

House Bill 376

By: Representatives Parsons of the 42nd, Geisinger of the 48th, Lucas of the 139th, Martin of the 47th, and Wix of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated,
2 relating to telecommunications and competition development, so as to modernize
3 telecommunications competition by implementing the Access Transition Fund; to revise
4 certain definitions; to revise certain provisions relating to rates for basic local exchange
5 services to require Tier 2 local exchange companies to transition from intrastate switched
6 access; to provide for review by the Public Service Commission; to provide for annual
7 reports to the General Assembly; to provide for termination of the Access Transition Fund;
8 to provide an annual limitation on the Access Transition Fund; to provide for jurisdiction and
9 authority of the commission; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Article 4 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
14 telecommunications and competition development, is amended by revising subsection (b) of
15 Code Section 46-5-161, relating to legislative findings and intent relative to "The
16 Telecommunications and Competition Development Act of 1995," as follows:

17 "(b) It is the intent of this article to:

- 18 (1) Permit local exchange companies to elect alternative forms of regulation;
- 19 (2) Protect the consumer during the transition to a competitive telecommunications
20 market;
- 21 (3) Assure reasonable cost for universal access to basic telecommunications services
22 throughout Georgia;
- 23 (4) Encourage investment in Georgia's telecommunications infrastructure and encourage
24 the introduction of innovative products and services for Georgia's consumers;
- 25 (5) Authorize competition for local exchange services; and

26 (6) Allow pricing flexibility for all telecommunications services other than basic local
 27 exchange services for certain telecommunications companies."

28 **SECTION 2.**

29 Said article is further amended by revising Code Section 46-5-162, relating to definitions
 30 relative to "The Telecommunications and Competition Development Act of 1995," as
 31 follows:

32 "46-5-162.

33 As used in this article, the term:

34 (1) 'Alternative regulation' means a form of regulation pursuant to which the rates, terms,
 35 and conditions for telecommunications services provided by a local exchange company
 36 are set pursuant to the rules specified in this article.

37 (2) 'Basic local exchange services' or 'universal access local exchange services' ~~mean~~
 38 means the provision to residential and single line business customers in Georgia of
 39 services composed of a touch tone switched access line and dial tone; of a quality
 40 sufficient for ~~two-way~~ two-way voice and 9600 baud data/fax communications. This
 41 service shall include 1+ dialing for access to competitive providers of
 42 telecommunications services by January 1, 1997. The elements of universal access local
 43 exchange services are subject to subsequent review and modification by the commission.

44 (3) 'Caller identification service' means a type of telephone service which permits
 45 telephone customers to see the telephone number of incoming telephone calls.

46 (4) 'Commission' means the Georgia Public Service Commission.

47 (5) 'Electing company' means a local exchange company subject to the alternative
 48 regulation described in this article.

49 (6) 'Fund' means the ~~Universal~~ Transition Access Fund ~~created~~ referred to in Code
 50 Section 46-5-167.

51 (7) 'Gross domestic product-price index' or 'GDP-PI' means the gross domestic product
 52 fixed weight price index calculated by the United States Department of Commerce.

53 (8) 'Interconnection service' means the service of providing access to a local exchange
 54 company's facilities for the purpose of enabling another telecommunications company
 55 to originate or terminate telecommunications service.

56 (9) 'Local calling area' means the geographic area encompassing one or more local
 57 ~~exchanges~~ exchange services as described in commission orders or in maps, tariffs, and
 58 rate schedules reviewed and approved by the commission.

59 (10) 'Local exchange company' means a telecommunications company authorized to
 60 provide local exchange service as described in this article. For purposes of this article,
 61 there shall be two categories of local exchange companies:

62 (A) Tier 1 companies are those companies with 2 million or more access lines within
63 Georgia holding a certificate of public convenience and necessity issued by the
64 commission; and

65 (B) Tier 2 companies are those companies with less than 2 million access lines within
66 Georgia holding a certificate of public convenience and necessity issued by the
67 commission.

