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COMMITTEE AMENDMENT AMENDED, ADOPTED, AND AMENDED

May 30, 2012

**H. 3508**

Introduced by Reps. Gambrell, Sandifer, Harrell, Erickson, Limehouse, Weeks, H.B. Brown, Agnew, Allison, Anthony, Bales, Bannister, Bedingfield, Bingham, Brady, Brannon, G.A. Brown, Cole, Crosby, Forrester, Hardwick, Harrison, Hayes, Hiott, Hixon, Horne, Lowe, Lucas, McCoy, D.C. Moss, Owens, Parker, Pinson, Pitts, Skelton, J.E. Smith, J.R. Smith, Sottile, Tallon, Vick, White, Taylor, Hamilton, Battle, Allen, Dillard, Alexander, Cooper, Mack and Bowen

S. Printed 5/30/12--S.

Read the first time February 22, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO RETITLE ARTICLE 23, CHAPTER 9, TITLE 58, RELATING TO GOVERNMENT‑OWNED TELECOMMUNICATIONS SERVICE PROVIDERS AS “GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS”; BY ADDING SECTION 58‑9‑2660 SO AS TO PROVIDE A GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDER MAY PETITION THE PUBLIC SERVICE COMMISSION TO DESIGNATE ONE OR MORE AREAS AS AN ‘UNSERVED AREA’, TO SPECIFY THE PROCEDURE FOR MAKING AND PROTESTING THIS PETITION, TO PROVIDE FOR A HEARING OF A PROTEST TO A PETITION, TO PROVIDE FOR THE APPLICATION OF CERTAIN PROVISIONS OF LAW TO AN UNSERVED AREA, AND TO PROVIDE A PROCESS FOR PETITIONING FOR A DETERMINATION THAT AN AREA HAS CEASED TO BE AN UNSERVED AREA; TO AMEND SECTION 58‑9‑10, AS AMENDED, RELATING TO DEFINITIONS CONCERNING TELEPHONE COMPANIES, SO AS TO MODIFY THE DEFINITION OF “BROADBAND SERVICE”; TO AMEND SECTION 58‑9‑2600, RELATING TO THE PURPOSE OF ARTICLE 23, CHAPTER 9, TITLE 58, SO AS TO MAKE CONFORMING CHANGES AND CLARIFY THE SCOPE OF THE ARTICLE; TO AMEND SECTION 58‑9‑2610, RELATING TO DEFINITIONS CONCERNING GOVERNMENT‑OWNED TELECOMMUNICATIONS SERVICE PROVIDERS, SO AS TO MAKE CONFORMING CHANGES AND ADD CERTAIN DEFINITIONS; TO AMEND SECTION 58‑9‑2620, AS AMENDED, RELATING TO DUTIES, RESTRICTIONS, RATE COMPUTATIONS, AND ACCOUNTING REQUIREMENTS OF GOVERNMENT‑OWNED TELECOMMUNICATIONS SERVICE PROVIDERS, SO AS TO MAKE CONFORMING CHANGES, TO GIVE THE OFFICE OF REGULATORY STAFF JURISDICTION TO INVESTIGATE THE COMPLIANCE OF A GOVERNMENT‑OWNED COMMUNICATIONS PROVIDER WITH THE PROVISIONS OF THIS CHAPTER, TO PROVIDE THE COMMISSION MAY ENFORCE THE COMPLIANCE OF A GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDER WITH THE PROVISIONS OF THIS CHAPTER, AND TO CLARIFY THAT THIS SECTION DOES NOT EXPAND OR LIMIT THE JURISDICTION OF THE COMMISSION OR OFFICE OF REGULATORY STAFF WITH RESPECT TO ANY SERVICE PROVIDER OTHER THAN A GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDER; TO AMEND SECTION 58‑9‑2630, RELATING TO CERTAIN TAX COLLECTIONS AND PAYMENTS, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 58‑9‑2650, AS AMENDED, RELATING TO LIABILITY INSURANCE RATES FOR COMMUNICATIONS OPERATIONS, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas certain political subdivisions of the State have applied for and received federal grants to provide certain broadband projects in designated areas of the State; and

Whereas the General Assembly finds that it is appropriate to update the existing statutes addressing government-owned telecommunications service providers in a manner that does not prevent those political subdivisions from complying with the terms and conditions of such federal grants;

Now therefore:

SECTION 1. Article 23, Chapter 9, Title 58 of the 1976 Code is re-titled “Government‑Owned Communications Service Providers”.

