

REPORT OF CONFERENCE COMMITTEE

MR. PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2798: Broadband services; provide for the participation of rate-regulated electric utilities in the expansion of.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

20 77-3-2. (1) The Legislature finds and determines that the
21 rates, services and operations of public utilities as defined in
22 this title are affected with the public interest and that the
23 availability of an adequate and reliable service by such public
24 utilities to the people, economy and government of the State of
25 Mississippi is a matter of public policy. The Legislature hereby
26 declares to be the policy of the State of Mississippi:

27 (a) To provide fair regulation of public utilities in
28 the interest of the public;

29 (b) To promote the inherent advantage of regulated
30 public utilities;



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

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

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

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

45 (g) To cooperate with other states and the federal
46 government in promoting and coordinating interstate and intrastate
47 public utility service and reliability;

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

52 (i) With respect to rate-regulated public utilities, to
53 foster, encourage, enable and facilitate economic development in
54 the State of Mississippi, * * * ~~and~~ to support and augment
55 economic development activities, * * * ~~and~~ to expand deployment of



56 existing and emerging technologies, including fiber-optic
57 infrastructure which will foster a more reliable and resilient
58 utility delivery system and provide customer access to enhanced
59 services, to authorize and empower the Public Service
60 Commission * * *, in carrying out its statutory responsibilities,
61 and to take every opportunity to advance the economic development
62 of the state.

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

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

70 (i) Periodically review and adjust, if required,
71 the utility's level of revenues based upon the actual books and
72 records of the utility which are periodically the subject of
73 independent audits and regulatory audits;

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

79 (iii) Use such other provisions which may be
80 permitted by this chapter.



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

89 (c) In administering any such formula type rate of
90 return evaluation rate, the following procedures shall be observed
91 by the commission:

92 (i) Each periodic evaluation shall be supported
93 with a sworn filing by the utility incorporating the data
94 specified in the formula rate adopted by the commission, and such
95 data shall be verified by the commission; and

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

102 (d) The requirements of paragraphs (a), (b) and (c) of
103 this subsection and other applicable provisions of Title 77,
104 Chapter 3, Article 1, Mississippi Code of 1972, which are observed
105 by the commission in administering such rate, are hereby declared



106 to be procedural but are not required to be included in the rate
107 itself.

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

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

125 77-3-3. As used in this chapter:

126 (a) The term "corporation" includes a private or public
127 corporation, a municipality, an association, a joint-stock
128 association or a business trust.

129 (b) The term "person" includes a natural person, a
130 partnership of two (2) or more persons having a joint or common



131 interest, a cooperative, nonprofit, limited dividend or mutual
132 association, a corporation, or any other legal entity.

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

135 (d) The term "public utility" includes persons and
136 corporations, or their lessees, trustees and receivers now or
137 hereafter owning or operating in this state equipment or
138 facilities for:

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

141 (ii) The transmission, sale, sale for resale, or
142 distribution of natural, artificial, or mixed natural and
143 artificial gas to the public for compensation by means of
144 transportation, transmission, or distribution facilities and
145 equipment located within this state; however, the term shall not
146 include the production and gathering of natural gas, the sale of
147 natural gas in or within the vicinity of the field where produced,
148 or the distribution or sale of liquefied petroleum gas or the sale
149 to the ultimate consumer of natural gas for use as a motor vehicle
150 fuel;

151 (iii) The transmission, conveyance or reception of
152 any message over wire, of writing, signs, signals, pictures and
153 sounds of all kinds by or for the public, where such service is
154 offered to the public for compensation, and the furnishing, or the
155 furnishing and maintenance, of equipment or facilities to the



156 public, for compensation, for use as a private communications
157 system or part thereof; however, no person or corporation not
158 otherwise a public utility within the meaning of this chapter
159 shall be deemed such solely because of engaging in this state in
160 the furnishing, for private use as last aforementioned, and
161 moreover, nothing in this chapter shall be construed to apply to
162 television stations, radio stations, community television antenna
163 services, video services, Voice over Internet Protocol services
164 ("VoIP"), any wireless services, including commercial mobile
165 services, Internet Protocol ("IP") - enabled services or broadband
166 services; and

167 (iv) The transmission, distribution, sale or
168 resale of water to the public for compensation, or the collection,
169 transmission, treatment or disposal of sewage, or otherwise
170 operating a sewage disposal service, to or for the public for
171 compensation.

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



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

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

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

196 (g) The term "affiliated interest" or "affiliate"
197 includes:

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

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



204 (iii) Any corporation of which fifteen percent
205 (15%) or more of the voting securities is owned or controlled,
206 directly or indirectly, by a public utility;

207 (iv) Any corporation of which twenty-five percent
208 (25%) or more of the voting securities * * * ~~of which~~ is owned or
209 controlled, directly or indirectly, by any person or corporation
210 that owns or controls, directly or indirectly, twenty-five percent
211 (25%) or more of the voting securities of any public utility or by
212 any person or corporation in any chain of successive ownership of
213 twenty-five percent (25%) of such securities;

214 (v) Any person who is an officer or director of a
215 public utility or of any corporation in any chain of successive
216 ownership of fifteen percent (15%) or more of voting securities of
217 a public utility; or

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



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

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

238 (i) The term "cost of service" includes operating
239 expenses, taxes, depreciation, net revenue and operating revenue
240 requirement at a claimed rate of return from public utility
241 operations.

