

By: Senator(s) Carter

To: Energy

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2798

1 AN ACT TO PROVIDE FOR CERTAIN PARTICIPATION OF RATE-REGULATED
2 ELECTRIC UTILITIES IN THE EXPANSION OF BROADBAND SERVICES IN THE
3 STATE OF MISSISSIPPI; TO AMEND SECTION 77-3-2, MISSISSIPPI CODE OF
4 1972, TO DECLARE THE POLICY OF THIS STATE TO SUPPORT EXPANSION OF
5 EXISTING AND EMERGING TECHNOLOGIES TO FOSTER RELIABLE AND
6 RESILIENT SERVICE AND CUSTOMER ACCESS TO ENHANCED SERVICES; TO
7 AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO INCLUDE
8 DEFINITIONS OF "BROADBAND SERVICE PROVIDER," "BROAD AND OPERATOR,"
9 "ELECTRIC DELIVERY SYSTEM" AND "ENHANCED GRID INVESTMENTS"; TO
10 AMEND SECTION 77-3-44, MISSISSIPPI CODE OF 1972, TO INCLUDE FIBER
11 OPTIC INFRASTRUCTURE AND ENHANCED GRID INVESTMENTS AS AN ECONOMIC
12 DEVELOPMENT ACTIVITY IN WHICH CERTAIN UTILITIES ARE AUTHORIZED TO
13 UNDERTAKE, AND TO AUTHORIZE RATE-REGULATED ELECTRIC UTILITIES TO
14 GRANT PERMISSION TO BROADBAND OPERATORS OR BROADBAND SERVICE
15 PROVIDERS TO USE THE ELECTRIC DELIVERY SYSTEM; TO CREATE A NEW
16 SECTION TO PROVIDE COMPETITIVE SAFEGUARDS WHEN A RATE-REGULATED
17 ELECTRIC UTILITY GRANTS PERMISSION TO A BROADBAND OPERATOR OR
18 BROADBAND SERVICE PROVIDER TO USE ANY PART OF THE UTILITY'S
19 ELECTRIC DELIVERY SYSTEM; AND FOR RELATED PURPOSES.

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

21 **SECTION 1.** Section 77-3-2, Mississippi Code of 1972, is
22 amended as follows:

23 77-3-2. (1) The Legislature finds and determines that the
24 rates, services and operations of public utilities as defined in
25 this title are affected with the public interest and that the
26 availability of an adequate and reliable service by such public



27 utilities to the people, economy and government of the State of
28 Mississippi is a matter of public policy. The Legislature hereby
29 declares to be the policy of the State of Mississippi:

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

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

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

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

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

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

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



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

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

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

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

74 (i) Periodically review and adjust, if required,
75 the utility's level of revenues based upon the actual books and



76 records of the utility which are periodically the subject of
77 independent audits and regulatory audits;

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

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

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

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

96 (i) Each periodic evaluation shall be supported
97 with a sworn filing by the utility incorporating the data
98 specified in the formula rate adopted by the commission, and such
99 data shall be verified by the commission; and



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

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

112 (4) It is the intention of the Legislature to validate,
113 retroactively to its initial adoption by the commission, any
114 formula type rate, including any revenue adjustments effected
115 pursuant thereto, which has heretofore been adopted by the
116 commission. For the purposes of the retroactive validation and
117 the administration of any formula type rate heretofore adopted by
118 the commission, should the provisions of Title 77, Chapter 3,
119 Article 1, Mississippi Code of 1972, conflict with any provisions
120 of such formula type rate, Title 77, Chapter 3, Article 1,
121 Mississippi Code of 1972, shall be interpreted to prevail and the
122 formula type rate shall hereafter be administered or revised to
123 conform to Title 77, Chapter 3, Article 1, Mississippi Code of
124 1972; provided, however, such conflict, if any, shall not be held



125 to invalidate the retroactive effect of this section upon such
126 rate.

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

129 77-3-3. As used in this chapter:

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

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

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

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

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

145 (ii) The transmission, sale, sale for resale, or
146 distribution of natural, artificial, or mixed natural and
147 artificial gas to the public for compensation by means of
148 transportation, transmission, or distribution facilities and
149 equipment located within this state; however, the term shall not



150 include the production and gathering of natural gas, the sale of
151 natural gas in or within the vicinity of the field where produced,
152 or the distribution or sale of liquefied petroleum gas or the sale
153 to the ultimate consumer of natural gas for use as a motor vehicle
154 fuel;

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

171 (iv) The transmission, distribution, sale or
172 resale of water to the public for compensation, or the collection,
173 transmission, treatment or disposal of sewage, or otherwise



174 operating a sewage disposal service, to or for the public for
175 compensation.

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

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

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



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

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

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

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

208 (iii) Any corporation of which fifteen percent
209 (15%) or more of the voting securities is owned or controlled,
210 directly or indirectly, by a public utility;

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

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



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

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

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

242 (i) The term "cost of service" includes operating
243 expenses, taxes, depreciation, net revenue and operating revenue
244 requirement at a claimed rate of return from public utility
245 operations.



