

By: Representative Ellis

To: Public Utilities

HOUSE BILL NO. 1252

1 AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE PUBLIC SERVICE COMMISSION MAY ONLY REGULATE THE
3 RATES, TERMS AND CONDITIONS OF CERTAIN SWITCHED ACCESS SERVICES
4 AND SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICES; TO PROVIDE
5 THAT AN INCUMBENT LOCAL EXCHANGE CARRIER SHALL PROVIDE PRIMARY
6 SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICE TO THE PREMISES
7 OF A PERMANENT RESIDENCE OR BUSINESS WITHIN ITS FRANCHISED SERVICE
8 TERRITORY, IF THE COST TO THE REQUESTING PARTY DOES NOT EXCEED A
9 CERTAIN AMOUNT; TO PROVIDE THAT THE COMMISSION SHALL RETAIN
10 EXCLUSIVE ORIGINAL JURISDICTION OVER CUSTOMER COMPLAINTS FOR THOSE
11 SERVICES THAT CONTINUE TO BE REGULATED; TO PROVIDE THAT CERTAIN
12 TELECOMMUNICATION UTILITIES SHALL ONLY BE REQUIRED TO FILE
13 FINANCIAL OR SERVICE QUALITY INFORMATION THAT IS REQUIRED TO BE
14 FILED WITH THE FEDERAL COMMUNICATIONS COMMISSION; AND FOR RELATED
15 PURPOSES.

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

17 **SECTION 1.** Section 77-3-35, Mississippi Code of 1972, is
18 amended as follows:

19 77-3-35. (1) Subject to the provisions of subsections (2)
20 and (4) of this section, under such reasonable rules and
21 regulations as the commission may prescribe, every public utility,
22 as to the rates * * * which are subject to regulation under the
23 provisions of this article, shall file with the commission, within
24 such time and in such form as the commission may designate,
25 schedules showing such rates and charges established by it and
26 collected and enforced, or to be collected or enforced within the
27 jurisdiction of the commission. The utility shall keep copies of
28 such schedules open to public inspection under such reasonable
29 rules and regulations as the commission may prescribe.

30 No such public utility shall directly or indirectly, by any
31 device whatsoever, or in anywise, charge, demand, collect or
32 receive from any person or corporation for any service rendered or
33 to be rendered by such public utility a greater or less

34 compensation than that prescribed in the schedules of such public
35 utility applicable thereto then filed in the manner provided in
36 this section, and no person or corporation shall receive or accept
37 any service from any such public utility for a compensation
38 greater or less than prescribed in such schedules.

39 * * * Utilities selling commodities or rendering any
40 service to cooperatives, municipalities or other nonprofit
41 organizations, shall, at the order of the commission, file
42 schedules of such rates and charges for information purposes only.

43 The commission may provide, by rules and regulations to be
44 adopted by it, the following:

45 (a) That utilities may contract with a manufacturer
46 that is not a utility for furnishing the services or commodities
47 described in Section 77-3-3(d)(i), (ii) and (iii) for use in
48 manufacturing;

49 (b) That utilities described in Section 77-3-3(d)(i)
50 also may contract with a customer that has a minimum yearly
51 electric consumption of two thousand five hundred (2,500) megawatt
52 hours per year or greater for furnishing the services or
53 commodities described in Section 77-3-3(d)(i); and

54 (c) That utilities described in Section 77-3-3(d)(ii)
55 also may contract with a customer that has a minimum yearly
56 consumption of eight million five hundred thousand (8,500,000)
57 cubic feet of gas per year or greater for furnishing the services
58 or commodities described in Section 77-3-3(d)(ii).

59 These contracts may be entered into without reference to the
60 rates or other conditions which may be established or fixed
61 pursuant to other provisions of this article. Such regulations
62 shall provide that before becoming effective any such contract
63 shall be approved by the commission.

64 (2) (a) The Legislature recognizes that the maintenance of
65 universal telephone service in Mississippi is a continuing goal of
66 the commission and that the public interest requires that the

67 commission be authorized and encouraged to formulate and adopt
68 rules and policies that will permit the commission, in the
69 exercise of its expertise, to regulate and control the provision
70 of telecommunications services to the public in a changing
71 environment where competition and innovation are becoming more
72 commonplace, giving due regard to the interests of consumers, the
73 public, the providers of telecommunications services and the
74 continued availability of good telecommunications service. The
75 commission is authorized to issue more than one competing
76 certificate of public convenience and necessity to provide local
77 exchange telephone service in the same geographical area;
78 provided, that the issuing of any such additional certificates
79 shall not otherwise affect any certificate of public convenience
80 and necessity heretofore issued to any provider of such services.

81 The commission shall adopt all rules and regulations
82 necessary for implementing this subsection (2)(a).

83 The commission retains the authority to issue orders to
84 implement its rules, regulations and the provisions of this
85 chapter, including the authority to grant and modify, impose
86 conditions upon, or revoke a certificate.

87 (b) * * * The commission may, on its own motion or at
88 the request of any interested party, enter an order, after notice
89 and opportunity for hearing, determining and directing that, in
90 the provision of a service or facility by a utility of the type
91 defined in Section 77-3-3(d)(iii), competition or other market
92 forces adequately protect the public interest, or that a service
93 or facility offered by the utility is discretionary, and that the
94 public interest requires that the utility's rates and charges for
95 such service or facility shall not thereafter be subject to
96 regulation by the commission.

97 (c) In making its determination whether the rates and
98 charges for a service or facility shall not be subject to

99 regulation by the commission, the commission may consider
100 individually or collectively:

101 (i) Whether the exercise of commission
102 jurisdiction produces tangible benefits to the utility's customers
103 that exceed those available by reliance on market forces or other
104 factors;

105 (ii) Whether technological changes, competitive
106 forces, discretionary nature of the service or facility, or
107 regulation by other state and federal regulatory bodies render the
108 exercise of jurisdiction by the Mississippi commission unnecessary
109 or wasteful;

110 (iii) Whether the exercise of commission
111 jurisdiction inhibits a regulated utility from competing with
112 unregulated providers of functionally similar telecommunications
113 services or equipment;

114 (iv) Whether the existence of competition tends to
115 prevent abuses, unjust discrimination and extortion in the charges
116 of telecommunications utilities for the service or facility in
117 question;

118 (v) The availability of the service or facility
119 from other persons and corporations; or

120 (vi) Any other factors that the commission
121 considers relevant to the public interest.

122 In making the determination as above set forth, the
123 commission may specify the period of time during which the
124 utility's rates and charges for the service or facility shall not
125 thereafter be subject to regulation. Likewise, after notice and
126 opportunity for hearing, the commission may revoke a determination
127 and direction made under this section, when the commission finds
128 that commission regulation of the utility's rates and charges for
129 the service or facility in question is necessary to protect the
130 public interest.

131 (3) (a) * * * The commission is authorized to consider and
132 adopt alternative methods of regulation proposed by a utility of
133 the type defined in Section 77-3-3(d)(i), (ii) or (iii) to
134 establish rates for the services furnished by such utility that
135 are fair, just and reasonable to the public and that provide fair,
136 just and reasonable compensation to the utility for such services.

137 (b) For purposes of this subsection, the phrase
138 "alternative methods of regulation" means the regulation of
139 utility rates and charges by methods other than the rate base or
140 rate of return method of regulation set forth in other provisions
141 of this article.

142 (4) (a) Notwithstanding any other provisions of this
143 article or any other statute to the contrary, and consistent with
144 the provisions herein, for those public utilities of the type
145 defined in Section 77-3-3(d)(iii) that are subject to the
146 competitive requirements set forth in 47 USCS Section 251 or those
147 public utilities that have waived a suspension granted by the
148 commission of the requirements of 47 USCS Section 251(b) and (c)
149 as authorized by 47 USCS Section 251(f)(2), the Legislature has
150 determined that, in the provision of all services other than
151 switched access service and single-line flat rate voice
152 communication service, competition or other market forces
153 adequately protect the public interest. Therefore, the commission
154 is only authorized to regulate the rates, terms and conditions of
155 switched access service and single-line flat rate voice
156 communication service within a traditional local calling area,
157 with access to 911, with touch tone dialing and with access to
158 long distance, so long as such single-line flat rate service is
159 not combined with any other service, feature or product. The
160 retail rates for such single-line flat rate voice communication
161 service beginning January 1, 2007, and every succeeding January 1
162 may only be increased during the calendar year by an amount that
163 does not exceed the rates for such service on January 1 of the

164 previous year, plus the increase in the Consumer Price Index for
165 all Urban Consumers as reported by the United States Department of
166 Labor, Bureau of Labor Statistics.

167 (b) For those public utilities of the type defined in
168 Section 77-3-3(d)(iii) that have been granted a suspension by the
169 commission of the requirements of 47 USCS Section 251(b) and (c)
170 as authorized by 47 USCS Section 251(f)(2), the commission, at the
171 request of such public utility, shall enter an order, after notice
172 and opportunity for hearing, determining that such public
173 utility's provision of service will be subject to the same level
174 of regulation as provided in paragraph (a) of this subsection, but
175 only after the commission determines that such public utility has
176 satisfied one (1) of the following conditions:

177 (i) Has executed interconnection agreements
178 which have been approved by the commission to the extent required
179 under law with two (2) or more local exchange carriers
180 unaffiliated with such public utility;

181 (ii) Offers for resale at wholesale rates,
182 pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public
183 utility's retail telecommunications services provided to
184 subscribers who are not telecommunications carriers;

185 (iii) At least two (2) competitive
186 telecommunications providers unaffiliated with such requesting
187 public utility are offering service to such public utility's
188 subscribers; or

189 (iv) Has experienced a material reduction in
190 access lines or minutes of use in two (2) consecutive years.

191 A waiver of suspension under paragraph (a) of this subsection
192 shall be effective upon written notification to the commission.
193 The initial rate utilized by such public utility shall be the rate
194 for such service in effect at the time of such waiver under this
195 section. The commission, upon request of the public utility, may

return such public utility to return to a form of regulation
permitted under Section 77-3-35.

(c) (i) An incumbent local exchange carrier shall
provide, upon reasonable request, primary single-line flat rate
voice communication service to the premises of a permanent
residence or business within its franchised service territory, if
the costs, including, but not limited to, the costs of facilities,
rights-of-way and equipment, of providing such service to the
requesting party do not exceed Five Thousand Dollars (\$5,000.00).
This requirement shall not apply where there is an alternative
provider of service to the premises of the residence or business
customer, or where the incumbent local exchange carrier has been
prohibited from providing service to the premises.

(ii) If the costs exceeds Five Thousand Dollars
(\$5,000.00), as provided in and subject to subparagraph (i) of
this paragraph (c), an incumbent local exchange carrier may not
deny service on the basis of costs so long as sufficient funds to
provide that services are available from contributions to aid in
construction or the Mississippi portion of the applicable federal
universal service fund program as administered by the commission.

(d) Nothing in this chapter shall be construed to
affect the duties of an incumbent local exchange carrier to
provide unbundled access to network elements to the extent
required under 47 USCS Sections 251 and 252 and the Federal
Communications Commission's regulations implementing these
sections, or the commission's authority to arbitrate and enforce
interconnection agreements pursuant to 47 USCS Sections 251 and
252 and the Federal Communications Commission's regulations
implementing these sections.

(e) The commission shall retain exclusive original
jurisdiction over customer complaints for those services that
continue to be regulated. For services no longer regulated, the
commission shall have exclusive original jurisdiction to interpret

229 and enforce the terms and conditions of customer service
230 agreements for telecommunications services, but it shall not
231 alter, set aside or refuse to enforce the rates, terms and
232 conditions thereof, either directly or indirectly. No other party
233 shall be allowed to participate in any such complaint proceeding,
234 except for the customer, legal counsel or other representative of
235 the customer, or the public utility involved.

236 (f) A public utility of the type defined in Section
237 77-3-3(d)(iii) which is regulated under the provisions of
238 paragraph (a) of this subsection shall only be required to file
239 financial or service quality information that such public
240 utilities are required to file with the Federal Communications
241 Commission so long as such financial information includes data
242 specific to Mississippi. As to all other data and information,
243 the requirements of Section 77-3-79 continue to apply. If any
244 such public utility is not required to file such financial
245 information with the Federal Communications Commission, the
246 requirements of Section 77-3-79 continue to apply. The public
247 utility regulatory tax established in Section 77-3-87 shall be
248 based on the financial information contained in such federal
249 financial reports filed by such public utilities. The calculation
250 of such tax for such public utilities shall continue to be based
251 upon the gross revenues from the intrastate operations of such
252 public utility in the same manner as such tax was calculated
253 before July 1, 2006. Nothing herein shall change the obligation
254 of such public utilities described in Section 77-3-3(d)(iii) to
255 pay the public utilities regulatory tax established in Section
256 77-3-87. In addition, such public utility shall only be required
257 to adhere to billing for retail telecommunications services in
258 compliance with the federal truth in billing regulations
259 prescribed by the Federal Communications Commission.

260 (g) (i) In order to transition to the changes
261 effectuated by paragraph (a) of this subsection, the rates, terms

and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to the effective date of this section shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to the effective date of this section. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and conditions governing such products or services shall remain in effect until a written customer service agreement becomes effective as described in subparagraph (ii) of this paragraph (g).

(ii) Except as provided in subparagraph (i) of this paragraph (g), the service provider shall offer existing and new customers a written customer service agreement, which in the case of new customers shall be delivered no later than thirty (30) days after the initiation of service. The customer service agreement shall include a provision advising the customer that he has thirty (30) days from receipt in which to elect:

1. To terminate service with the service provider by contacting such service provider within the thirty-day time period, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement shall relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and shall be in effect until termination through pay off; or

2. To use the services of the service provider or to otherwise continue the account with the service provider after the thirty-day time period has elapsed, either of which shall constitute the customer's assent to all the rates, terms and conditions of the written customer service agreement.

The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(iii) If any service provider desires to modify in any respect any rates, terms or conditions of a customer service agreement, it shall provide at least thirty (30) days' prior written notice of the modification and the proposed effective date to the customer. The customer service agreement shall include a provision advising the customer that he has the option:

1. To terminate service with the service provider by contacting such service provider prior to the effective date, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as then in effect; or

2. To use the services of the service provider or to otherwise continue the account with the service provider on or after the effective date, either of which shall constitute the customer's assent to the modified written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

SECTION 2. This act shall take effect and be in force from and after July 1, 2006.