**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 25 TO CHAPTER 9, TITLE 58 ENTITLED “LOCAL GOVERNMENT‑OWNED BROADBAND INTERNET ACCESS SERVICE” SO AS TO AUTHORIZE AND REGULATE LOCAL GOVERNMENT‑OWNED BROADBAND INTERNET ACCESS SERVICE PROVIDERS.

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

SECTION 1. Chapter 9, Title 58 of the 1976 Code is amended by adding:

“Article 25

Local Government‑Owned Broadband Internet Access Service

Section 58‑9‑3000. (A) Notwithstanding another provision of law, this article regulates the provision of broadband Internet access service by individual or partnered local governments, or local governmental agencies, entities, cooperatives, or instrumentalities.

(B) Notwithstanding another provision of law, on the effective date of this article, the provisions of Article 23, Chapter 9, as well as any service area restrictions relating to the provision of broadband Internet access service contained in Title 58, shall cease to apply to local agencies, as defined in Section 58‑9‑3020, that provide broadband Internet access service to historically unserved areas.

Section 58‑9‑3010. Through this article, the General Assembly intends to protect and promote the Internet as an open platform enabling consumer choice, freedom of expression, end‑user control, competition, and the freedom to innovate without permission, thereby encouraging the deployment of advanced telecommunications capability and removing barriers to infrastructure investment.

Section 58‑9‑3020. For purposes of this article:

(1) ‘Broadband Internet access service’ means a mass‑market retail service provided by a local agency in South Carolina by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial‑up Internet access service. ‘Broadband Internet access service’ also includes any service provided by a local agency in South Carolina that provides a functional equivalent of that service or that is used to evade the protections set forth in this article.

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

(3) ‘Edge provider’ means any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet to an end user.

(4) ‘End user’ means any individual or entity in South Carolina that uses a broadband Internet access service that is provided by a local agency.

(5) ‘Fixed broadband Internet access service’ means any broadband Internet access service that serves end users primarily at fixed endpoints using stationary equipment. ‘Fixed broadband Internet access service’ includes fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services.

(6) ‘Local agency’ means either individual or partnered county or municipal governments, or county or municipal governmental agencies, or local political subdivisions, authorities, entities, cooperatives, or instrumentalities, including special purpose districts and public service districts.

(7) ‘Mobile broadband Internet access service’ means any broadband Internet access service that serves end users primarily using mobile stations.

(8) ‘Network management practice’ means a practice that has a primarily technical network management justification, but does not include other business practices.

(9) ‘Paid prioritization’ means the management of a broadband provider’s network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, that either is:

(a) in exchange for consideration, monetary or otherwise, from a third party; or

(b) done to benefit an affiliated entity.

(10) ‘Reasonable network management’ means a network management practice that is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

Section 58‑9‑3030. (A)(1) Except as otherwise provided in this section and notwithstanding the provisions of Article 23, Chapter 9, or any other state law to the contrary, a local agency as defined in this article, or any entity otherwise authorized by law to act on a local agency’s behalf is authorized to participate in a telecommunications venture that is created to provide broadband services to any area within the agency’s jurisdiction that the commission has determined to be an historically unserved area, meaning that the area does not have access to broadband Internet services.

(2) For purposes of this section, a ‘telecommunications venture’ means an undertaking, joint venture, or other business relationship with one or more third parties to provide broadband Internet access service that may include broadband Internet service, voice over Internet protocol telephonic service, video over Internet protocol service, and similar services provided over broadband facilities.

(3) A telecommunications venture authorized by this article is permitted to provide broadband Internet access service only in historically unserved areas.

(B) A telecommunications venture created and operated pursuant to the authority granted in this article may be subsidized by one or more of the participants as may be determined by the participants; provided, however, that electric cooperatives and municipal electric systems shall comply with any applicable provisions of contracts with suppliers of electricity prohibiting or otherwise limiting cross‑subsidies of services with electricity revenues.

(C) It is the intent of the General Assembly that any telecommunications venture established pursuant to this article must not be subsidized by revenues from power or other utility operations.

(D)(1) Notwithstanding another provision of law, until July 1, 2030, unless such date is extended by the General Assembly, any area of the State determined by the commission to be an historically unserved area where there is no access to broadband Internet service, a municipality or cooperatively owned utility may not receive or request in exchange for new pole attachments any pole attachment charge from a cable or video service provider, or a telecommunications venture seeking to provide new broadband Internet services to the area that exceeds fifty percent of the highest pole attachment rate charged by the municipality or cooperatively owned utility to a cable service provider on January 1, 2020. For purposes of the discounted pole attachment charge for new pole attachments in historically unserved areas, no increase in the underlying pole attachment rate shall raise the discounted rate until July 1, 2030, unless such date is extended by the General Assembly. This item does not apply to any pole attachment charges for poles where, as of January 1, 2020, the cable or video service provider or a telecommunications venture is paying a pole attachment charge.

(2) A municipality or cooperatively owned utility shall provide access to its poles and conduit located in public rights of way to any entity listed in item (1) that requests a pole attachment agreement on terms and conditions consistent with this section and other applicable law in the historically unserved area.

(E) A local agency seeking to provide broadband Internet access service pursuant to this article shall apply to the commission for a finding that the area is historically unserved. The applicant shall provide a copy of the application to all telecommunications providers offering service in the area applied for and to all holders of state‑issued certificates of franchise authority or local franchises in areas within fifty miles of the area applied for (area broadband providers) at the same time it submits its application to the commission. The application shall include proof that the local agency has publicly advertised its intent to provide broadband Internet access service pursuant to this article. The local agency shall demonstrate that it has provided notice of its intent to all area broadband providers at least sixty days prior to its submission of its application to the commission. All area broadband providers shall have the right to submit comments regarding any application to the commission. All records of a local agency regarding its intent to provide broadband Internet access service pursuant to this article must be available for disclosure and public inspection, and all local agency meetings pertaining to a telecommunications venture must be open meetings pursuant to Chapter 4, Title 30.

(F) The commission shall provide a report to the Speaker of the House of Representatives and to the President of the Senate no later than January 31, 2021, and thereafter on January thirty‑first annually, on the status of the provision of broadband services in accordance with this article.

Section 58‑9‑3040. (A) Except for reasonable network management, a local agency insofar as it is engaged in the provision of broadband Internet access service pursuant to this article may not block lawful content, applications, services, or nonharmful devices.

(B) Except for reasonable network management, a local agency engaged in the provision of broadband Internet access service pursuant to this article may not impair or degrade lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device.

(C) A local agency engaged in the provision of broadband Internet access service pursuant to this article may not engage in paid prioritization.

(D) Except for reasonable network management, a local agency insofar as it is engaged in the provision of broadband Internet access service pursuant to this article may not unreasonably interfere with, or unreasonably disadvantage, either of the following:

(1) an end user’s ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of the end user’s choice; or

(2) an edge provider’s ability to make lawful content, applications, services, or devices available to an end user.”

SECTION 2. This act takes effect upon approval by the Governor.

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