68 (11) 'Local exchange services' means services offered for the transmission and utilization
69 of two-way interactive communications and associated usage with the local calling area.

70 (12) 'Local interconnection services' means that part of switched interconnection service
71 provided for the purpose of originating or terminating a call which originates and
72 terminates within the local calling area.

73 (13) 'Portability' means the technical capability that permits a customer to retain the same
74 local number at the same customer location regardless of the provider of the local
75 exchange service.

76 (14) 'Switched access' means that part of switched interconnection service provided for
77 the purpose of originating or terminating a toll service.

78 (15) 'Switched interconnection service' means that part of interconnection service which
79 utilizes the local exchange company's switching facilities to provide line or trunkside
80 access or both to the local exchange company's end office or tandem switches for the
81 purpose of originating and terminating the telecommunications services of other
82 telecommunications companies.

83 (16) 'Tariff' means the schedule or other writing filed with the commission that describes
84 the rates, terms, and conditions of certain telecommunications services provided by the
85 telecommunications company.

86 (17) 'Telecommunications company' means any person, firm, partnership, corporation,
87 association, or municipal, county, or local governmental entity offering
88 telecommunications services to the public for hire.

89 (18) 'Telecommunications services' means the services for the transmission of two-way
90 interactive communications to the public for hire. For purposes of illustration, the term
91 'telecommunications services' includes without limitation local exchange services and
92 interconnection services.

93 (19) 'Toll service' means the transmission of two-way interactive switched
94 communications between local calling areas.

95 (20) 'Universal access provider' means a local exchange company that is obligated to
96 provide basic local exchange service in all of its local calling areas in response to
97 reasonable requests for such service and which, in consideration of such obligation, may

98 have its rates for local switched interconnection service established as provided in this
 99 article."

100 **SECTION 3.**

101 Said article is further amended by revising subsection (e) of Code Section 46-5-164, relating
 102 to interconnection among certificated local exchange companies, as follows:

103 "(e) The commission is authorized to allow local exchange companies to resell the services
 104 purchased from other local exchange companies pursuant to rules determining when and
 105 under what circumstances such resale shall be allowed; ~~provided, however, that the resale~~
 106 ~~of basic local exchange services supported by the Universal Access Fund shall be limited~~
 107 ~~to users and uses conforming to the definition of basic local exchange services set forth in~~
 108 ~~paragraph (2) of Code Section 46-5-162.~~ Any local exchange company or
 109 telecommunications company desiring to purchase or to resell services purchased from
 110 another local exchange company may petition the commission for the authorization to
 111 purchase or to resell such services. In cases where the purchase or resale of services
 112 purchased is authorized by the commission, the commission shall determine the reasonable
 113 rates, terms, or conditions for the purchase or resale of such local exchange services such
 114 that no local exchange company or telecommunications company gains an unfair market
 115 position. The commission shall render a final decision in any proceeding initiated pursuant
 116 to the provisions of this subsection no later than 60 days after the close of the record except
 117 that the commission, by order, may extend such period in any case in which it shall find
 118 that the complexity of the issues and the length of the record require an extension of such
 119 period, in which event the commission shall render a decision at the earliest date
 120 practicable. In no event shall the commission delay the rendering of a final decision in such
 121 proceeding beyond the earlier of 120 days after the close of the record or 180 days from
 122 the filing of the notice of petition under this subsection. The commission, at its discretion
 123 or upon a petition filed by either party, may modify a ruling rendered under this subsection,
 124 provided that a petition for modification ~~may~~ shall not be filed more than once in any 18
 125 month period."

