

Senate Bill 328

By: Senators Pearson of the 51st, Williams of the 19th, Rogers of the 21st, Mullis of the 53rd, Thomas of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to
2 electrical service, so as to require electric suppliers to provide cable companies
3 nondiscriminatory access to electrical facilities on just and reasonable rates, terms, and
4 conditions; to provide legislative findings; to provide definitions; to provide procedures and
5 remedies; to provide for a repeal under certain circumstances; to provide for related matters;
6 to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The General Assembly finds that:

- 10 (1) The deployment of facilities based communications services should be promoted;
- 11 (2) Cable companies should be encouraged to attach their facilities to poles already
12 existing in current rights of way rather than acquiring or condemning additional property
13 to construct duplicative sets of poles and to promote the deployment of facilities based
14 communications services; and
- 15 (3) The provisions set forth in this Act will encourage collocation of facilities in order to
16 discourage the unnecessary use of eminent domain and promote the deployment of
17 facilities based communications services.

18 **SECTION 2.**

19 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,
20 is amended by revising Code Section 46-3-13, relating to enforcement of the "Georgia
21 Territorial Electric Service Act" by the Public Service Commission, as follows:

22 "46-3-13.

23 Except as provided in subsection (s) of Code Section 46-3-16, at ~~At any time, upon its own~~
24 ~~complaint or the complaint of any other an~~ electric supplier or ~~any other interested party~~
25 a cable company, the commission shall have the authority and jurisdiction, after notice to

26 all affected electric suppliers and other interested parties, and after a hearing, to enforce the
 27 provisions of this part by appropriate orders."

28 **SECTION 3.**

29 Said chapter is further amended by adding a new Code Section to read as follows:

30 "46-3-16.

31 (a) As used in this Code section, the term:

32 (1) 'Cable attachment' means any attachment by a cable company to an electrical
 33 facility.

34 (2) 'Cable company' means a cable television operator as defined in Section 602(5) of the
 35 federal Communications Act of 1934 that offers or provides, or intends to offer or
 36 provide, cable television service, including any broadband cable communications
 37 services, voice service, Internet access service, or any other service similar to such
 38 services, including the transport or delivery of services between or to cable companies
 39 or end users.

40 (3) 'Electrical facility' means any pole, duct, conduit, or right of way, including without
 41 limitation transmission poles and towers, owned or controlled by an electric supplier.

42 (4) 'Electric supplier' means electric membership corporations as defined in Code Section
 43 46-3-171; without limitation, any corporation or utility that is cooperatively organized;
 44 and any public utility that is owned or authorized by the state or a political subdivision
 45 thereof created pursuant to Article 3 of this chapter.

46 (5) 'Make ready' means all work necessary or appropriate to make space for or otherwise
 47 accommodate new, additional, or changed cable attachments, including, but not limited
 48 to, necessary or appropriate rearrangements, removal and replacement of the electrical
 49 facility or cable attachments, and other work related thereto.

50 (b) An electric supplier shall provide cable companies with nondiscriminatory access to
 51 all electrical facilities on just and reasonable rates, terms, and conditions.

52 (c) An electric supplier shall approve or deny in writing any cable attachment request no
 53 later than 15 business days after the receipt thereof; and if make-ready construction by the
 54 electric supplier is required, an estimate for such costs shall be provided to the requesting
 55 cable company. Any denial shall include, in sufficient detail, the grounds therefor not
 56 inconsistent with the provisions of this Code section. An electric supplier may deny a
 57 cable company access to its electrical facilities on a nondiscriminatory basis if there is
 58 insufficient capacity and for reasons of safety, reliability, and generally applicable
 59 engineering principles. No electric supplier may deny a cable company access to its
 60 electrical facilities on the ground that there is insufficient capacity or for reasons of safety,
 61 reliability, and generally applicable engineering principles if:

- 62 (1) Those limitations can be remedied by setting a new pole or other electrical facility
63 or by rearranging or otherwise reengineering the electrical facilities; and
- 64 (2) The cable company agrees to pay the reasonable, actual, and verifiably comparable
65 costs of setting a new pole or other electrical facility or rearranging or otherwise
66 reengineering the electrical facilities to resolve those capacity, safety, reliability, or
67 engineering issues.
- 68 (d) A cable company that requests a cable attachment shall be held responsible for the
69 reasonable, actual, and verifiable costs incurred by the electric supplier or any other
70 attaching entity in accommodating the request.
- 71 (e) A cable company with an existing cable attachment shall not be required to bear any
72 of the costs of rearranging or relocating its cable attachment if such rearrangement or
73 relocation is required as the result of an additional attachment or the adjustment of an
74 existing attachment sought by any other entity or sought by an electric supplier.
- 75 (f) If make ready is required by an electric supplier, such make-ready work shall be
76 commenced by the electric supplier within 20 business days of the electric supplier's receipt
77 of consent to its make-ready cost estimate by the requesting cable company; and the
78 electric supplier shall ensure the make-ready work performed is consistent with the electric
79 supplier's standard work order process. The electric supplier shall use its best efforts to
80 complete all make-ready work within 60 business days of receipt of consent to the
81 make-ready work estimate by the requesting cable company.
- 82 (g) Following receipt of a request from a cable company, an electric supplier shall
83 negotiate in good faith the rates, terms, and conditions for access to and the use of the
84 electrical facilities. Following a request from a cable company that is a party to an existing
85 agreement with an electric supplier, made either pursuant to the terms of the existing
86 agreement or within 90 days prior to or following the end of the term of the agreement, the
87 parties to the existing agreement shall negotiate in good faith the rates, terms, and
88 conditions for the continued access to and use of the electrical facilities. In the event the
89 parties are unable to reach agreement within 90 days of a request to negotiate or if either
90 party believes in good faith that an impasse has been reached prior to the expiration of the
91 90 day period, either party may bring an action to the commission as provided in this Code
92 section.
- 93 (h) All rental rates, including rent, fees, and charges demanded, invoiced, or assessed by
94 an electric supplier, shall be just, reasonable, and cost based. An electric supplier shall not
95 increase its rental rates more than once annually and then only:
- 96 (1) If the pole attachment agreement between the electric supplier and the cable company
97 allows for such increases; and

98 (2) After providing the cable company with at least 120 days' advance written notice
99 containing justification for the proposed increase. Every invoice provided by an electric
100 supplier to a cable company shall be itemized in sufficient detail and have appropriate
101 supporting documentation attached to permit the cable company to ascertain the basis of
102 the rates, fees, and charges therein.

103 (i) For a year for which there is a pole count or audit, the following adjustment shall be
104 made:

105 (1) The difference between the number of poles found by the pole audit for the year in
106 question and the number of attachments for which the attacher was most recently
107 invoiced for adjustment payments shall be prorated evenly based on the assumption that
108 such attacher's attachments were added evenly over the period since the last pole audit;
109 and

110 (2) If the number of poles in the previous annual rental invoice is greater than the
111 number found by the pole audit in the current year, then the cable company shall be
112 entitled to a credit or pro rata refund from the electric supplier.

113 (j) Except as otherwise provided in subsection (m) of this Code section, an electric
114 supplier shall not impose requirements or conditions upon overlashing activities of a cable
115 company.

116 (k) An electric supplier shall not require any cable company having or seeking attachments
117 to indemnify or insure such electric supplier from or against any losses, damages, claims
118 for damages, or other liability to the extent that such arises from the negligence or willful
119 misconduct of the electric supplier or its agents, employees, contractors, or licensees as a
120 condition to granting access or making attachments.

121 (l) The electric supplier has the option to perform periodic safety inspections and pole
122 inventories not more than once every five years, unless otherwise mutually agreed by the
123 parties, to determine any safety violations caused by an attacher upon 180 days' advance
124 written notice. Such notice shall describe the scope of the inspection, and the electric
125 supplier shall use best efforts to get all entities with attachments to participate in the safety
126 inspection. The cable company shall pay a pro rata share of the electric supplier's
127 inspection costs and shall incur its own costs to participate in such periodic safety
128 inspections. The cable company's pro rata share of the electric supplier's cost shall be equal
129 to the percentage of the total violations related to the cable company's cable attachments
130 as identified during the safety inspection unless the cable company can clearly demonstrate
131 that it did not cause the violation.

132 (m) When a cable company makes cable attachments that do not comply with generally
133 applicable engineering rules, the electric supplier shall provide written notice of the
134 noncompliant cable attachments. In the event of a noncompliant cable attachment that

135 poses an imminent safety risk, the cable company shall immediately bring such cable
136 attachment into compliance. In all other instances of noncompliant cable attachments, the
137 cable company shall, within 60 days following the written notice, either contest the notice
138 of noncompliance in writing or bring its cable attachments into compliance. If the work
139 required to bring the cable attachments into compliance is not reasonably capable of being
140 completed within the 60 day period, the period for compliance shall be extended as may
141 be deemed reasonable under the circumstances so long as the cable company promptly
142 commences and diligently pursues within the 60 day period such actions as are reasonably
143 necessary to make the cable attachments compliant.

