

Senate Bill 313

By: Senators Rogers of the 21st, Shafer of the 48th, Unterman of the 45th and Stoner of the 6th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
2 so as to repeal Chapter 90, relating to the "Local Government Cable Fair Competition Act
3 of 1999"; to enact the "Broadband Investment Equity Act" to provide for regulation of
4 competition between public providers of communications service and private providers of
5 such service; to provide for a short title; to provide for definitions; to provide for
6 authorization to public providers to deliver communications services and invest capital in
7 facilities designed to provide communications services; to establish financial requirements
8 prior to cross-subsidizing the costs of providing communications services; to establish
9 requirements as to pricing; to provide for exemptions; to provide for the applicability of the
10 public records and public meetings laws; to specify the applicability of antitrust liability; to
11 provide for public and private partnerships for communications service; to provide for related
12 matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

15 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
16 by repealing Chapter 90, relating to the "Local Government Cable Fair Competition Act of
17 1999," and enacting a new chapter to read as follows:

18 "CHAPTER 90

19 36-90-1.

20 This chapter shall be known and may be cited as the 'Broadband Investment Equity Act.'

21 36-90-2.

22 As used in this chapter, the term:

- 23 (1) 'Broadband service' means a service that consists of the capability to transmit at a rate
24 not less than 200 kilobits per second in either the upstream or downstream direction and
25 in combination with such service provide either:
- 26 (A) Access to the Internet; or
27 (B) Computer processing, information storage, or protocol conversion.
- 28 (2) 'Cable service' means the one-way transmission to subscribers of video programming
29 or other programming service and subscriber interaction, if any, which is required for the
30 selection or use of such video programming or other programming service.
- 31 (3) 'Capital costs' means all costs of providing a service which are capitalized in
32 accordance with generally accepted governmental accounting principles.
- 33 (4) 'Communications network' means a wired or wireless network for the provision of
34 communications services.
- 35 (5) 'Communications service' means the provision of cable service, video programming
36 service, telecommunications service, broadband service, or high-speed Internet service
37 to the public for a fee, regardless of the technology used to deliver the service.
- 38 (6) 'Cross-subsidization' or 'cross-subsidize' or 'cross-subsidy' means the payment of any
39 item of direct or indirect costs of providing a service from a source other than from the
40 revenues derived from the sale of communications services, or a source that is not
41 accounted for in the full-cost accounting of providing the service.
- 42 (7) 'Direct costs' means those expenses of a public provider which are directly
43 attributable to the provision of a service that would be eliminated if the provision of said
44 service were discontinued.
- 45 (8) 'Franchising authority' means any governmental entity which is authorized by law to
46 grant a franchise and which is also a public provider.
- 47 (9) 'Full-cost accounting' means the accounting for all costs incurred by a public provider
48 in providing a service, including all direct and indirect costs, utilizing cost accounting
49 standards promulgated by the federal Costs Accounting Standards Board of the federal
50 Office of Management and Budget so as to assure that all direct and indirect costs are
51 included.
- 52 (10) 'Generally accepted governmental accounting principles' means the accounting
53 standards promulgated from time to time by the Governmental Accounting Standards
54 Board.
- 55 (11) 'High-speed Internet service' means Internet access service with transmission speeds
56 that are equal to or greater than the requirements for basic broadband tier 1 service as
57 defined by the Federal Communications Commission for broadband data gathering and
58 reporting.

59 (12) 'Indirect costs' means any costs that are identified with two or more services or other
 60 public provider functions and are not directly identified with a single service. Indirect
 61 costs may include, but are not limited to, administration, accounting, personnel,
 62 purchasing, legal, and other staff or departmental support. Indirect costs shall be
 63 allocated to two or more services in proportion to the relative burden each respective
 64 service places upon the cost category.

65 (13) 'Private provider' means any person, firm, partnership, corporation, or association,
 66 other than a public provider, offering communications service.

