

House Bill 168

By: Representatives Reichert of the 126<sup>th</sup>, Hudson of the 156<sup>th</sup>, Brown of the 130<sup>th</sup>, Lewis of the 14<sup>th</sup> and Bell of the 25<sup>th</sup>

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 repeal certain provisions relating to radio common carriers; to  
3 repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public  
7 transportation, is amended by striking and repealing in their entirety Code Sections 46-6-1  
8 through 46-6-16, relating to radio common carriers, which read as follows:

9 "46-6-1.

10 This chapter shall be known and may be cited as the 'Georgia Radio Utility Act.'

11 46-6-2.

12 As used in this chapter, the term:

13 (1) 'Facility' means all real property, stations, antennas, radios, receivers, transmitters,  
14 instruments, appliances, fixtures, and other personal property used by a radio utility in  
15 providing service to its subscribers.

16 (2) 'Person' means any individual, partnership, corporation, company, association,  
17 administrator, or executor, and any trustee or receiver appointed by any court whatsoever.

18 (3) 'Radio service' or 'service' means any radio service that may be authorized under the  
19 Domestic Public Land Mobile Radio Service or Rural Radio Service Rules of the Federal  
20 Communications Commission on frequencies allocated to those services.

21 (4) 'Radio utility' means any person who owns, controls, operates, or manages a radio  
22 utility system. This term does not mean a telephone utility or telegraph utility regulated  
23 by the commission.

24 (5) 'Radio utility system' means any facility within the state which provides a radio  
25 service on a for-hire basis to members of the public who subscribe to such service,

1 whether or not such facility is interconnected with the public land-line  
2 telephone-exchange network.

3 (6) 'Service area' means that geographical area in which a radio utility provides service  
4 pursuant to a certificate of public convenience and necessity issued by the Georgia Public  
5 Service Commission.

6 46-6-3.

7 (a) The commission shall have the power and jurisdiction to supervise and regulate every  
8 radio utility operating within this state and its property, property rights, equipment,  
9 facilities, contracts, certificates, and franchises as may be necessary to carry out the  
10 purposes of this chapter. The commission shall also have the power and jurisdiction to do  
11 all things, whether specifically designated in this chapter or in addition thereto, which are  
12 necessary or convenient in the exercise of such power and jurisdiction. Without limiting  
13 the generality of the foregoing provisions of this Code section, the commission is  
14 authorized to adopt and enforce such reasonable rules, regulations, and orders as it may  
15 deem necessary with respect to rates, charges, classifications, issuance of certificates,  
16 territory of operation, abandonment or suspension of service, adequacy of service,  
17 prevention or elimination of unjust discrimination between subscribers, financial  
18 responsibility, records, reports, and safety of operation and equipment and as it may deem  
19 necessary to accomplish the purposes of this chapter and to implement its provisions.

20 (b) The commission may, after affording an opportunity for hearing, order a radio utility  
21 to make any reasonable repair or improvement of or addition to such system.

22 (c) The commission may from time to time visit the places of business and other premises  
23 of radio utilities and may examine the records and facilities of radio utilities to ascertain  
24 if all rules, regulations, and orders of the commission have been complied with. The  
25 commission shall have the power to examine any person under oath, including all officers,  
26 agents, and employees of radio utilities, and to compel the production of papers and the  
27 attendance of witnesses in order to obtain the information necessary for administering this  
28 chapter.

29 (d) The commission shall have the power and authority to institute all such proceedings  
30 and investigations, hear all such complaints, issue all such process and orders, and render  
31 all such decisions as are necessary to enforce this chapter and the rules, regulations, and  
32 orders adopted hereunder and as are necessary to accomplish the purposes of this chapter.

33 (e) The commission shall have the right to institute, or to intervene as a party in, any  
34 action, in any court of competent jurisdiction, for mandamus, injunctive relief, or other  
35 relief to compel compliance with any provision of this chapter or of any rule, regulation,

1 or order adopted hereunder, or to restrain or otherwise prevent or prohibit any illegal or  
2 unauthorized conduct in connection therewith.

3 46-6-4.

4 The commission shall prescribe just and reasonable rates, charges, and classifications for  
5 the services rendered by a radio utility to subscribers. The tariffs therefor shall be in such  
6 form and shall be filed and published in such manner and on such notice as the commission  
7 may prescribe and shall be subject to change on such notice and in such manner as the  
8 commission may prescribe.

9 46-6-5.

10 No person shall begin or continue the construction or operation of any radio utility system,  
11 or of any geographical extension thereof, or acquire ownership or control thereof, either  
12 directly or indirectly, without first obtaining from the commission a certificate that the  
13 present or future public convenience and necessity require or will require such  
14 construction, operation, geographical extension, or acquisition. The commission is  
15 authorized to prescribe appropriate and reasonable rules and regulations governing the  
16 issuance of such certificates and is authorized to prescribe the appropriate form of  
17 application for such certificates.

18 46-6-6.

19 (a) Upon the filing of an application for a certificate of public convenience and necessity  
20 under this chapter, the commission shall fix the time and place for a hearing thereon and  
21 shall cause notice thereof to be given to such parties in interest as the commission may  
22 deem necessary. The commission shall also cause notice of the application to be published  
23 once at least 14 days prior to the hearing in some newspaper of general circulation in the  
24 affected territory.

25 (b) After such hearing, the commission may either issue to the applicant a certificate of  
26 public convenience and necessity in a form to be prescribed by it, refuse to issue the same  
27 or issue it for only partial exercise of the privilege sought, or attach to the exercise of the  
28 right granted by the certificate such terms, limitations, and conditions which it deems the  
29 public interest may require. The certificate shall include a copy of a service-area map  
30 clearly showing the territory in which the radio utility system is to be constructed,  
31 extended, operated, or acquired.

32 (c) In determining whether a certificate shall be issued, the commission shall take into  
33 consideration, among other things, the public need for the proposed service or acquisition,

1 the suitability of the applicant, the financial responsibility of the applicant, and the ability  
2 of the applicant to perform efficiently the service for which authority is requested.

3 46-6-7.

4 No certificate issued pursuant to this chapter may be transferred, assigned, or encumbered  
5 unless such transaction is first approved by the commission.

6 46-6-8.

7 (a) The commission shall not grant a certificate for the establishment of a proposed radio  
8 utility operation in or an extension of an existing service area into an established service  
9 area, which proposed operation or extension will be in competition with or duplicate the  
10 service of any other radio utility unless the commission first determines both (1) that the  
11 existing certificated radio utility is unwilling or unable to meet the reasonable needs of the  
12 public, and (2) that the person operating the same is unable to or refuses or neglects, after  
13 hearing on reasonable notice, to provide reasonably adequate service; provided, however,  
14 nothing contained in this Code section shall be construed as prohibiting a radio utility from  
15 terminating service for its own subscribers in other established service areas, either through  
16 its own facilities or those of others in accordance with subsection (b) of this Code section.  
17 In no event shall a radio utility offer, allow, or construct facilities for, the origination of  
18 service, whether by dedicated facilities, '800' numbers, foreign exchange lines, or other  
19 inter-LATA toll-free, local access, or other means, outside its established service area.  
20 Service shall be deemed to originate at the location of the calling party at the time the call  
21 is made.

22 (b) Any radio utility seeking to terminate service for its own subscribers in other service  
23 areas pursuant to this Code section shall do so only in the following manner:

24 (1) Through interconnection with or use of facilities of the existing certificated radio  
25 utility, subject to mutual agreement and consent of both radio utilities; or

26 (2) Through its own facilities, provided that said facilities are capable of only  
27 terminating and not originating service outside the utility's established service area, and  
28 the commission finds, after notice and hearing, that the construction and operation of the  
29 specific facilities to be constructed and operated by the utility in such other service areas  
30 are or will be required by the present or future public convenience and necessity.

31 46-6-9.

