

Senate Bill 232

By: Senators Gooch of the 51st, Wilkinson of the 50th, Harper of the 7th, Lucas of the 26th, Burke of the 11th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 public transportation, so as to specifically authorize electric membership corporations and
3 their affiliates and subsidiaries to provide emerging communications technologies; to provide
4 and change certain definitions; to prohibit cross-subsidation of certain activities of electric
5 membership corporations; to establish certain requirements for attachments to utility poles
6 owned by EMCs offering emerging communications technologies; to require electric
7 membership corporations to obtain certain franchises; to provide for applicability; to provide
8 for related matters; to repeal conflicting laws; and for other purposes.

9 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

10 **SECTION 1.**

11 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
12 transportation, is amended by revising Code Section 46-3-200, relating to purposes of electric
13 membership corporations, as follows:

14 "46-3-200.

15 An electric membership corporation may serve any one or more of the following purposes:

- 16 (1) To furnish electrical energy and service;
- 17 (2) To assist its members in the efficient and economical use of energy;
- 18 (3) To engage in research and to promote and develop energy conservation and sources
19 and methods of conserving, producing, converting, and delivering energy; ~~and~~
- 20 (4) To provide and operate emerging communications technologies as provided in Code
21 Section 46-5-223; and
- 22 ~~(4)~~(5) To engage in any lawful act or activity necessary or convenient to effect the
23 foregoing purposes."

24 **SECTION 2.**

25 Said Title 46 is further amended by revising Code Section 46-5-221, relating to definitions,
 26 as follows:

27 "46-5-221.

28 As used in this article, the term:

29 (1) 'Affiliate' means another person which controls, is controlled by, or is under common
 30 control with such person.

31 (2) 'Assigned area' shall have the same meaning as provided in Code Section 46-3-3.

32 ~~(1) 'Broadband service' means a service that consists of the capability to transmit at a rate~~
 33 ~~not less than 200 kilobits per second in either the upstream or downstream direction and~~
 34 ~~in combination with such service provide either:~~

35 ~~(A) Access to the Internet; or~~

36 ~~(B) Computer processing, information storage, or protocol conversion.~~

37 'Broadband services' means Internet access capable of transmitting data at a rate of at
 38 least 25 megabits per second in the downstream direction and at least 3 megabits per
 39 second in the upstream direction to end users. For the purposes of this article, ~~broadband~~
 40 ~~service~~ the term does not include any information content or service applications
 41 provided over such access service nor any intrastate service that was subject to a tariff in
 42 effect as of September 1, 2005.

43 (1.1) 'Communications services provider' means a cable operator as defined in 47 U.S.C.
 44 Section 522(5), as it existed on January 1, 2018; a telecommunications carrier as defined
 45 in 47 U.S.C. Section 153(512), as it existed on January 1, 2018; a provider of information
 46 services as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; and
 47 a wireless services provider.

48 (1.2) 'Electric membership corporation' or 'EMC' means an electric membership
 49 corporation organized under this title or any prior electric membership corporation law
 50 of this state, or a corporation which elected, in accordance with the provisions thereof,
 51 to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

52 (1.3) 'EMC gas affiliate' shall have the same meaning as provided in Code
 53 Section 46-4-152.

54 (1.4) 'Emerging communications technologies' means broadband services, VoIP, IP
 55 enabled services, wireless services, and all facilities and equipment associated therewith.

56 (1.5) 'IP enabled services' means any service, capability, functionality, or application that
 57 enables an end user to send or receive a communication in existing Internet Protocol
 58 format, or any successor format, regardless of whether the communication is voice, data,
 59 or video.

60 (1.6) 'Served area' means a geographic area of the state, identified as a census block, that
 61 has a provider of terrestrial broadband services other than an EMC or an affiliate of an
 62 EMC.

63 (1.7) 'Unserved area' means a geographic area of the state, identified as a census block,
 64 that does not have a provider of terrestrial broadband services other than an EMC or an
 65 affiliate of an EMC.

66 (1.8) 'Unserved location' means a physical address or group of addresses within a served
 67 area that does not have a provider of terrestrial broadband services other than an EMC
 68 or an affiliate of an EMC.

69 (2) 'VoIP' means Voice over Internet Protocol services offering real-time multidirectional
 70 voice functionality utilizing any Internet protocol.

71 (3) 'Wireless ~~service~~ services' means:

72 (A) Commercial ~~commercial~~ mobile radio service carried on between mobile stations
 73 or receivers and land stations and by mobile stations communicating among
 74 themselves; or

75 (B) Commercial fixed radio service carried on between or among land stations or
 76 receivers."

77 **SECTION 3.**

78 Said Title 46 is further amended by revising Code Section 46-5-222, relating to commission
 79 has no authority over setting of rates or terms and conditions for the offering of broadband
 80 service, voice over Internet protocol, or wireless service, and limitations, as follows:

81 "46-5-222.

82 (a) The Public Service Commission shall not have any jurisdiction, right, power, authority,
 83 or duty to impose any requirement or regulation relating to the setting of rates or terms and
 84 conditions for the offering of broadband ~~service~~ services, VoIP, or wireless services.

85 (b) This Code section shall not be construed to affect:

86 (1) State laws of general applicability to all businesses, including, without limitation,
 87 consumer protection laws and laws relating to restraint of trade;

88 (2) Any authority of the Public Service Commission with regard to consumer
 89 complaints; or

90 (3) Any authority of the Public Service Commission to act in accordance with federal
 91 laws or regulations of the Federal Communications Commission, including, without
 92 limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled
 93 network elements and to arbitrate and enforce interconnection agreements.