67 (14) 'Public provider' means any county, municipal corporation, or other political
 68 subdivision of the state which provides communications service using a communications
 69 network, whether directly, indirectly, or through any authority or instrumentality acting
 70 on behalf of or jointly with other public providers for the benefit of any county, municipal
 71 corporation, or other political subdivision of the state.

72 (15) 'Subscriber' means any private person lawfully receiving any communications
 73 service provided by a private provider or public provider.

74 (16) 'Telecommunications service' means any service provided for a charge or
 75 compensation to facilitate the origination, transmission, emission, or reception of signs,
 76 signals, data, writings, images, sounds, or intelligence of any nature by telephone or
 77 telephone service, including public pay telephones, or cable television service (CATV),
 78 including cellular or other wireless telephones, wire, radio, electromagnetic, photo
 79 electronic, or photo-optical system.

80 (17) 'Unserved area' means a census block, as designated by the United States decennial
 81 census of 2010 or any future such census, in which at least 50 percent of households
 82 either have no access to Broadband service or have access only from a satellite provider.

83 (18) 'Video programming service' means programming provided by, or generally
 84 considered comparable to programming provided by, a television broadcast station, as set
 85 forth in 47 U.S.C. Section 522(20).

86 36-90-3.

87 (a) Prior to receiving the authorization to deliver communications services or to invest
 88 capital in any facilities designed to provide communications services for any purpose, a
 89 public provider shall:

90 (1) First solicit proposals from private providers in accordance with Code
 91 Section 36-90-10;

92 (2) Prepare reasonable projections of at least a three-year cost-benefit analysis which
 93 identifies and discloses the total projected direct costs and indirect costs of and revenues
 94 to be derived from providing the communications service. Such costs shall be determined

95 in accordance with this chapter, and generally accepted governmental accounting
 96 principles;

97 (3) Conduct at least two public hearings which shall be held at least 30 days apart. A
 98 notice of the time, place, and date of each hearing shall be:

99 (A) Published in a newspaper of general circulation within the jurisdiction of the public
 100 provider once a week for two weeks prior to the week in which the hearing is to be
 101 held;

102 (B) Posted on the Public Service Commission website at least 45 days in advance of
 103 the date of the hearing; and

104 (C) Mailed to private providers providing communications service within the
 105 jurisdiction of the public provider 45 days in advance of the date of the hearing; and

106 (4) Hold a special election upon the approval of the General Assembly by a local Act in
 107 each county or municipal corporation within the jurisdiction of the public provider. Such
 108 local Act shall specify the language to be used in the ballot for the special election which
 109 shall state in plain language the amount of debt being issued to finance the cost of
 110 providing communications service and that the public provider is required to pay any
 111 debts out of the public provider's general fund if revenues from the communications
 112 service do not meet the public provider's projections. The special election shall be held
 113 pursuant to Code Section 21-2-540. A majority of the votes cast in the special election
 114 must approve the public provider's plan to provide communications service or its
 115 investment of capital for the provision of communications service. A public provider
 116 shall not be required to obtain voter approval prior to the sale or discontinuance of the
 117 public provider's communications network.

118 (b) No county or municipal corporation that has received approval to provide
 119 communications service, has been granted the authority to provide communications
 120 service, or is providing communications service under the laws of this state on or before
 121 June 30, 2012, shall be required to comply with the provisions of Code Section 36-90-10
 122 or with subsection (a) of this Code section.

123 36-90-4.

124 (a) No public provider shall cross-subsidize the costs of providing communications
 125 service with funds from any noncommunications service, operation, or revenue source,
 126 including any funds from electric, water, natural gas, sewer, or garbage services. Each year
 127 an officer of the public provider shall certify to the Public Service Commission that no
 128 cross-subsidy has taken place in the most recent calendar or fiscal year.

129 (b) A public provider shall establish one or more separate funds for the provision of
130 communications service, use the funds to separately account for revenues, expenses,
131 property, and capital funding associated with the provision of the communications service.

