate that includes the use of the electric cooperative's poles shall specifically include pole attachment fees to be paid by the broadband affiliate to the electric cooperative equal to pole attachment fees charged by the electric cooperative to like unaffiliated, private entities.

(b) An electric cooperative shall not:

(i) Charge an affiliate under this chapter 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 chapter an amount more than the affiliate charges an unaffiliated entity for the same item or class of items.

(6) An electric cooperative 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. An electric cooperative may, however, make capital investments in an affiliate, make loans to an affiliate at 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 electric cooperative's board of directors determines to be prudent and authorizes.

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

(8) Before broadband services may be offered under this chapter, an electric cooperative must, by resolution of the board of directors 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 electric cooperative members upon request.

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

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

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

77-17-9. (1) An electric cooperative 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) An electric cooperative 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 electric cooperative.

(3) An electric cooperative 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 6. Section 77-17-11, Mississippi Code of 1972, is
brought forward as follows:

77-17-11. (1) An electric cooperative may grant permission
to an affiliate or other broadband operator to use the electric
delivery system of the electric cooperative to provide broadband
services. The use of the electric cooperative'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 electric cooperative'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
electric cooperative's electric delivery system is located.

(2) If a portion of an electric cooperative's electric
delivery system is used by an affiliate or other broadband
operator for the provision of broadband services 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.

(a) The petition allowed and damages recoverable under this subsection (2) 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.

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

(c) The damages recoverable shall be an amount equal to the difference between (i) the fair market value of the landowner's interest in the real property immediately before the electric cooperative's electric delivery system on the owner's property was first used by an affiliate or other broadband operator for the provision of broadband services, and (ii) the fair market value of the landowner's interest in the real property immediately after the electric cooperative's electric delivery system on the landowner's property was first used by an affiliate or other broadband operator 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 vest a permanent easement in favor of the affiliate or other broadband operator 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 affiliate or other broadband operator in the land records of the county in which the subject property is located.

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

(e) 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 and is used or could be used by the electric cooperative for its own operations.

(f) The landowner shall not be entitled to any relief or damages if an easement has been granted to the affiliate or other broadband operator or if the landowner has, either directly or through his membership in the electric cooperative, authorized the electric cooperative to use or allow others to use its electric delivery system for the provision of broadband services.
SECTION 7. Section 77-17-13, Mississippi Code of 1972, is brought forward as follows:

77-17-13. This chapter 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 chapter shall be interpreted or construed to infringe upon nor otherwise encumber the property or property interests used by any investor-owned electric public utility to provide electric service to its customers.

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