144 (n) No electric supplier shall enter into any contract or arrangement pertaining to a cable
145 company's cable attachments to or use of electrical facilities or its books and records if any
146 part of the compensation or other benefits paid or payable for the services of the private
147 examining or collecting firm conducting the examination is contingent upon or otherwise
148 related to the amount of tax, interest, fee, rent, charge, court cost, or penalty assessed
149 against or collected from the cable company. Any such contract or arrangement, if made
150 or entered into, is void and unenforceable. Any assessment or preliminary assessment of
151 taxes, penalties, fees, rent, charges, court costs, or interest proposed or asserted by, or based
152 upon the recommendation of, a private examining or collecting firm compensated under
153 any such contract or arrangement shall be void and unenforceable.

154 (o) An electric supplier shall provide cable companies no less than 120 days' written notice
155 prior to removal of cable attachments to electrical facilities or termination of any service
156 to those facilities which arises out of a breach of a rate, term, or condition of a cable
157 attachment agreement. If any such breach of rate, term, or condition of cable attachment
158 is disputed by a cable company, the cable company may bring an action to the commission
159 as provided in this Code section.

160 (p) All other terms and provisions of any agreement with electric suppliers governing or
161 affecting a cable company's cable attachments, including any rate, term, or condition
162 governing audits, inspections, termination, security bond, and insurance requirements, shall
163 be just, reasonable, and consistent with the provisions of this Code section. An electric
164 supplier shall not require any cable company having or seeking cable attachments to be
165 subject to any unilateral changes to any operational procedures, practices, or rules in an
166 existing agreement or otherwise without first being provided a reasonable opportunity to
167 review, accept, or dispute the change; and any such operational procedures, practices, or
168 rules shall not be unduly burdensome.

169 (q)(1)(A) Any electric supplier or cable company that is aggrieved by conduct of
170 another party that is in violation of any provision of this Code section may file a

171 complaint with the commission. The commission shall have exclusive jurisdiction over
 172 such actions.

173 (B) The complaint shall state with specificity the conduct complained of and all
 174 information and argument relied on to justify said claim.

175 (C) The respondent shall have 30 days from the date the complaint was filed to file a
 176 response.

177 (D) The complainant shall have 20 days from the date of the response to file a reply.

178 (E) The burden of proof shall be on the party advocating a deviation from this Code
 179 section or on the party claiming that the rate, term, or condition complained of is not
 180 just and reasonable.

181 (2) The commission shall resolve any dispute identified in the pleadings consistent with
 182 the public interest and this Code section, taking into consideration and applying such
 183 factors and evidence that may be presented by a party, including without limitation the
 184 rules and regulations applicable to cable attachments under Section 224 of the federal
 185 Communications Act of 1934, as amended, or the rules and regulations of any state
 186 certified to regulate cable attachments under Section 224(c) of the federal
 187 Communications Act of 1934, as amended.

188 (3) The commission shall resolve a complaint within 180 days of the commencement of
 189 the action. The commission may adopt such rules as it deems necessary to implement its
 190 jurisdiction and authority under this Code section.

191 (4) The parties shall pay any reasonable third-party expenses incurred by the commission
 192 in resolving a complaint. At the time the commission determines that third-party
 193 expenses will be required, the commission shall issue an order setting forth the scope and
 194 budget for such expenses. All invoices relating to the expenses shall be subject to
 195 commission review and approval, and no party shall be required to pay any invoice not
 196 approved by the commission.

197 (r) This Code section shall not constitute certification as defined by federal law. If a court
 198 of competent jurisdiction determines that this Code section is tantamount to certification,
 199 this Code section shall automatically stand repealed and shall be null and void.

200 (s) This Code section shall not apply to any cable attachment regulated by the Federal
 201 Communications Commission under Section 224 of the federal Communications Act of
 202 1934, as amended."

203 **SECTION 4.**

204 Said chapter is further amended by revising paragraph (24) of subsection (b) of Code Section
 205 46-3-201, relating to the powers of electric membership corporations generally, as follows:

