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Chapter No. 447
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HOUSE BILL NO. 825

Originated in House  Clerk

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AN ACT TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "VIDEO SERVICES," "VOICE OVER INTERNET PROTOCOL SERVICES," "COMMERCIAL MOBILE SERVICES" AND "INTERNET PROTOCOL ENABLED SERVICES"; TO PROVIDE THAT SUCH SERVICES SHALL NOT BE INCLUDED IN THE REGULATION OF PUBLIC UTILITIES; TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION SHALL HAVE JURISDICTION OVER INTRASTATE SWITCHED ACCESS SERVICE PROVIDED BY PUBLIC UTILITIES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

(ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and

artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;

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

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

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or

tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

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

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

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

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

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

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

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

(iv) Any corporation twenty-five percent (25%) or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or

controls, directly or indirectly, twenty-five percent (25%) or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of twenty-five percent (25%) of such securities;

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

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

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

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

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

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

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

(l) The term "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 as defined in 47 USCS Section 522(20).

(m) The term "Voice over Internet Protocol services" or "VoIP 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.

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

(o) The term "Internet protocol-enabled services" or "IP-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.

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

SECTION 2. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

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

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept

any service from any such public utility for a compensation greater or less than prescribed in such schedules.

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

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

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

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

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

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

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision

of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one (1) competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

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

The commission may apply standards adopted by the Federal Communications Commission that are generally applicable to companies that are designated and operate as eligible telecommunications carriers, pursuant to 47 USCS Section 214(e). The commission may exercise its authority to ensure that these carriers, including commercial mobile radio service providers that receive federal eligible telecommunications status, comply with those standards, only to the extent permitted by and consistent with applicable federal laws and regulations.

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

(b) The commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the

public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

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

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

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

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

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

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

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination

and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

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

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

(4) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d) (iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f) (2), the Legislature has determined that, in the provision of all services, other than switched access service * * *, competition or other market forces adequately protect the public interest. Therefore, subject to Section 77-3-35(4) (d), the commission no longer has jurisdiction over the services, other than the provision of intrastate switched access service, provided by such public utilities. * * *

(b) For those public utilities of the type defined in Section 77-3-3(d) (iii) that have been granted a suspension by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f) (2), the commission, at the

request of such public utility, shall enter an order, after notice and opportunity for hearing, determining that such public utility's provision of service will be subject to the same level of regulation as provided in paragraph (a) of this subsection, but only after the commission determines that such public utility has satisfied one (1) of the following conditions:

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

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

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

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

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

(c) * * * Subject to Section 77-3-35(4)(d), a public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be subject to any rule, regulation or order promulgated by the commission with regard to retail services. The provisions of Section 77-3-23 shall not apply to such public utility

regulated under the provisions of paragraph (a) of this subsection.

* * *

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier arising under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to approve, arbitrate and enforce interconnection agreements and to resolve disputes pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections or any other applicable federal law or regulation. The commission shall exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and with respect to enforcement or modification of any wholesale self-effectuating enforcement mechanism plan in place as of July 1, 2011, and to issue orders to resolve such complaints, provided that such actions are consistent with federal telecommunications law. The commission shall interpret and apply federal, not state, substantive law. The commission shall adjudicate and enforce such claims in accordance with state procedural law and rules. No claim shall be brought to the commission as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the commission within one hundred eighty (180) days of the filing of the complaint.

(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 and enforce the terms and conditions of customer service agreements for telecommunications services, but it shall not

alter, set aside or refuse to enforce the rates, terms and conditions thereof, either directly or indirectly. No other party shall be allowed to participate in any such complaint proceeding, except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall not be required to file financial, service quality or other information with the commission. * * * The calculation of the public utility regulatory tax established in Section 77-3-87 shall be based upon ninety thousandths of one percent (90/1000 of 1%) per year of the gross revenues from the intrastate operations of such public utility which is subject to regulation under the provision of paragraph (a) of this subsection * * *. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g) (i) In order to transition to the changes 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 July 1, 2006, shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to July 1, 2006. 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.

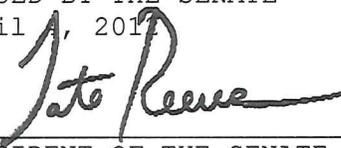
(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

SECTION 3. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 14, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 1, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4:19 pm