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

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

260 (i) Is used to provide access to the internet, or
261 (ii) Provides computer processing, information
262 storage, information content or protocol conversion, including any
263 service applications or information service provided over such
264 high-speed access service.

265 (l) The term "video services" means video programming
266 services without regard to delivery technology, including internet
267 protocol technology ("internet protocol television or IPTV") and
268 video programming provided as a part of a service that enables
269 users to access content, information, email or other services



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

272 (m) The term "Voice over Internet Protocol services" or
273 "VoIP services" means any service that: (i) enables real-time,
274 two-way voice communications that originate from or terminate to
275 the user's location in internet protocol or any successor
276 protocol; (ii) uses a broadband connection from the user's
277 location; and (iii) permits users generally to receive calls that
278 originate on the public switched telephone network and to
279 terminate calls to the public switched telephone network.

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

282 (o) The term "internet protocol-enabled services" or
283 "IP-enabled services" means any service, capability,
284 functionality, or application provided using internet protocol, or
285 any successor protocol, that enables an end user to send or
286 receive a communication in internet protocol format, or any
287 successor format, regardless of whether the communications is
288 voice, data or video.

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

292 (q) "Broadband operator" means a broadband service
293 provider that uses the electric delivery system of any
294 rate-regulated public utility of the type as defined in paragraph



295 (d)(i) of this section with the rate-regulated utility's consent
296 to provide broadband services.

297 (r) "Electric delivery system" means the poles, lines,
298 fiber, cables, broadband system, materials, equipment, easements
299 and other facilities or properties used by any rate-regulated
300 public utility of the type as defined in paragraph (d)(i) of this
301 section to deliver or facilitate the delivery, sale or use of
302 electric energy.

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

307 (t) The term "unserved area" means an area lacking
308 access to adequate internet service, as determined by the Public
309 Service Commission.

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

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

314 77-3-44. (1) Any rate-regulated electric or natural gas
315 public utility with certificated service area in Mississippi may
316 undertake economic development activities, whether directly or
317 indirectly, including activities such as providing capital, or
318 investment in or acquisition and development of business or
319 industrial sites and the necessary infrastructure or services



320 needed to attract new or existing businesses or industry, to
321 create or maintain employment opportunities, or expansion of fiber
322 optic infrastructure and enhanced grid investments, including
323 those which provide customer access to modern enhanced services,
324 or otherwise to positively impact or in some manner promote the
325 sale of electric energy or natural gas within its certificated
326 service area. Any facilities developed, constructed or acquired
327 in support of the activities described in this section, including
328 fiber optic infrastructure and enhanced grid investments,
329 including those which provide customer access to modern enhanced
330 services, for which a certificate of public convenience and
331 necessity or other commission approval has been granted after July
332 1, 2015, as well as any capital investment in natural gas reserves
333 made directly or indirectly by an electric or natural gas public
334 utility to foster long-term stability in the cost of fuel, may be
335 deemed used and useful in the provision of electric or natural gas
336 service regardless of whether or not any end-use customers are
337 taking service from said facilities or investment and otherwise
338 recoverable through the utility's rates.

339 (2) (a) Notwithstanding the foregoing, to further expand
340 fiber optic infrastructure in the state, any rate-regulated public
341 utility of the type as defined in Section 77-3-3(d) (i) may grant
342 permission to broadband operators or broadband service providers
343 to use the electric delivery system, including the fiber optic
344 infrastructure and enhanced grid investments of the rate-regulated



345 public utility to provide broadband services or other similar
346 services as defined in Section 77-3-3(k) through (o), including to
347 extend adequate internet services to unserved areas, subject to
348 the competitive safeguards in Section 4 of this act. The
349 rate-regulated public utility shall not allow the use of its
350 electric delivery system by a broadband operator to provide
351 broadband services to diminish the reliability of the electric
352 delivery system.

353 (b) To further expand fiber optic infrastructure and
354 economic development in the state, any public utility, including
355 electric cooperatives, of the type as defined in Section
356 77-3-3(d) (i), may grant permission to a retail customer with a
357 nonaggregated load greater than twenty (20) megawatts to
358 construct, install or maintain above or underground fiber optic
359 infrastructure on the public utility's existing right-of-way of
360 its electric delivery system.