32 Any radio utility holding a certificate of public convenience and necessity under this  
33 chapter may interconnect its facilities with the communication facilities of any other  
34 regulated communication company operating in the area in which the radio utility is

1 located, provided that an agreement can be reached between the radio utility and the  
2 communication company providing for such interconnection; provided, further, that when  
3 an agreement cannot be reached between the radio utility and the communication company,  
4 either may petition the commission for the right of interconnection and such  
5 interconnection shall be ordered by the commission on such reasonable terms as shall be  
6 set by the commission.

7 46-6-10.

8 No radio utility shall combine, merge, or consolidate with, or acquire control of, another  
9 organization without first obtaining the approval of the commission, which approval shall  
10 be granted only upon a finding, after a hearing, that such proposed combination, merger,  
11 consolidation, or acquisition is in the public interest.

12 46-6-11.

13 Any radio utility operating a radio utility system under authority of a certificate of public  
14 convenience and necessity issued by the commission under this chapter shall, where  
15 necessary and upon making due compensation to the owner of the property, have the right  
16 to construct, maintain, and operate antennas and towers upon any private property for the  
17 purpose of broadcasting and receiving radio signals, provided that the antenna equipment  
18 is so erected, placed, and maintained as not to obstruct or interfere with the ordinary use  
19 of such property by the owner or owners thereof.

20 46-6-12.

21 Any person who, as of March 27, 1972, held a valid certificate of public convenience and  
22 necessity issued by the commission pursuant to the 'Georgia Radio Common Carrier Act'  
23 (Ga. L. 1970, p. 104) shall not be required to seek and obtain a certificate of public  
24 convenience and necessity under this chapter for the continuance of the construction or  
25 operation of the radio utility system previously certificated. Any such certificate of public  
26 convenience and necessity issued by the commission pursuant to the 'Georgia Radio  
27 Common Carrier Act' shall have the same force and effect and shall be subject to the same  
28 terms and conditions as if issued pursuant to this chapter.

29 46-6-13.

30 For any alleged or apparent violation by a radio utility of any provision of this chapter or  
31 the orders or rules and regulations of the commission made under the authority of this  
32 chapter, the commission shall, upon the complaint of any person or upon its own motion,  
33 issue its rule nisi or order to show cause against the radio utility, reciting the matter

1 involved and fixing the time, date, and place for a hearing on the matter. If, after such  
2 hearing, the commission determines that a violation has occurred or is occurring, the  
3 commission shall order the radio utility to bring itself into compliance with this chapter and  
4 the orders and the rules and regulations of the commission within 90 days from the date of  
5 the order. If the radio utility fails or neglects to comply at or prior to the expiration of the  
6 90 day period, the commission may, in its sound discretion, order the revocation,  
7 suspension, or alteration of the certificate of public convenience and necessity held by the  
8 radio utility.

9 46-6-14.

10 Within 30 days after the service of an order or decision reflecting any action of the  
11 commission which is ripe for judicial review, any party aggrieved thereby may appeal to  
12 the Superior Court of Fulton County for the purpose of having the reasonableness or  
13 lawfulness of such action inquired into and determined. Such appeal shall be tried  
14 according to the rules governing other civil cases to the extent practicable.

15 46-6-15.

16 This chapter relates only to radio utilities as defined in Code Section 46-6-2 and is not  
17 applicable to the mobile radio telephone service offered by land line telephone and  
18 telegraph utilities regulated by the commission.

19 46-6-16.

20 (a) Any person, including an officer, agent, or employee of any organization, who willfully  
21 violates any provision of this chapter or of any rule, regulation, or order adopted hereunder  
22 or who willfully procures, aids, or abets any violation of such a provision shall be guilty  
23 of a misdemeanor.

24 (b) Any person who offers radio utility service to the public in this state without a  
25 certificate of public convenience and necessity, or after such certificate has been canceled,  
26 may be enjoined by the courts of this state from operating within this state upon the  
27 bringing of an action by the commission, by a radio utility which competes with the  
28 offending radio utility, or by any other person."

29 **SECTION 2.**

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