

House Bill 168 (AS PASSED HOUSE AND SENATE)

By: Representatives Cox of the 102nd, Martin of the 47th, Reese of the 98th, Parsons of the 42nd, and May of the 111th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
2 telephone and telegraph service, so as to provide for legislative intent; to provide a short title;
3 to substantially revise the regulation of telecommunications; to modernize
4 telecommunications competition by curtailing unnecessary regulation; to provide for related
5 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 It is the intent of the General Assembly to:

- 9 (1) Update and modernize Georgia's telecommunications laws to encourage competition
10 and bring about lower prices and better services for the consumer;
11 (2) Make Georgia a more attractive place for telecommunications investment and
12 encourage the deployment of advanced technologies;
13 (3) Create and preserve jobs for Georgia workers; and
14 (4) Reduce the subsidies paid by Georgia consumers.

15 It is not the intent of the General Assembly to impose any fee or other charge on Georgia
16 consumers.

17 **SECTION 2.**

18 This Act shall be known as and may be cited as the "Telecom Jobs and Investment Act."

19 **SECTION 3.**

20 Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and
21 telegraph service, is amended by revising Code 46-5-166, relating to rates for basic local
22 exchange services, as follows:

23 "46-5-166.

24 ~~(a) An electing local exchange company shall have its rates for basic local exchange~~
 25 ~~services determined pursuant to this Code section.~~

26 ~~(b) Rates for basic local exchange services for residential and single line business~~
 27 ~~customers in effect on the date the local exchange company becomes subject to alternative~~
 28 ~~regulation described in this article shall be the maximum rates that the local exchange~~
 29 ~~company may charge for basic local exchange services for a period of five years, provided~~
 30 ~~that such maximum rates are subject to review by the commission pursuant to subsection~~
 31 ~~(f) of this Code section under rules promulgated by the commission. During such period,~~
 32 ~~the local exchange company may charge less than the authorized maximum rates for basic~~
 33 ~~local exchange services. Thereafter, rate adjustments for basic local exchange services~~
 34 ~~may be made pursuant to subsection (c) of this Code section.~~

35 ~~(c) Rates for basic local exchange services may be adjusted by the electing company~~
 36 ~~subject to an inflation based cap. Inflation shall be measured by the change in the GDP-PI.~~
 37 ~~The electing company is authorized to adjust the cap on an annual basis. The cap requires~~
 38 ~~that the annual percentage rate increase for basic local exchange services shall not exceed~~
 39 ~~the greater of one-half of the percentage change in the GDP-PI for the preceding year when~~
 40 ~~the percentage change in the GDP-PI exceeds 3 percent or the GDP-PI minus 2 percentage~~
 41 ~~points.~~

42 ~~(d) In the event the GDP-PI is no longer available, the commission shall elect a~~
 43 ~~comparable broad national measure of inflation calculated by the United States Department~~
 44 ~~of Commerce for its use.~~

45 ~~(e)(a) The local exchange company~~ An electing company, as defined in paragraph (5) of
 46 Code Section 46-5-162, shall set rates for all other local exchange services on a basis that
 47 does not unreasonably discriminate between similarly situated customers; provided,
 48 however, that all such rates are subject to a complaint process for abuse of market position
 49 in accordance with rules to be promulgated by the commission. ~~Competing local exchange~~
 50 ~~companies may resell local exchange services purchased from other local exchange~~
 51 ~~companies.~~

52 ~~(f)(1)(b)~~ (b) Except as otherwise provided in this subsection, the rates for switched access by
 53 each Tier 1 local exchange company shall be no higher than the rates charged for interstate
 54 access by the same local exchange company. The rates for switched access shall be
 55 negotiated in good faith between the parties. In the event that the rates for switched access
 56 cannot be negotiated between the parties, any party may petition the commission to set
 57 reasonable rates, terms, or conditions for switched access. The commission shall render
 58 a final decision in any proceeding initiated pursuant to the provisions of this ~~paragraph~~
 59 subsection no later than 60 days after the close of the record except that the commission,

60 by order, may extend such period in any case in which it shall find that the complexity of
 61 the issues and the length of the record require an extension of such period, in which event
 62 the commission shall render a decision at the earliest date practicable. In no event shall the
 63 commission delay the rendering of a final decision in such proceeding beyond the earlier
 64 of 120 days after the close of the record or 180 days from the filing of the notice of petition
 65 for determination of rates for switched access that initiated the proceeding.