SECTION 2. Article 23, Chapter 9, Title 58 of the 1976 Code is amended by adding:

“Section 58‑9‑2660. (A) A government‑owned communications service provider may petition the commission to designate one or more areas as an unserved area. The petition must identify with specificity each 2010 Census tract within a persistent poverty county described in Section 58-9-2610(G) and each 2010 census block in any other county for which this designation is sought. The petition must also identify each county that contains any Census tract or block identified in the petition. If an objection is not filed pursuant to subsection (C), the commission must grant the petition and designate each 2010 Census tract or block identified in the petition as an unserved area.

(B) The commission shall maintain a list, by county, of all broadband service providers who have provided to the commission written notification that they wish to receive notice of petitions to designate unserved areas in a particular county or counties. The commission must serve electronic notice of the petition described in subsection (A) on all broadband service providers in the affected county or counties that requested notice of petitions within five working days of the petition’s filing. The commission must also post public notice of the filing of the petition on its website.

(C)(1) A broadband service provider that has not notified the commission of its wish to receive notice of petitions pursuant to subsection (B) or a resident of an area designated in a petition filed pursuant to subsection (A) may, within thirty days after the commission posts public notice of the filing of the petition on its website, file with the commission an objection to this designation on the ground that one or more areas designated in the petition is not an unserved area.

(2) A provider of broadband service in the area designated in a petition filed pursuant to subsection (A) that notified the commission of its wish to receive notice of petitions may, within thirty days after service of the notice required in subsection (B), file with the commission an objection to this designation on the ground that one or more areas designated in the petition is not an unserved area.

(3) Any provider or resident filing an objection must file testimony supporting the objection within thirty days after the objection is filed. If no testimony is filed in support of the objection, the petition must be granted.

(D) If an objection is filed pursuant to subsection (C), the commission must:

(1) give the petitioner an opportunity to submit prefiled testimony responding to the objection;

(2) hold a hearing on the dispute; and

(3) rule on the petition within ninety days after the objection is filed.

(E) Upon a commission designation that an area is an unserved area, the provisions of Sections 58‑9‑2620, 58‑9‑2630, and 58‑9‑2650 must not apply to a broadband service provided by the petitioner in that area until the later of:

(1) sixty months after the effective date of this act if, at the time an area is designated as an unserved area, the transmission speed requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband gathering and reporting are the same as they were on the effective date;

(2) thirty-six months after the effective date of this act if, at the time an area is designated as an unserved area, the transmission speed requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband gathering and reporting are different than they were on the effective date of this act; or

(3) twelve months after the commission determines pursuant to subsection (F) that the area is no longer an unserved area.

(F) A provider of broadband service or a resident of an area designated as an unserved area may petition the commission to determine that the area is no longer an unserved area. After notice and an opportunity for a hearing, the commission must grant the petition if, considering only broadband service that is available from providers other than the government-owned communications service provider that filed the petition resulting in the designation by the commission of the area as an unserved area, the commission determines that the area no longer satisfies the relevant definition of ‘unserved’ in Section 58-9-2610(G).”

SECTION 3. Section 58‑9‑10(17) of the 1976 Code, as added by Act 6 of 2003, is amended to read:

“(17) The term ‘broadband service’ means ~~any~~ a service that is used to deliver video or to provide access to the Internet or content and services similar to that accessible through the Internet, and that consists of the offering of:

(a) a capability to transmit information at a rate that is generally not less than one hundred ninety kilobits per second in at least one direction; or

(b) ~~any service that combines computer processing, information storage, and protocol conversion to enable users to access Internet content and services~~ a service that uses one or more of the following to provide this access:

(i) computer processing;

(ii) information storage; and

(iii) protocol conversion.”