126 **SECTION 4.**

127 Said article is further amended by revising subsections (f) and (g) of Code Section 46-5-166,
 128 relating to rates for basic local exchange services, as follows:

129 "(f)(1) Except as otherwise provided in this subsection, the rates for switched access by
 130 each Tier 1 local exchange company shall be no higher than the rates charged for
 131 interstate access by the same local exchange company. The rates for switched access shall
 132 be negotiated in good faith between the parties. In the event that the rates for switched

133 access cannot be negotiated between the parties, any party may petition the commission
134 to set reasonable rates, terms, or conditions for switched access. The commission shall
135 render a final decision in any proceeding initiated pursuant to the provisions of this
136 paragraph no later than 60 days after the close of the record except that the commission,
137 by order, may extend such period in any case in which it shall find that the complexity
138 of the issues and the length of the record require an extension of such period, in which
139 event the commission shall render a decision at the earliest date practicable. In no event
140 shall the commission delay the rendering of a final decision in such proceeding beyond
141 the earlier of 120 days after the close of the record or 180 days from the filing of the
142 notice of petition for determination of rates for switched access that initiated the
143 proceeding.

144 (2) Each Tier 2 local exchange company shall transition, in the manner described in this
145 subsection and subsection (d) of 46-5-167, prior to July 1, 2000, adjust in equal annual
146 increments its intrastate switched access charges rate to parity with its similar interstate
147 switched access rates that are in effect as of July 1, 2009. The transition to intrastate and
148 interstate switched access parity shall occur in equal increments over a period of five
149 years and in a manner consistent with the adjustment of basic local exchange service rates
150 in subsection (d) of Code Section 46-5-167. In addition, each telecommunications
151 company holding a certificate of authority, or otherwise authorized to provide
152 telecommunications services in this state, shall transition in equal increments over a
153 period of five years beginning on either July 1, 2009, or the date on which said
154 telecommunications company initiates offering service, whichever is later, its intrastate
155 switched access rates to levels not to exceed the similar interstate switched access rates
156 in effect as of July 1, 2009, that the incumbent Tier 1 or Tier 2 company in the
157 corresponding service territory charges for equivalent functions. After this five-year
158 period, the commission may review the Tier 2 company's and the telecommunications
159 company's intrastate and interstate switched access rates then in effect and may order,
160 upon good cause shown, further reductions in intrastate switched access rates. to their
161 corresponding interstate levels and shall allow adjustment of other rates, including those
162 of basic local exchange services or universal service funds, as may be necessary to
163 recover those revenues lost through the concurrent reduction of the intrastate switched
164 access rates. In no event shall such adjustments exceed the revenues associated with
165 intrastate to interstate access parity as of July 1, 1995. In addition, if access revenues have
166 dropped below July 1, 1995, levels in subsequent years, the adjustment in those years will
167 be based on the reduced balance. Any intrastate to interstate switched access adjustments
168 resulting in increased local rates that have been capped under subsection (b) of this Code
169 section will be allowed and a new cap will be established pursuant to this Code section.

170 ~~In the event that the rates for switched access cannot be negotiated in good faith between~~
 171 ~~the parties, the commission shall determine the reasonable rates for switched access in~~
 172 ~~accordance with the procedures provided in paragraph (1) of this subsection.~~

173 (g) In accordance with rules to be promulgated by the commission, any electing company
 174 shall file tariffs with the commission for basic local exchange services and other local
 175 exchange services that state the terms and conditions of such services and the rates as
 176 established pursuant to this Code section unless such company has eliminated such tariffs
 177 pursuant to paragraph (2) of subsection (b) of Code Section 46-2-23."

178 **SECTION 5.**

179 Said article is further amended by revising Code Section 46-5-167, relating to the Universal
 180 Access Fund, as follows:

181 "46-5-167.

182 (a) The commission shall ~~create a Universal~~ implement the Access Transition Fund to
 183 assure the provision of reasonably priced access to basic local exchange services
 184 throughout Georgia and as a mechanism to allow the recovery of revenues lost by Tier 2
 185 companies through the intrastate switched access rate rebalancing under paragraph (2) of
 186 subsection (f) of 46-5-166. The fund shall be administered by the commission under rules
 187 to be promulgated by the commission as needed to assure that the fund operates in a
 188 competitively neutral manner between competing telecommunications ~~providers~~
 189 companies. The commission shall include in its annual report to the General Assembly
 190 required under Code Section 46-5-174 the status of the intrastate switched access rate
 191 rebalancing and shall conduct a review of the Access Transition Fund in 2015 and shall
 192 report its findings in 2016 to the General Assembly. Notwithstanding any other provision
 193 in this article, the Access Transition Fund shall cease to exist on June 30, 2019.