66 ~~(2)(c) Each Beginning January 1, 2011, and ending December 31, 2015, each Tier 2 local~~
 67 ~~exchange company shall, prior to July 1, 2000, adjust in equal annual increments its~~
 68 ~~intrastate switched access charges to parity with its similar interstate switched access rates.~~
 69 ~~The commission shall have authority to govern the transition of Tier 2 local exchange~~
 70 ~~company switched access rates to their corresponding interstate levels and the commission~~
 71 ~~shall allow adjustment of other rates, including those of basic local exchange services or~~
 72 ~~universal service access funds, as may be necessary to recover those revenues, based on~~
 73 ~~calendar year 2008, lost through the concurrent reduction of the intrastate switched access~~
 74 ~~rates. In no event shall such adjustments exceed the revenues associated with intrastate to~~
 75 ~~interstate access parity as of July 1, 1995. In addition, if access revenues have dropped~~
 76 ~~below July 1, 1995, levels in subsequent years, the adjustment in those years will be based~~
 77 ~~on the reduced balance. Any intrastate to interstate switched access adjustments resulting~~
 78 ~~in increased local rates that have been capped under subsection (b) of this Code section will~~
 79 ~~be allowed and a new cap will be established pursuant to this Code section. In the event~~
 80 ~~that the rates for switched access cannot be negotiated in good faith between the parties,~~
 81 ~~the commission shall determine the reasonable rates for switched access in accordance with~~
 82 ~~the procedures provided in paragraph (1) of this subsection (b) of this Code section. Any~~
 83 ~~Tier 2 local exchange company that is an electing company may elect to become subject~~
 84 ~~to rate of return regulation by certification to the commission of this election no later than~~
 85 ~~December 31, 2010. A Tier 2 local exchange company making this election is prohibited~~
 86 ~~from making a subsequent election to have the rates, terms, and conditions for its services~~
 87 ~~determined pursuant to the alternative regulation described in subsection (b) of Code~~
 88 ~~Section 46-5-165 prior to January 1, 2016.~~

89 ~~(d) Beginning January 1, 2011, and ending December 31, 2020, each telecommunications~~
 90 ~~company holding a certificate of authority or otherwise authorized to provide~~
 91 ~~telecommunications services in this state other than a Tier 2 local exchange company shall~~
 92 ~~adjust in equal annual increments its intrastate switched access charges to parity with its~~
 93 ~~similar interstate switched access rates.~~

94 ~~(g)(e) In accordance with rules to be promulgated by the commission, any electing~~
 95 ~~telecommunications company providing intrastate switched access services shall file tariffs~~
 96 ~~with the commission for basic local exchange intrastate switched access services and other~~

97 ~~local exchange applicable~~ services that state the terms and conditions of such services and
 98 the rates as established pursuant to this Code section.
 99 (f) The commission shall review the intrastate switched access rates as set forth in
 100 subsections (c) and (d) of this Code section and shall report the results of its findings and
 101 any actions taken to the General Assembly by or before December 31, 2011. Thereafter,
 102 the commission shall include in its annual report to the General Assembly required under
 103 Code Section 46-5-174 the status of any intrastate switched access rate changes under this
 104 Code section."

105 SECTION 4.

106 Said chapter is further amended by revising Code Section 46-5-167, relating to the Universal
 107 Access Fund, as follows:

108 "46-5-167.

109 (a) The commission shall ~~create~~ administer a Universal Access Fund to assure the
 110 provision of reasonably priced access to basic local exchange services throughout Georgia.
 111 The fund shall be administered by the commission pursuant to this Code section and under
 112 rules to be promulgated by the commission as needed to assure that the fund operates in a
 113 competitively neutral manner between competing telecommunications providers.

114 (b) ~~The commission shall require all~~ All telecommunications companies ~~providing~~
 115 telecommunications holding a certificate of authority issued by the commission to provide
 116 services within Georgia to shall contribute quarterly to the fund in a proportionate amount
 117 to their gross revenues from sale to end users of such telecommunications services as
 118 determined by rules to be promulgated by the commission as provided in this subsection.
 119 The commission shall determine the manner of contribution using either one or a
 120 combination of the following two contribution methodologies:

- 121 (1) A charge for each working telephone number; or
- 122 (2) A proportionate amount based on each company's gross intrastate revenues from the
 123 provision of telecommunications services to end users.