94 (c) Except as otherwise expressly provided in this Code section, nothing in this Code
 95 ~~section article~~ shall be construed to restrict or expand any other authority or jurisdiction of
 96 the Public Service Commission."

97 **SECTION 4.**

98 Said Title 46 is further amended by adding two new Code sections to read as follows:

99 "46-5-223.

100 (a)(1) Subject to the provisions of subsection (c) of this Code section, an EMC:

101 (A) That obtains a certificate of authority issued pursuant to Code Section 46-5-163
 102 shall be authorized to provide and operate emerging communications technologies
 103 within such EMC's assigned area and within a five-mile radius thereof; and

104 (B) Shall be authorized to create an affiliate that shall be authorized to provide and
 105 operate emerging communications technologies within such EMC's assigned area and
 106 within a five-mile radius thereof, provided that such affiliate obtains a certificate of
 107 authority issued pursuant to Code Section 46-5-163.

108 (b) Subject to the provisions of subsection (c) of this Code section, an EMC shall be
 109 authorized to apply for, accept, repay, and utilize loans, grants, and other financing from
 110 the federal government, this state, or any department or agency thereof, or from any other
 111 public or private party, in order to provide funding to assist the EMC or an affiliate of such
 112 EMC in the planning, engineering, construction, extension, operation, repair, and
 113 maintenance of emerging communications technologies which the EMC or an affiliate of
 114 such EMC shall be authorized to provide under this article.

115 (c) In order to encourage and promote fair competition in the overall retail emerging
 116 technologies market, and to protect the privacy of electric and natural gas consumers, no
 117 cross-subsidization shall be permitted between an EMC's natural gas activities or an EMC's
 118 electricity services, and the provision or operation of emerging communications
 119 technologies by such EMC or through an affiliate of such EMC. Any EMC that provides
 120 or operates emerging communications technologies shall:

121 (1) Ensure that cross-subsidizations do not occur between the electricity services of an
 122 EMC, the gas activities of its EMC gas affiliate, and the emerging communications
 123 technologies it provides;

124 (2) Fully allocate all electricity activities costs, gas activities costs, or emerging
 125 communications technologies activities costs including costs for any shared services,
 126 between the EMC's electricity activities, the gas activities of its EMC gas affiliate, and
 127 the EMC's emerging communications technologies activities, in accordance with the
 128 applicable uniform system of accounts and generally accepted accounting principles that
 129 are applicable to EMCs under either federal or state laws, rules, or regulations;

- 130 (3) Not charge any costs of the EMC's electricity activities or any costs of its EMC gas
131 affiliate to the emerging communications technologies customers of such EMC;
132 (4) Not charge any costs of the EMC's emerging communications technologies activities
133 to the EMCs electricity activities or its EMC gas affiliate's activities; and
134 (5) Not, for the protection and privacy of customer information, release any proprietary
135 customer information about any of such EMC's emerging communications technologies
136 customers to its electricity division, affiliate, or subsidiary or its EMC gas affiliate
137 without obtaining prior verifiable authorization from such customers.

138 46-5-224.

139 (a) In order for an EMC or its affiliate to offer one or more emerging communications
140 technologies, an EMC shall:

141 (1) Ensure that any rates and fees charged by such EMC for attachments to utility poles
142 by communications services providers shall be nondiscriminatory regardless of the
143 services provided by the communications services provider and shall not exceed the
144 annual recurring rate permitted under rules and regulations adopted pursuant to 47 U.S.C.
145 Section 224(d) by the Federal Communications Commission, as such existed on
146 January 1, 2018, and any regulations and Federal Communications Commission decisions
147 promulgated thereunder; provided, however, that this paragraph shall only apply if the
148 EMC or its affiliate is providing an emerging technology to an area other than to an
149 unserved area or unserved location;

150 (2) Establish nondiscriminatory, competitively neutral and commercially reasonable
151 terms and conditions for attachments to utility poles by any provider of emerging
152 communications technologies, which terms and conditions shall comply with the federal
153 pole attachment requirements provided in 47 U.S.C. Section 224, as such existed on
154 January 1, 2018, and any regulations and Federal Communications Commission decisions
155 promulgated thereunder; and

156 (3) Not require compliance by a provider of emerging communications technologies with
157 utility pole attachment specifications that exceed the specifications in the National
158 Electrical Safety Code, applicable fire safety codes, and any building code or similar code
159 of general applicability for the protection of the public health, safety, or welfare that was
160 adopted by the applicable local government jurisdiction prior to the filing of a utility pole
161 attachment application.

162 (b) For purposes of this Code section, an EMC may file a petition with the Georgia
163 Technology Authority along with data demonstrating that no broadband services are
164 offered to a physical address or group of physical addresses in a served area. Upon receipt
165 of such petition and data, the Georgia Technology Authority shall determine whether such

166 physical address or group of addresses is an unserved location. The Georgia Technology
167 Authority shall provide notice of the petition and any data provided by the EMC in support
168 of such petition or that the Georgia Technology Authority has related to the area that is the
169 subject of such petition to any communications services provider offering broadband
170 services in the served area. The communications services provider shall have 45 days after
171 the date such notice is sent to furnish information to the Georgia Technology Authority
172 showing that the physical address or group of addresses that are the subject of the petition
173 currently have broadband services available. The Georgia Technology Authority shall
174 issue its determination within 75 days of the date the notice is sent to the communications
175 services provider.

176 46-5-225.

177 Nothing in this chapter shall authorize an EMC or any other provider of emerging
178 communications technologies to provide cable television or video service without first
179 obtaining a state or local cable or video franchise."

180 **SECTION 5.**

181 All laws and parts of laws in conflict with this Act are repealed.