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Summary: Government owned communication services

**HISTORY OF LEGISLATIVE ACTIONS**

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3196_20201209.docx)

**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 COMMUNICATIONS SERVICE PROVIDERS AS “LOCAL GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS”; BY ADDING SECTION 58‑9‑2640 SO AS TO PROHIBIT CERTAIN PRACTICES BY LOCAL AGENCIES PROVIDING COMMUNICATIONS SERVICES, INCLUDING BROADBAND SERVICES, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 58‑9‑2600, RELATING TO THE PURPOSE OF ARTICLE 23, CHAPTER 9, TITLE 58, SO AS TO DEFINE THE ARTICLE’S MODIFIED PURPOSE; TO AMEND SECTION 58‑9‑2610, RELATING TO DEFINITIONS APPLICABLE TO GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS, SO AS TO MAKE CONFORMING CHANGES AND ADD CERTAIN DEFINITIONS; TO AMEND SECTION 58‑9‑2620, RELATING TO GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS’ DUTIES AND RESTRICTIONS; COST AND RATE COMPUTATIONS; AND ACCOUNTING REQUIREMENTS, SO AS TO, AMONG OTHER THINGS, AUTHORIZE LOCAL AGENCIES, AS DEFINED IN THIS ACT, TO PARTICIPATE IN TELECOMMUNICATIONS VENTURES IN ORDER TO PROVIDE BROADBAND SERVICES TO UNSERVED AREAS WITHIN THE AGENCIES’ GEOGRAPHICAL OR TERRITORIAL BOUNDARIES; TO AMEND SECTION 58‑9‑2630, RELATING TO TAX COLLECTIONS AND PAYMENTS BY GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 58‑9‑2650, RELATING TO LIABILITY INSURANCE RATES, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 58‑9‑3010, RELATING TO DEFINITIONS APPLICABLE TO ARTICLE 25, CHAPTER 9, TITLE 58, SO AS TO MAKE CONFORMING CHANGES TO A CROSS REFERENCE; AND TO REPEAL SECTIONS 58‑9‑2660 AND 58‑9‑2670 RELATING TO PETITIONS TO DESIGNATE UNSERVED AREAS, AND EXEMPTIONS FOR GOVERNMENT‑OWNED COMMUNICATIONS SERVICE PROVIDERS RECEIVING FUNDING FOR COMPREHENSIVE COMMUNITY INFRASTRUCTURE PROJECTS.

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

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

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

“Section 58‑9‑2640. (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 3. Section 58‑9‑2600 of the 1976 Code is amended to read:

“Section 58‑9‑2600. (A) This article regulates the provision of ~~communications service by an agency, entity, instrumentality, or a political subdivision of this State, excluding the State Department of Administration, for services provided as of the effective date of this article~~ broadband Internet access service by individual or partnered local governments, or local governmental agencies, entities, cooperatives, or instrumentalities.

(B) 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 4. Section 58‑9‑2610 of the 1976 Code is amended to read:

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

~~(A)(1)~~ ~~‘Government‑owned communications service provider’ means a state or local political subdivision, instrumentality of the State, person, or entity providing 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 local government. ‘Government‑owned communications service provider’ does not include the State Department of Administration for services provided as of the effective date of this article.~~

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

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

~~(C)~~ ~~‘Telecommunications service’ 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).~~

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

~~(F)~~ ~~‘Public’ means the public generally or a limited portion of the public, including a person or corporation. The term “public” excludes governmental agencies or entities when they receive communications service from the State Department of Administration 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.~~

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

(4) ‘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.

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

(6) ‘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.

(7)(a) ‘Local government‑owned communications service provider’ means a local agency, as defined in this section, or an entity otherwise authorized by law to act on a local agency’s behalf that is participating in a telecommunications venture to provide communications services, including broadband services, over a facility, operation, or system that is directly or indirectly owned by, or operated by, a local agency to an area within the agency’s geographical or territorial boundaries that is deemed to be an unserved area.

(b)(i) ‘Local government‑owned communications service provider’ does not include the State Department of Administration for services provided as of the effective date of this article.

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

(8) ‘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.

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

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

(11) ‘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.

(12) ‘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.

(13) ‘Telecommunications service’ means a telecommunications service as defined in Section 58‑9‑2200(1).

(14) ‘Unserved area’ means:

(a) 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

(b) 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.”

SECTION 5. Section 58‑9‑2620 of the 1976 Code is amended to read:

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

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

~~(2)~~ ~~not receive a financial benefit that is not available to a nongovernment‑owned communications service 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 a communications service with funds from any other noncommunications service, operation, or other revenue source. If a determination is made that a direct or indirect subsidy has occurred, the government‑owned communications service provider immediately must increase prices for communications service in a manner that ensures that the subsidy will not continue, and any amounts used directly or indirectly to subsidize the past operations 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 a communications service, the following:~~

~~(a)~~ ~~cost of capital component that is the equivalent to the cost of capital available to nongovernment‑owned 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 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 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 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 communications service provider.~~

~~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 must be filed with the commission, provided to the Office of Regulatory Staff and made available for public inspection and copying. 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.~~

(A)(1) Notwithstanding another provision of law, 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 an area within the agency’s geographical or territorial boundaries that has been determined to be an unserved area, as defined by Section 58‑9‑2610(14).

(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 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, 2031, 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, 2021. 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, 2031, 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, 2021, 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, 2022, and thereafter on January thirty‑first annually, on the status of the provision of broadband services in accordance with this article.”

SECTION 6. Section 58‑9‑2630 of the 1976 Code is amended to read:

“Section 58‑9‑2630. (A) A local government‑owned communications service provider shall pay or collect taxes annually in a manner equivalent to taxes paid by a nongovernment‑owned communications service 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 a communications service.

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

(C) A local government‑owned communications service provider shall annually remit to the general fund of the government entity owning the communications service provider an amount equal to all taxes or fees a private sector communications service provider must pay.

(D) The taxpayer confidentiality provisions contained in Title 12 do not apply to the filing of a local government‑owned communications service provider. However, the Department of Revenue shall require an annual report of all communications service providers. The report must require a communications company licensed in this State to report the total gross of retail communications to which the business license tax is applicable pursuant to Section 58‑9‑2220. This information must be available to any entity authorized to collect a tax on retail communications or its agent. Information provided to an entity or agent authorized to collect a tax must not be disclosed or provided to another person. This information only may 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 7. Section 58‑9‑2650 of the 1976 Code 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 communications operations. To have local government‑owned and nongovernment‑owned communications service providers in the same competitive position, to the extent possible, the rate paid for liability insurance for local government‑owned 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 local government‑owned communications service provider pays less than the average market rate for this insurance established by the Department of Insurance, the difference must be remitted by the local government‑owned communications service provider to the general fund of the government owning that communications service provider. However, nothing in this section may be construed to mean a local government‑owned communications provider is not covered by the South Carolina Tort Claims Act.”

SECTION 8. Section 58‑9‑3010(8) of the 1976 Code, as added by Act 175 of 2020, is amended to read:

“(8) ‘Communications service provider’ means a person that provides communications service as defined in Section 58‑9‑2610~~(B)~~(7)(a).”

SECTION 9. Sections 58‑9‑2660 and 58‑9‑2670 are repealed.

SECTION 10. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, 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 this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 11. This act takes effect upon approval by the Governor.

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