SECTION 4. Section 58‑9‑2600 of the 1976 Code, as added by Act 360 of 2002, is amended to read:

“Section 58‑9‑2600. This article regulates the provision of ~~telecommunications~~ communications service by an agency ~~or~~, entity ~~of the State or~~, instrumentality, or a political subdivision of this State, excluding the State Budget and Control Board, for services provided as of ~~this article’s~~ the effective date of this article.”

SECTION 5. Section 58‑9‑2610 of the 1976 Code, as added by Act 360 of 2002, is amended to read:

“Section 58‑9‑2610. As used in this article:

(A)(1) ‘Government‑owned ~~telecommunications~~ communications service provider’ means a state or local political subdivision ~~or~~, instrumentality of the State, person, or entity providing ~~telecommunications~~ a communications service to the public for hire over a facility, operation, or system that is directly or indirectly owned by, operated by, or a financial benefit obtained by or derived from, an agency, instrumentality, or entity of the State or ~~any~~ local government. ‘Government‑owned ~~telecommunications~~ communications service provider’ does not include the State Budget and Control Board for services provided as of ~~this article’s~~ the effective date of this article.

(2) The term ‘government‑owned ~~telecommunications~~ communications service provider’ does not include ~~any~~ a state or local governmental entity, instrumentality, or agency that obtains or derives financial benefit solely from leasing or renting, to ~~any~~ a person or entity, property that is not, in and of itself, a facility used to provide ~~telecommunications~~ a communications service.

~~(2)~~(B) ‘Communications service’ means a telecommunications service, a broadband service, or both.

(C) ‘Telecommunications service’ ~~for the purpose of this section is~~ means a telecommunications service as defined in Section 58‑9‑2200(1).

(D) Broadband service means a service that meets the definition of ‘broadband service’ in Section 58-9-10(17) and that has transmission speeds that are equal to or greater than the requirements for basic broadband tier 1 service as defined by the Federal Communications Commission for broadband data gathering and reporting. This definition does not modify or otherwise affect the definition of ‘broadband services’ for the purposes of Section 58-9-280(G).

~~(3)~~(E) ‘Person’ as defined in Section 58‑9‑10(4) includes a ‘government‑owned ~~telecommunications~~ communications service provider’.

~~(4)~~(F) ‘Public’ means the public generally or ~~any~~ a limited portion of the public, including a person or corporation. The term ‘public’ excludes governmental agencies or entities when they receive ~~telecommunications~~ communications service from the State Budget and Control Board pursuant to its statutory authority or other legal requirements.

(G) ‘Unserved area’ means:

(1) within a county that is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census, a nongovernment-owned communications service provider’s territory within a 2010 Census tract, as designated by the United States Census Bureau, in which at least seventy-five percent of households have either no access to broadband service or access to broadband service only from a satellite provider; and

(2) within any other county, a 2010 Census block, as designated by the United States Census Bureau, in which at least ninety percent of households have either no access to broadband service or access to broadband service only from a satellite provider.

For the purposes of this subsection, ‘household’ has the same meaning as prescribed by the United States Census Bureau.

(H) ‘Commission’ means the South Carolina Public Service Commission.”