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

251 (k) The term "broadband services" means any service
252 that consists of or includes a high-speed access capability to



253 transmit at a rate that is not less than two hundred (200)
254 kilobits per second either in the upstream or downstream direction
255 and either:

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

261 (l) The term "video services" means video programming
262 services without regard to delivery technology, including Internet
263 Protocol technology ("Internet Protocol television or IPTV") and
264 video programming provided as a part of a service that enables
265 users to access content, information, email or other services
266 offered over the public internet. The term "video programming"
267 means any programming as defined in 47 USCS Section 522(20).

268 (m) The term "Voice over Internet Protocol services" or
269 "VoIP services" means any service that: (i) enables real-time,
270 two-way voice communications that originate from or terminate to
271 the user's location in Internet Protocol or any successor
272 protocol; (ii) uses a broadband connection from the user's
273 location; and (iii) permits users generally to receive calls that
274 originate on the Public Switched Telephone Network and to
275 terminate calls to the Public Switched Telephone Network.

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



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

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

288 (q) "Broadband operator" means a broadband service
289 provider that uses the electric delivery system of any public
290 utility of the type as defined in Section 77-3-3(d) (i) with the
291 public utility's consent to provide broadband services.

292 (r) "Electric delivery system" means the poles, lines,
293 fiber, cables, broadband system, materials, equipment, easements
294 and other facilities or properties used by any public utility of
295 the type as defined in Section 77-3-3(d) (i) to deliver or
296 facilitate the delivery, sale or use of electric energy.

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

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

301 77-3-44. (1) Any rate-regulated electric or natural gas
302 public utility with certificated service area in Mississippi may



303 undertake economic development activities, whether directly or
304 indirectly, including activities such as providing capital, or
305 investment in or acquisition and development of business or
306 industrial sites and the necessary infrastructure or services
307 needed to attract new or existing businesses or industry, to
308 create or maintain employment opportunities, or expansion of
309 fiber-optic infrastructure or otherwise to positively impact or in
310 some manner promote the sale of electric energy or natural gas
311 within its certificated service area. Any facilities developed,
312 constructed or acquired in support of the activities described in
313 this section, including fiber-optic infrastructure for which a
314 certificate of public convenience and necessity or other
315 commission approval has been granted after July 1, 2015, as well
316 as any capital investment in natural gas reserves made directly or
317 indirectly by an electric or natural gas public utility to foster
318 long-term stability in the cost of fuel, may be deemed used and
319 useful in the provision of electric or natural gas service
320 regardless of whether or not any end-use customers are taking
321 service from said facilities or investment and otherwise
322 recoverable through the utility's rates.

323 (2) (a) In addition, to further expand fiber-optic
324 infrastructure in the state, any rate-regulated public utility of
325 the type as defined in Section 77-3-3(d) (i) may grant permission
326 to broadband service providers to use the electric delivery
327 system, including without limitation the fiber-optic



328 infrastructure, of the public utility to provide broadband
329 services or other similar services as defined in Section 77-3-3(k)
330 through (o). To the extent a rate-regulated electric public
331 utility grants permission to any broadband service provider to use
332 any part of the utility's electric delivery system, including,
333 without limitation, its fiber optic infrastructure, it must grant
334 such permission on a nonexclusive basis.

335 (b) The public utility shall not: (i) allow the use of
336 its electric delivery system by a broadband operator to provide
337 broadband services as defined above to diminish the reliability of
338 the electric delivery system; (ii) require any person to purchase
339 broadband services as a condition of receiving or continuing to
340 receive electric service; or (iii) disconnect, or threaten to
341 disconnect, electric service to any customer due to the customer's
342 failure to pay for broadband services. Any complaint related to a
343 public utility's permissive offer of use pursuant to this
344 paragraph (b) shall be brought before and resolved by the Public
345 Service Commission.

346 (c) In addition, to further expand fiber-optic
347 infrastructure and economic development in the state, any public
348 utility, including electric cooperatives, of the type as defined
349 in Section 77-3-3(d) (i) may grant permission to a retail customer
350 with a nonaggregated load greater than twenty (20) megawatts to
351 construct, install, or maintain above or underground fiber-optic



352 infrastructure on the public utility's existing right-of-way of
353 its electric delivery system.

354 (d) In instances where a landowner has previously been
355 compensated for the use of their land through a right-of-way
356 instrument with a public utility, the use of the public utility's
357 electric delivery system for the provision of broadband services
358 to a broadband operator or use of the public utility's existing
359 right-of-way on its electric delivery system by a retail customer
360 to construct, install, or maintain above or underground
361 fiber-optic infrastructure shall not be considered an additional
362 burden on the real property upon which the public utility's
363 electric delivery system is located and shall not require the
364 public utility, the broadband operator or retail customer to
365 obtain the consent of anyone having an interest in the real
366 property upon which the public utility's electric delivery system
367 is located.

