~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 17, 2011

**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 2/17/11--H.

Read the first time January 27, 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 A 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.

Amend Title To Conform

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 “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 2000 Census block for which this designation is sought. If an objection is not filed pursuant to subsection (B), the commission must grant the petition and designate each 2000 Census block identified in the petition as an unserved area.

(B) A provider of broadband service or a resident of an area designated in a petition filed pursuant to subsection (A) may, within thirty days after the commission posts 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. The commission must not accept this objection for filing unless it is accompanied by prefiled testimony supporting the objection.

(C) If an objection is filed pursuant to subsection (B), 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 forty‑five days after the objection is filed.

(D) 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) thirty-six months after the effective date of this act; or

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

(E) 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 it determines that broadband service is available to more than ten percent of the households in the area from one or more providers that are not a satellite provider or the government‑owned communications service provider that filed the petition resulting in the designation by the commission of the area as an unserved area.”

SECTION 3. Section 59‑9‑10(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 amended 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 broadband service as defined in Section 58‑9‑10(17).

~~(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 a 2000 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 for which a nongovernment‑owned ~~telecommunications~~ communications service ~~providers are~~ provider is not ~~recipients of~~ a recipient 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;

(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 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 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 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 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 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 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. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