SECTION 6. Section 58‑9‑2620 of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

“Section 58‑9‑2620. Notwithstanding any other provision of law, a government‑owned ~~telecommunications~~ communications service provider ~~shall~~ must:

(1) be subject to the same local, state, and federal regulatory, statutory, and other legal requirements ~~that~~ to which nongovernment‑owned ~~telecommunications~~ communications service providers are subject ~~to~~, including regulation and other legal requirements by the ~~Public Service~~ commission and the Office of Regulatory Staff;

(2) not ~~be the recipient of any~~ receive a financial ~~benefits of any type that~~ benefit that is not available to a nongovernment‑owned ~~telecommunications~~ communications service ~~providers are~~ provider on the same terms and conditions as it is available to a government-owned communications service provider, including, but not limited to, tax exemptions and governmental subsidies of any type. Tax exempt capital financing may be used consistent with Sections 58‑9‑2620(4)(a) and 58‑9‑2630(C);

(3) not be permitted to subsidize the cost of providing ~~telecommunications~~ a communications service with funds from any other ~~nontelecommunications~~ noncommunications service, operation, or other revenue source. If a determination is made that a direct or indirect subsidy has occurred, the government‑owned ~~telecommunications~~ communications service provider immediately ~~shall~~ must increase prices for ~~telecommunications~~ communications service in a manner that ensures that the subsidy ~~shall~~ will not continue, and any amounts used directly or indirectly to subsidize the past operations ~~shall~~ will be reimbursed to the general treasury of the appropriate state or local government. This subsection does not prohibit a government-owned communications service provider from providing matching funds or in-kind contributions in order to comply with the terms of a federal grant as long as it imputes the matching funds and the value of the in-kind contributions in calculating the cost incurred and in the rates to be charged for the provision of a communications service;

(4) impute, in calculating the cost incurred and in the rates to be charged for the provision of ~~telecommunications services~~ a communications service, the following:

(a) cost of capital component that is the equivalent to the cost of capital available to nongovernment‑owned ~~telecommunications~~ communications service providers in the same state or locality; and

(b) an amount equal to all taxes, licenses, fees, and other assessments applicable to a nongovernment‑owned ~~telecommunications~~ communications provider including, but not limited to, federal, state, and local taxes, rights‑of‑way franchise consent, or administrative fees, and pole attachment fees;

(5) keep separate books and separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of ~~telecommunications~~ communications service; and

(6) be required to prepare and publish an independent annual audit in accordance with generally accepted accounting principles that reflects the full cost of providing the service, including all direct and indirect costs. The indirect costs ~~shall~~ must include, but are not limited to, amounts for rights‑of‑way franchise, consent, or administrative fees, regulatory fees, occupation taxes, pole attachment fees, and ad valorem taxes. The annual accounting must reflect any direct or indirect subsidies received by the government‑owned ~~telecommunications~~ communications service provider.

(7) Notwithstanding any other provision of law, the Office of Regulatory Staff has jurisdiction to investigate, and the commission has authority to enforce, a government‑owned communications service provider to comply with the provisions of this section.

Records demonstrating compliance with the provisions of this section ~~shall~~ must be filed with the ~~Public Service~~ commission ~~and~~, provided to the Office of Regulatory Staff and ~~be~~ made available for public inspection and copying. ~~The compliance shall be overseen by the Office of Regulatory Staff pursuant to and not inconsistent with its power and jurisdiction set forth by law.~~ Nothing in this article expands or restricts the existing jurisdiction of the commission or the Office of Regulatory Staff regarding a service or provider other than a government‑owned communications service provider.”

SECTION 7. Section 58‑9‑2630 of the 1976 Code, as added by Act 360 of 2002, is amended to read:

“Section 58‑9‑2630. (A) A government‑owned ~~telecommunications~~ communications service provider shall pay or collect taxes ~~each year~~ annually in a manner equivalent to taxes paid by a nongovernment‑owned ~~telecommunications~~ communications service ~~providers~~ provider through payment of the following:

(1) all state taxes, including corporate income taxes~~,~~ under Section 12‑6‑530, and utility license taxes under Section 12‑20‑100;

(2) all local taxes, including local business license taxes, under Section 58‑9‑2230, together with any franchise fees and other local taxes and fees, including impact, user, service, or permit fees, pole rental fees, and rights‑of‑way franchise, consent, or administrative fees; and

(3) all property taxes on otherwise exempt real and personal property that are directly used in the provision of ~~telecommunication services~~ a communications service.

(B) A government‑owned ~~telecommunications~~ communications service provider shall ~~be required to~~ compute, collect, and remit taxes in the same manner as a nongovernment‑owned ~~telecommunications~~ communications service provider and ~~shall~~ must be entitled to the same deductions.

(C) A government‑owned ~~telecommunications~~ communications service provider shall annually remit to the general fund of the government entity owning the ~~telecommunications~~ communications service provider an amount ~~equivalent~~ equal to ~~any and~~ all taxes or fees a private sector ~~telecommunications~~ communications service provider ~~would be required to~~ must pay.

(D) The taxpayer confidentiality provisions contained in Title 12 ~~shall~~ do not apply to the ~~filings~~ filing of a government‑owned ~~telecommunications~~ communications service ~~providers~~ provider. ~~Provided,~~ However, the Department of Revenue shall require an annual report of all ~~telecommunications~~ communications service providers. The report ~~shall~~ must require ~~any telecommunications~~ a communications company licensed in this State to report the total gross of retail ~~telecommunications,~~ communications to which the business license tax is applicable~~,~~ pursuant to Section 58‑9‑2220. This information ~~shall~~ must be available to any entity authorized to collect a tax on retail ~~telecommunications~~ communications or ~~their~~ its agent. Information provided to an entity or agent authorized to collect a tax ~~may~~ must not be disclosed or provided ~~in any manner~~ to ~~any other~~ another person. ~~Such~~ This information may only be used by an entity or agent of an entity authorized to collect a tax for purposes of determining the accuracy of tax returns, filings, and payment of taxes.”

SECTION 8. Section 58‑9‑2650 of the 1976 Code, as added by Act 360 of 2002, is amended to read:

“Section 58‑9‑2650. The Department of Insurance must determine the South Carolina average market rate for private sector liability insurance for ~~telecommunications~~ communications operations. ~~In order~~ To have government‑owned and nongovernment‑owned ~~telecommunications~~ communications service providers in the same competitive position, to the extent possible, the rate paid for liability insurance for government‑owned ~~telecommunications~~ communications operations must be equal to or greater than the average market rate for private sector liability insurance in South Carolina as determined by the Department of Insurance. To the extent that any government‑owned ~~telecommunications~~ communications service provider pays less than the average market rate for this insurance established by the Department of Insurance, the difference ~~shall~~ must be remitted by the government‑owned ~~telecommunications~~ communications service provider to the general fund of the government owning ~~the telecommunications~~ that communications service provider. ~~Provided,~~ However, nothing in this section ~~shall~~ may be construed to mean ~~that~~ a government‑owned ~~telecommunication providers are~~ communications provider is not covered by the South Carolina Tort Claims Act.”

SECTION 9. Article 23, Chapter 9, Title 58 of the 1976 Code of Laws is amended by adding:

“Section 58-9-2670 (A). For any government-owned communications service provider that, on or before the effective date of this act, was awarded funding for a Comprehensive Community Infrastructure middle-mile project pursuant to the Broadband Technology Opportunities Program administered by the United States Department of Commerce’s National Telecommunications and Information Administration:

(1) the provisions of Section 58-9-2630 do not apply;

(2) the provisions of Sections 58-9-2620, 58-9-2650, and 58-9-2660 do not apply to the provision of communications services by a government-owned communications service provider to the government entity that owns the communications facility, operation, or system; and

(3) the provisions of Section 58-9-2620, 58-9-2650, and 58-9-2660 do not apply to the extent that the middle-mile services it offers are used to actually provide communications services to end users in unserved areas. The provider may use any reasonable methodology to comply with this provision. On an annual basis, the provider must file with the commission and provide to the Office of Regulatory Staff a detailed explanation of the methodology it uses to comply with this section, along with supporting documentation, and the explanation and documentation must be made available for public inspection and copying.