361 (c) In instances where a landowner has previously been
362 compensated for the use of his land through a right-of-way
363 instrument with a rate-regulated public utility, the use of the
364 rate-regulated public utility's electric delivery system for the
365 provision of broadband services to a broadband operator or
366 broadband service provider or use of the rate-regulated public
367 utility's existing right-of-way on its electric delivery system by
368 a retail customer to construct, install, or maintain above or
369 underground fiber optic infrastructure shall not be considered an



370 additional burden on the real property upon which the
371 rate-regulated public utility's electric delivery system is
372 located and shall not require the broadband operator, broadband
373 service provider or retail customer to obtain the consent of
374 anyone having an interest in the real property upon which the
375 rate-regulated public utility's electric delivery system is
376 located. If a portion of a rate-regulated public utility's
377 electric delivery system is used by a broadband operator,
378 broadband service provider or retail customer for the provision of
379 broadband services to construct, install, or maintain above or
380 underground fiber optic infrastructure and the landowner of the
381 real property on which such portion is located believes his
382 property has been damaged by such use, the landowner may petition
383 the circuit court of the county in which the property is situated
384 for any damages to which the landowner may be entitled under this
385 subsection.

386 (i) The petition allowed and damages recoverable
387 under this subsection shall be the landowner's exclusive remedy,
388 and the landowner shall not be entitled to assert any other
389 theory, claims or causes of action nor recover any other damages,
390 punitive damages, costs, attorneys' fees, or other relief.

391 (ii) The recoverable damages, if any, shall be
392 recoverable only from the broadband operator or retail customer
393 and not from the rate-regulated electric public utility.



394 (iii) The damages recoverable shall be an amount
395 equal to the difference between 1. the fair market value of the
396 landowner's interest in the real property immediately before the
397 rate-regulated electric public utility's electric delivery system
398 on the owner's property was first used by the broadband operator,
399 broadband service provider or retail customer for the provision of
400 broadband services, and 2. the fair market value of the
401 landowner's interest in the real property immediately after the
402 rate-regulated electric public utility's electric delivery system
403 on the landowner's property was first used by the broadband
404 operator or retail customer for the provision of broadband
405 services. The before and after values must be established by the
406 testimony of a qualified real estate appraiser. The damages, if
407 any, shall be fixed and shall not be deemed to continue,
408 accumulate or accrue. The court shall, as part of its judgment,
409 vest the rights granted by the rate-regulated public utility to
410 the broadband operator or retail customer and his respective
411 successors and assigns for the placement or use of a broadband
412 system on or as part of the electric delivery system. The
413 judgment will have the same effect of a conveyance executed in due
414 form of law and shall run with the land; and a certified copy of
415 said judgment may be filed by the broadband operator or retail
416 customer in the land records of the county in which the subject
417 property is located.



418 (iv) Evidence of past, current or future revenues
419 or profits derived or to be derived by a broadband operator or
420 retail customer from providing broadband services is not
421 admissible for any purpose in any such proceeding.

422 (v) The landowner shall not be entitled to any
423 damages or other relief relating to any broadband system or
424 portion thereof or any fiber optic infrastructure by the retail
425 customer that is located on the landowner's property and which is
426 used by the rate-regulated electric public utility for its own
427 operations.

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

437 (d) The total revenue collected by a rate-regulated
438 public utility, derived from leasing their fiber optic
439 infrastructure and enhanced grid investments and associated use of
440 the rate-regulated public utility's right-of-way, shall all be
441 credited back to the electric service customers annually in a
442 method determined by the Public Service Commission.



443 (3) Nothing in this section shall affect, abrogate or
444 eliminate in any way any obligation of a rate-regulated public
445 utility or broadband operator to comply with any applicable safety
446 and permitting requirements of any railroad company or any state
447 governmental body or agency with respect to property that is held
448 or controlled by such railroad company or state governmental body
449 or agency, as the case may be, and in, on, over or across which an
450 easement is located.

451 (4) Except for subsection (2) (b) of this section, nothing in
452 this section shall be interpreted to affect the provisions of
453 Sections 77-17-1 through 77-17-15, also known as the Mississippi
454 Broadband Enabling Act.

455 **SECTION 4.** (1) To the extent a rate-regulated electric
456 public utility grants permission to any broadband operator or
457 broadband service provider to use any part of the utility's
458 electric delivery system, including, without limitation, its fiber
459 optic infrastructure and enhanced grid investments, it must grant
460 such permission, on a first-come first-served basis, to all other
461 broadband operators and broadband service providers on a
462 nondiscriminatory and nonexclusive basis as defined and determined
463 by the Public Service Commission.

464 (2) A rate-regulated electric public utility shall not offer
465 or condition the provision of electric services, nor shall the
466 rate-regulated electric public utility offer more favorable rates,
467 terms or conditions for electric services, based on a customer



468 decision to purchase broadband services from any broadband
469 provider or broadband operator.

470 (3) The Public Service Commission shall enforce subsections
471 (1) and (2) of this section. Before a rate-regulated electric
472 public utility can grant permission to any broadband operator or
473 broadband service provider to use any part of the utility's
474 electric delivery system, including without limitation its fiber
475 optic infrastructure and enhanced grid investments, the Public
476 Service Commission must have approved such infrastructure and
477 investments.

478 **SECTION 5.** This act shall take effect and be in force from
479 and after its passage.