124 In calculating such contributions, the commission shall allow a local exchange company
 125 holding a certificate of authority issued by the commission after July 1, 1995, and before
 126 January 1, 2010, with primary headquarters in Georgia and more than 750 full-time
 127 employees working in Georgia as of January 1, 2010, to utilize accumulated unexpired
 128 Georgia net operating losses for taxable years ending prior to January 1, 2010, on a full
 129 dollar-for-dollar basis to reduce up to 50 percent of its contribution to the Universal Access
 130 Fund. Within the same tax year of the election, companies making such election shall
 131 formally notify the Department of Revenue that the company agrees to forego any rights
 132 or claims to the Georgia net operating losses so used. The commission may allow any

133 telecommunications company certified as a competitive local exchange carrier to request
 134 a hearing seeking relief from this contribution requirement upon application,
 135 demonstration, and good cause shown that such competitive local exchange carrier does
 136 not receive a benefit from the reduction in intrastate switched access charges pursuant to
 137 subsection (c) of Code Section 46-5-166.

138 ~~(c) The commission may also require any telecommunications company to contribute to~~
 139 ~~the fund if, after notice and opportunity for hearing, the commission determines that the~~
 140 ~~company is providing private local exchange services or radio based local exchange~~
 141 ~~services in this state that compete with a telecommunications service provided in this state~~
 142 ~~for which a contribution to the fund is required under this Code section.~~

143 ~~(d)(c) Contributions to the fund shall be determined by~~ if, after notice and opportunity for
 144 hearing, the commission ~~based upon estimates as to~~ calculates the difference in the
 145 reasonable actual costs of basic local exchange services throughout Georgia and ~~the~~
 146 ~~amounts established by law or regulations of the commission as to the maximum amounts~~
 147 ~~that may be charged for such services~~ and shall also account for reductions in intrastate
 148 switched access charges pursuant to subsection (c) of Code Section 46-5-166.

149 ~~(e) Moneys in the fund shall be distributed quarterly to all providers of basic local~~
 150 ~~exchange services upon application and demonstration that the reasonable costs as~~
 151 ~~determined by the commission to provide basic local exchange services exceed the~~
 152 ~~maximum fixed price permitted for such basic local exchange services. The commission~~
 153 ~~may take into account the possibility that a competing local exchange company is~~
 154 ~~providing or could provide lower cost basic local exchange services. Competitive providers~~
 155 ~~shall be entitled to obtain a similar subsidy from the fund to the extent that they provide~~
 156 ~~basic local exchange services; provided, however, that such subsidy shall not exceed 90~~
 157 ~~percent of the per line amount provided the incumbent local exchange company for existing~~
 158 ~~basic local exchange service or 100 percent of new basic local exchange service.~~

159 (d)(1) Nothing in this subsection shall require any Tier 2 local exchange company to
 160 raise any of its rates. Nothing in this subsection shall authorize any Tier 2 local exchange
 161 company to receive any subsidy from the Universal Access Fund. For purposes of this
 162 subsection, the term 'subsidy' means any payment authorized by paragraph (2) of this
 163 subsection in excess of the intrastate access charge reductions pursuant to subsection (c)
 164 of Code Section 46-5-166.

165 (2) After notice and opportunity for hearing, the commission shall determine the amount
 166 of moneys in the fund that shall be distributed quarterly. Such determination shall be
 167 made as follows:

168 (A) Distributions to carriers that have reduced intrastate switched access charges
 169 pursuant to subsection (c) of Code Section 46-5-166 shall be limited to an amount