194 (b) The commission shall require all telecommunications companies providing
 195 telecommunications services within Georgia to contribute quarterly to the fund ~~in a~~
 196 ~~proportionate amount to their gross revenues from sale to end users of such~~
 197 ~~telecommunications services as determined by rules to be promulgated by the commission.~~
 198 The commission shall determine the manner of contribution using either one or a
 199 combination of the following two contribution methodologies:

200 (1) A charge for each working telephone number; or

201 (2) A proportionate amount based on each telecommunications company's gross
 202 revenues from sales to end users of its telecommunications services.

203 (c) The commission may also require any telecommunications company to contribute to
 204 the fund if, after notice and opportunity for hearing, the commission determines that the
 205 company is providing private local exchange services or radio based local exchange

206 services in this state that compete with a telecommunications service provided in this state
207 for which a contribution to the fund is required under this Code section.

208 ~~(d) Contributions to the fund shall be determined by the commission based upon estimates~~
209 ~~as to the difference in the reasonable actual costs of basic local exchange services~~
210 ~~throughout Georgia and the amounts established by law or regulations of the commission~~
211 ~~as to the maximum amounts that may be charged for such services. The commission shall~~
212 ~~determine the size of the fund pursuant to this subsection. Consistent with the five-year~~
213 ~~transition described in paragraph (2) of subsection (f) of Code Section 46-5-166, the~~
214 ~~commission shall first allow the adjustment of rates for basic local exchange services,~~
215 ~~which rates shall include mandatory expanded area service fees, to benchmarks to be~~
216 ~~established by the commission that shall be 125 percent of the July 1, 2009, residential~~
217 ~~state-wide weighted average rate for basic local exchange services imputed across all~~
218 ~~access lines and adjusted annually for inflation measured by the change in GDP-PI.~~
219 ~~Thereafter, each Tier 2 company, including any that has elected alternative regulation~~
220 ~~pursuant to Code Section 46-5-165, may, at its option, request and be granted quarterly~~
221 ~~distributions from the fund with respect to the total portion of the Tier 2 company's~~
222 ~~intrastate switched access revenue reductions that were not recoverable through the~~
223 ~~prescribed transition to the benchmark at any point during the five-year transition period.~~
224 ~~The transition to the prescribed benchmark shall occur in equal increments over a period~~
225 ~~of five years beginning on July 1, 2009; however, in the event that a Tier 2 company, at its~~
226 ~~own discretion, chooses not to increase its basic local exchange rates to the prescribed~~
227 ~~increment, then the Tier 2 company's distributions under the fund shall be determined after~~
228 ~~imputing the difference between the Tier 2 company's revenues attributable to the~~
229 ~~prescribed benchmark and the incremental revenues that would have been realized if the~~
230 ~~Tier 2 company had reached the prescribed increment. Notwithstanding any other~~
231 ~~provision in this article, the Access Transition Fund shall be limited to an annual total~~
232 ~~amount of \$25 million.~~

233 ~~(e) Moneys in the fund shall be distributed quarterly to all providers of basic local~~
234 ~~exchange services upon application and demonstration that the reasonable costs as~~
235 ~~determined by the commission to provide basic local exchange services exceed the~~
236 ~~maximum fixed price permitted for such basic local exchange services. The commission~~
237 ~~may take into account the possibility that a competing local exchange company is~~
238 ~~providing or could provide lower cost basic local exchange services. Competitive providers~~
239 ~~shall be entitled to obtain a similar subsidy from the fund to the extent that they provide~~
240 ~~basic local exchange services; provided, however, that such subsidy shall not exceed 90~~
241 ~~percent of the per line amount provided the incumbent local exchange company for existing~~
242 ~~basic local exchange service or 100 percent of new basic local exchange service.~~

243 Notwithstanding any other provision in this article, once any electing local exchange
 244 company has achieved intrastate and interstate switched access parity and certifies to the
 245 commission that it will not apply for reimbursement from the Access Transition Fund,
 246 subsections (a), (b), (c), and (d) of Code Section 46-5-166 shall no longer apply and
 247 subsection (e) of Code Section 46-5-166 shall apply to all rates.