(B) The provisions of Sections 58-9-2620, 58-9-2630, 58-9-2650, and 58-9-2660 do not apply to any government-owned communications service provider, that, on or before the effective date of this act, was awarded a grant for a last mile project pursuant to the Broadband Initiatives Program administered by the United States Department of Agriculture’s Rural Utilities Service, to the extent that the government-owned communications service provider provides communications services to addresses that are within the area set forth in its application for the grant, referenced above or to addresses that satisfy each of the following five criteria: (i) are within the border of the grant recipient’s county; (ii) are six miles or further from the center point of any incorporated area that, as of December 31, 2011, had a population in excess of 10,000 as determined by the 2010 census; (iii) are outside any area that, as of December 31, 2011, was served by a rural telephone company, as defined in 47 U.S.C. §153(37), that provided service to less than 15,000 access lines within its local exchange study area in the State; (iv) are outside the boundaries of any industrial or business park owned in whole or in part by the grant recipient’s county and occupied by one or more persons or entities as of the effective date of this act; and (v) are one mile or further from the center of any incorporated area or unincorporated community with a population of no more than 1,500 as long as the address is, as of December 31, 2011, within an exchange of a rural telephone company as defined in 47 U.S.C. §153(37). The provisions of Sections 58‑9‑2620, 58‑9‑2630, 58‑9‑2650, and 58‑9‑2660 apply to the extent that the government-owned communications service provider provides communications service to any other addresses. In order not to impede efficient network design, nothing in this subsection prohibits the incidental placement of the government-owned communications service provider’s facilities outside the borders of the grant recipient’s county as long as such facilities are not used to provide any communications services to any addresses outside the grant recipient’s county.

(C) The provisions of Sections 58-9-2620, 58-9-2630, 58-9-2650, and 58-9-2660 do not apply to any municipality that is a government-owned communications service provider and that: (i) applied, on or before December 31, 2011, for a grant for a last mile project pursuant to the Broadband Initiatives Program administered by the United States Department of Agriculture's Rural Utilities Service; (ii) expended funds in excess of $25,000 to complete business plans or feasibility studies in support of such application; and (iii) is awarded federal funds to support the project identified in the application referenced in item (i) of this subsection. The exemption provided in this subsection applies only to the extent that the municipality that is a government-owned communications service provider provides communications services to addresses that are within both the county in which the municipality is located and the area described in its grant application referenced in item (i) of this subsection.

(D) For any government-owned communications service provider that, on or before the effective date of this act, was also a charter member institution of the South Carolina LightRail Consortium, the provisions of Sections 58‑9‑2620, 58‑9‑2630, and 58‑9‑2650 do not apply to the institution or any of its affiliated organizations in the provision of connection to national research and educational networks described in 59-151-110(A), provided that: (i) the institution and its affiliated organizations use such connection solely for research and education-related activities; (ii) under no circumstances will the institution or any of its affiliated organizations provide service that connects commercial sites or that carries commercial traffic, commercial internet traffic or K-12 traffic originated in South Carolina; and (iii) neither such charter member institution of the South Carolina LightRail Consortium nor any affiliated organization is authorized to otherwise compete with the commercial communications or information offerings of private sector participants. As used in this subsection, ‘affiliated organization’ means an entity formed for the purpose of owning, leasing, providing or operating the facilities used to provide service to the charter member institution and to related entities that support the mission of the charter member institution. For purposes of this subsection, occasional and incidental use of the connection by persons appropriately granted such access to the connection for purposes that are not directly related to the missions of the charter member institutions is not considered as competing with the commercial communications or information offerings of private sector participants.

(E) Nothing in this act is intended nor may be construed to prohibit the MUSC or the MUSC Authority from using the South Carolina Lightrail, in furtherance of a documented research project, to transmit medical imaging between MUSC and the MUSC Authority and other hospital or healthcare facilities taking part in the project.

SECTION 10. The provisions of this act do not expand, diminish, or otherwise affect the provisions of Chapter 151, Title 59 regarding the South Carolina LightRail Consortium.

SECTION 11. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 12. This act takes effect upon approval by the Governor.

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