170 reflective of such access charge reductions and shall also be reduced by the amount per
 171 access line, which if added to the carrier's basic local exchange service rate, in
 172 accordance with a schedule established by the commission, results in an amount that
 173 would be equal to 110 percent of the July 1, 2009, residential state-wide weighted
 174 average rate for basic local exchange services imputed across all access lines and
 175 adjusted annually for inflation measured by the change in GDP-PI. Any distributions
 176 pursuant to this subparagraph shall be limited to a period of no more than ten years; and
 177 (B) Except for those distributions to Tier 2 local exchange companies that have
 178 reduced intrastate switched access charges pursuant to subsection (c) of Code Section
 179 46-5-166, distributions to a Tier 2 local exchange carrier subject to rate of return
 180 regulation shall also be reduced by the amount per access line, which if added to the
 181 carrier's basic local exchange service rate, in accordance with a schedule established by
 182 the commission, results in an amount that would be equal to 110 percent of the July 1,
 183 2009, residential state-wide weighted average rate for basic local exchange services
 184 imputed across all access lines and adjusted annually for inflation measured by the
 185 change in GDP-PI. The commission shall determine any such distributions upon
 186 application, demonstration, and good cause shown that the reasonable actual costs to
 187 provide basic local exchange services exceed the maximum fixed price permitted for
 188 such basic local exchange services; any distributions pursuant to this subparagraph shall
 189 be limited to a period of no more than 20 years.

190 ~~(f)~~(e) The commission shall require any local exchange company seeking reimbursement
 191 from the fund pursuant to subparagraph (d)(2)(B) of this Code section to file the
 192 information reasonably necessary to determine the actual and reasonable costs of providing
 193 basic local exchange services.

194 ~~(g)~~(f) The commission shall have the authority to make adjustments to the contribution or
 195 distribution levels based on yearly reconciliations and to order further contributions or
 196 distributions as needed between companies to equalize reasonably the burdens of providing
 197 basic local exchange service throughout Georgia.

198 ~~(h)~~(g) A local exchange company or other company shall not establish a surcharge on
 199 customers' bills to collect from customers' contributions required under this Code section."

200 **SECTION 5.**

201 Said chapter is further amended by revising subsection (a) of Code Section 46-5-222, relating
 202 to commission has no authority over setting of rates or terms and conditions for the offering
 203 of broadband service, voice over Internet protocol, or wireless service, as follows:

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

207 **SECTION 6.**

208 Said chapter is further amended by adding a new article to read as follows:

209 "ARTICLE 9

210 46-5-250.

211 As used in this article, the term 'retail telecommunications service' means the offering of
 212 two-way interactive communications for a fee directly to end users. Such term does not
 213 include wireless service as defined in paragraph (3) of Code Section 46-5-221 nor does it
 214 include the obligations of an incumbent local exchange carrier, as defined by 47 U.S.C.
 215 Section 251, pursuant to 47 U.S.C. Sections 251, 252, and 271 and the Federal
 216 Communications Commission's rules and regulations implementing such sections.

217 46-5-251.

218 (a) Notwithstanding any other provision of law in this chapter or Chapter 2 of this title
 219 except the provisions of Code Section 46-5-252 and the complaint process set forth in
 220 subsection (a) of the Code Section 46-5-166, the Public Service Commission shall not have
 221 any jurisdiction, right, power, authority, or duty to impose or enforce any requirement,
 222 regulation, or rule relating to the setting of rates or terms and conditions for the offering
 223 of retail telecommunications service by a telecommunications company not subject to rate
 224 of return regulation.

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

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

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

230 (3) Any authority of the Public Service Commission to act in accordance with federal
 231 laws or regulations of the Federal Communications Commission, including, without
 232 limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled
 233 network elements, intercarrier compensation, and to arbitrate and enforce interconnection
 234 agreements.

235 (c) Except as otherwise expressly provided in this Code section, nothing in this Code
236 section shall be construed to restrict or expand any other authority or jurisdiction of the
237 Public Service Commission.

238 46-5-252.

239 No company providing retail telecommunications service shall impose a separate line item
240 or surcharge on customers' bills to recover any costs of complying with any state law or
241 regulations without first submitting to the Public Service Commission the methodology and
242 data used by such company for approval by the commission; provided, however, that such
243 a company shall not be required to submit for approval separate line items or surcharges
244 that are specifically authorized or required by federal or state law. No fines or penalties
245 imposed by the Public Service Commission shall be considered as a cost of complying with
246 a state law or regulation or included in any such separate line item or surcharge, or as a
247 portion thereof."

248 **SECTION 7.**

249 This Act shall become effective upon its approval by the Governor or upon its becoming law
250 without such approval.

251 **SECTION 8.**

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