248 ~~(f) The commission shall require any local exchange company seeking reimbursement~~
 249 ~~from the fund to file the information reasonably necessary to determine the actual and~~
 250 ~~reasonable costs of providing basic local exchange services.~~

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

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

257 **SECTION 6.**

258 Said article is further amended by revising Code Section 46-5-168, relating to jurisdiction
 259 and authority of commission, as follows:

260 "46-5-168.

261 (a) The jurisdiction of the commission under this article shall be construed to include the
 262 authority necessary to implement and administer the express provisions of this article
 263 through rule-making proceedings and orders in specific cases.

264 (b) The commission's jurisdiction shall include the authority to:

265 (1) Adopt reasonable rules governing certification of local exchange companies;

266 (2) Grant, modify, impose conditions upon, or revoke a certificate;

267 (3) Establish and administer the ~~Universal~~ Access Transition Fund including
 268 modifications to the maximum allowable charge for basic local exchange service in
 269 accordance with the provisions of this article;

270 (4) Adopt reasonable rules governing service quality;

271 (5) Resolve complaints against a local exchange company regarding that company's
 272 service;

273 (6) Require a telecommunications company electing alternative regulation under this
 274 article to comply with the rate adjustment provisions of this article;

275 (7) Approve and if necessary revise, suspend, or deny tariffs in accordance with the
 276 provisions of this article;

277 (8) If necessary, elect another comparable measurement of inflation calculated by the
 278 United States Department of Commerce;

279 (9) Establish reasonable rules and methodologies for performing cost allocations among
 280 the services provided by a telecommunications company; and

281 (10) Direct telecommunications companies to make investments and modifications
 282 necessary to enable portability.

283 (c) The commission shall render a final decision in any proceeding initiated pursuant to
 284 the provisions of this article no later than 60 days after the close of the record except that
 285 the commission, by order, may extend such period in any case in which it shall find that
 286 the complexity of the issues and the length of the record require an extension of such
 287 period, in which event the commission shall render a decision at the earliest date
 288 practicable. In no event shall the commission delay the rendering of a final decision in such
 289 proceeding beyond the earlier of 120 days after the close of the record or 180 days from
 290 the filing of the notice of rulemaking, petition, or complaint that initiated the proceeding.

291 (d) In conducting any rule-making proceeding under this article, the commission shall
 292 consider the following factors:

293 (1) The extent to which cost-effective competitive alternatives are available to existing
 294 telecommunications networks and services; and

295 (2) Requirements necessary to prevent any disadvantage or economic harm to
 296 consumers, protect universal affordable service, ~~implement the establish and maintain an~~
 297 ~~affordable Universal Access~~ Transition Fund, protect the quality of telecommunications
 298 services, prevent anticompetitive practices, and prevent abandonment of service to areas
 299 where there is no competing provider of telecommunications service.

300 (e) Subject to any other provision of law protecting the confidentiality of trade secrets, the
 301 commission shall have access to the books and records of telecommunications companies
 302 as may be necessary to ensure compliance with the provisions of this article and with the
 303 commission's rules and regulations and to carry out its responsibilities under this article.

304 (f) In order to promote economic development and competitive advantage for the State of
 305 Georgia, the commission shall have the authority to petition, intervene, or otherwise
 306 commence proceedings before the appropriate federal agencies and courts having specific
 307 jurisdiction over the regulation of telecommunications seeking to enhance the competitive
 308 market for telecommunications services within the state."

309 **SECTION 7.**

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