368 (e) If a portion of a public utility's electric
369 delivery system is used by a broadband operator for the provision
370 of broadband services or a portion of a public utility's
371 right-of-way is used by a retail customer to construct, install,
372 or maintain above or underground fiber-optic infrastructure and
373 the landowner of the real property on which such portion is
374 located believes his property has been damaged by such use, the
375 landowner may petition the circuit court of the county in which



376 the property is situated for any damages to which the landowner
377 may be entitled under this subsection:

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

383 (ii) The recoverable damages, if any, shall be
384 recoverable only from the broadband operator or retail customer
385 and not from the public utility.

386 (iii) The damages recoverable shall be an amount
387 equal to the difference between 1. the fair market value of the
388 landowner's interest in the real property immediately before the
389 public utility's electric delivery system on the owner's property
390 was first used by the broadband operator or retail customer for
391 the provision of broadband services, and 2. the fair market value
392 of the landowner's interest in the real property immediately after
393 the public utility's electric delivery system on the landowner's
394 property was first used by the broadband operator or retail
395 customer for the provision of broadband services. The
396 before-and-after values must be established by the testimony of a
397 qualified real estate appraiser. The damages, if any, shall be
398 fixed and shall not be deemed to continue, accumulate, or accrue.
399 The court shall, as part of its judgment, confirm the rights
400 granted by the public utility to the broadband operator or retail



401 customer and their respective successors and assigns for the
402 placement or use of a broadband system on or as part of the
403 electric delivery system. The judgment will have the same effect
404 of a conveyance executed in due form of law and shall run with the
405 land; and a certified copy of said judgment may be filed by the
406 broadband operator retail customer in the land records of the
407 county in which the subject property is located.

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

412 (v) The landowner shall not be entitled to any
413 damages or other relief relating to any broadband system or
414 portion thereof that is located on the landowner's property or any
415 fiber-optic infrastructure by the retail customer that is located
416 on the landowner's property and is used or could be used by the
417 electric public utility for its own operations.

418 (vi) The landowner shall not be entitled to any
419 relief or damages if an easement has been granted to the broadband
420 operator or retail customer, if the landowner has authorized the
421 public utility to use or allow others to use its electric delivery
422 system for the provision of broadband services, or if the
423 landowner has authorized the public utility to use its existing
424 right-of-way to construct, install, or maintain above or
425 underground fiber-optic infrastructure.



426 (f) Nothing in this section shall affect, abrogate, or
427 eliminate in any way any obligation of a rate-regulated, public
428 utility or broadband operator to comply with any applicable safety
429 and permitting requirements of any railroad company or any state
430 governmental body or agency with respect to property that is held
431 or controlled by such railroad company or state governmental body
432 or agency, as the case may be, and in, on, over, or across which
433 an easement is located.

434 (g) All costs paid by a rate-regulated public utility
435 to acquire right-of-way shall be considered cost of service and
436 recovered through rates, and all revenue collected by a
437 rate-regulated public utility from third-party use of public
438 utility right-of-way shall be credited back to customers in a
439 comparable manner.

440 The Public Service Commission shall establish a mechanism for
441 electric utility revenues deriving from the provision of
442 competitive broadband services such that electric service
443 customers receive an annual credit, adjusted annually, for any
444 wholesale revenues derived from fiber optic infrastructure.

445 **SECTION 4.** This act shall take effect and be in force from
446 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 THAT IT IS THE POLICY OF THE STATE OF MISSISSIPPI
5 TO SUPPORT EXPANSION OF EXISTING AND EMERGING TECHNOLOGIES TO
6 FOSTER RELIABLE AND RESILIENT SERVICE AND CUSTOMER ACCESS TO
7 ENHANCED SERVICES; TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF
8 1972, TO INCLUDE DEFINITIONS OF "BROADBAND SERVICE PROVIDER,"
9 "BROADBAND OPERATOR" AND "ELECTRIC DELIVERY SYSTEM"; TO AMEND
10 SECTION 77-3-44, MISSISSIPPI CODE OF 1972, TO INCLUDE FIBER-OPTIC
11 INFRASTRUCTURE AS AN ECONOMIC DEVELOPMENT ACTIVITY, TO ALLOW
12 RATE-REGULATED ELECTRIC UTILITIES TO PERMIT BROADBAND PROVIDERS
13 USE OF THE ELECTRIC DELIVERY SYSTEM TO PROVIDE BROADBAND SERVICES,
14 TO REGULATE EASEMENTS, TO ALLOW CERTAIN ENTITIES TO CONSTRUCT
15 FIBER-OPTIC INFRASTRUCTURE ON PUBLIC UTILITIES' EXISTING
16 RIGHTS-OF-WAY; AND FOR RELATED PURPOSES.

CONFEREES FOR THE SENATE

X (SIGNED)
Carter

X (SIGNED)
Parks

X (SIGNED)
Polk

CONFEREES FOR THE HOUSE

X (SIGNED)
Bounds

X (SIGNED)
Anderson (122nd)

X (SIGNED)
Gibbs (36th)

