

By: Hamilton, Broomfield, Ellzey, Frierson,  
Maples, Pierce, Read, Rushing, Shows, Woods

To: Public Utilities

HOUSE BILL NO. 474

1 AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO  
2 INCLUDE WIRELESS COMMUNICATIONS SERVICES IN THE DEFINITION OF THE  
3 TERM "PUBLIC UTILITY" AS USED TO ESTABLISH THE JURISDICTION OF THE  
4 PUBLIC SERVICE COMMISSION; TO AMEND SECTION 77-3-5, MISSISSIPPI  
5 CODE OF 1972, TO PROHIBIT THE PUBLIC SERVICE COMMISSION FROM  
6 REGULATING THE RATES OF WIRELESS COMMUNICATIONS SERVICES UNTIL  
7 SUCH REGULATION IS AUTHORIZED BY FEDERAL LAW OR REGULATION; AND  
8 FOR RELATED PURPOSES.

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

10 SECTION 1. Section 77-3-3, Mississippi Code of 1972, is  
11 amended as follows:

12 77-3-3. As used in this chapter:

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

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

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

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

25 facilities for:

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

28 (ii) The transmission, sale, sale for resale, or  
29 distribution of natural, artificial, or mixed natural and  
30 artificial gas to the public for compensation by means of  
31 transportation, transmission, or distribution facilities and  
32 equipment located within this state; however, this term shall not  
33 include the production and gathering of natural gas, the sale of  
34 natural gas in or within the vicinity of the field where produced,  
35 or the distribution or sale of liquefied petroleum gas or the sale  
36 to the ultimate consumer of natural gas for use as a motor vehicle  
37 fuel;

38 (iii) The transmission, conveyance or reception of  
39 any message over wire or analog cellular or digital wireless  
40 communications system, by radio or otherwise, of writing, signs,  
41 signals, pictures and sounds of all kinds by or for the public,  
42 where such service is offered to the public for compensation, and  
43 the furnishing, or the furnishing and maintenance, of equipment or  
44 facilities to the public, for compensation, for use as a private  
45 communications system or part thereof; however, no person or  
46 corporation not otherwise a public utility within the meaning of  
47 this chapter shall be deemed such solely because of engaging in  
48 this state in the furnishing, for private use as last  
49 aforementioned, and moreover, nothing in this chapter shall be  
50 construed to apply to television stations, radio stations or  
51 community television antenna services; and

52 (iv) The transmission, distribution, sale or  
53 resale of water to the public for compensation, or the collection,  
54 transmission, treatment or disposal of sewage, or otherwise  
55 operating a sewage disposal service, to or for the public for

56 compensation.

57       The term "public utility" shall not include any person not  
58 otherwise a public utility, who furnishes the services or  
59 commodity described in this paragraph (d) only to himself, his  
60 employees or tenants as an incident of such employee service or  
61 tenancy, provided that such services are not sold or resold to  
62 such tenants or employees on a metered or consumption basis.

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

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

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

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

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

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

87                   (iii) Any corporation of which fifteen percent  
88 (15%) or more of the voting securities is owned or controlled,  
89 directly or indirectly, by a public utility;

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

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

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

111                   \* \* \* However, the term "affiliated interest" or "affiliate"

112 shall not include a joint agency organized pursuant to Sections  
113 77-5-701 et seq., as now or hereafter amended, nor a member  
114 municipality thereof.

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

122 (i) The term "cost of service" includes operating  
123 expenses, taxes, depreciation, net revenue and operating revenue  
124 requirement at a claimed rate of return from public utility  
125 operations.

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

135 SECTION 2. Section 77-3-5, Mississippi Code of 1972, is  
136 amended as follows:[BD1]

137 77-3-5. Subject to the limitations imposed in this article  
138 and in accordance with the provisions hereof, the Public Service  
139 Commission shall have exclusive original jurisdiction over the

140 intrastate business and property of public utilities. However,  
141 the commission shall not have jurisdiction over the production and  
142 gathering of natural gas or the sale of natural gas in or within  
143 the vicinity of the field where produced, or over the facilities  
144 and equipment utilized in any such operations including, but not  
145 limited to, such facilities as separators, scrubbers and gasoline  
146 plants of all types. Moreover, the commission shall not have  
147 jurisdiction to regulate the rates for the sales:

148 (a) of gas, water, electricity or sewage disposal  
149 services by municipalities to such persons as the municipalities  
150 are authorized by law to serve;

151 (b) of gas or electricity by cooperative gas or  
152 electric power associations to the members thereof as consumers,  
153 except as provided by Sections 77-3-15 and 77-3-17, where service  
154 is rendered in a municipality;

155 (c) of water or sewage disposal service by nonprofit  
156 corporations or associations where the governing body of such  
157 corporation or association is elected by the consumers thereof or  
158 appointed by the county board of supervisors; \* \* \*

159 (d) of water by districts organized under the  
160 provisions of Chapter 45, Laws of 1966-1967, Extraordinary  
161 Session; or

162 (e) of analog cellular or digital wireless  
163 communications services unless states are granted the authority to  
164 regulate the rates for the sale of such services under federal law  
165 or regulation.

166 SECTION 3. This act shall take effect and be in force from  
167 and after July 1, 2000.