132 (c) The public provider shall annually remit to the general fund of the county or municipal
133 corporation an amount equal to all taxes and fees that a similarly situated private service
134 provider would be required to pay to the county or city.

135 (d) In determining the cost of providing communications service, a public provider shall
136 impute an amount for the following into its indirect costs of providing service:

137 (1) Capital costs in an amount equal to the cost of capital for a private provider;

138 (2) An amount equal to all taxes, franchise fees, regulatory fees, occupation taxes, and
139 pole attachment fees, calculated in the same manner as such amounts are calculated for
140 any private provider paying such costs to the public provider for providing the same
141 communications service; and

142 (3) Expenses related to any facilities, buildings, equipment, vehicles, and personnel used
143 by the public provider in providing communications services.

144 (e) Each public provider shall prepare and publish an independent annual report and audit
145 in accordance with generally accepted governmental accounting principles that record the
146 full-cost accounting of providing service, including all direct, imputed, and indirect costs.
147 Each public provider shall also maintain records that show the amount and source of
148 capital, including working capital, utilized in providing communications service.

149 36-90-5.

150 (a) In providing communication service, a public provider shall not employ terms more
151 favorable or less burdensome than those imposed by the public provider upon any private
152 provider providing the same communication service within its jurisdiction with respect to
153 franchise terms and conditions, conditions of access to public property, and pole
154 attachment.

155 (b) A franchising authority shall not impose or enforce any local regulation on any private
156 provider which is not also made applicable to any competing public provider, nor shall a
157 franchising authority discriminate between a public provider and private provider.

158 (c) A public provider shall not under its governmental powers, including zoning or
159 land-use regulation, directly or indirectly exercise power or authority to withhold or delay
160 the provision of any utility service or require any person, including residents of a particular
161 development, to use or subscribe to any communications service provided by the public
162 provider.

163 (d) A public provider may not unreasonably withhold a request by a private provider to
164 transfer, modify, or renew its existing franchise in accordance with the terms of the

165 franchise and in accordance with the provisions of 47 U.S.C. Section 537, 47 U.S.C. 545,
 166 and 47 U.S.C. Section 546.

167 (e) No public provider shall advertise or promote its communications service on a public,
 168 educational, or governmental access channel that is provided by a private provider.

169 (f) No public provider shall use governmental resources or tax revenue to promote a public
 170 provider's communications service or, directly or indirectly, require government
 171 employees, officers, vendors, or agents to purchase the public provider's service.

172 (g) No public provider shall increase the costs of business taxes or other fees for
 173 franchises, rights of way, or licenses charged to private providers in order to fund a deficit
 174 in a public provider's communications service operation.

175 (h) In any action by a franchising authority to enforce any term or condition of a franchise
 176 agreement, a violation of this Code section by the public provider with respect to such
 177 respective term or condition shall be a defense in such action.

178 (i) A public provider shall comply with all local, state, and federal laws, regulations, or
 179 other requirements applicable to the provision of the communications service if that service
 180 was provided by a private provider.

181 (j) A public provider shall limit the provision of communications services to the areas
 182 within the geographic boundaries of the county or municipal corporation, and in no
 183 instance shall it provide communications service within the geographic boundaries of
 184 another municipal corporation or county.

185 (k) A public provider shall provide nondiscriminatory access to private providers for rights
 186 of way, poles, or other facilities owned, leased, or operated by the public provider.

187 36-90-6.

188 A public provider shall offer its service at a price or rate to each subscriber that is either (1)
 189 equal to or greater than the price or rate for comparable service of competing private
 190 providers or (2) equal to or greater than the incremental direct, imputed, and indirect costs
 191 of providing service to such subscriber.

192 36-90-7.

193 (a) The provisions of this chapter shall not apply to the operation of facilities by a county
 194 or municipal corporation to provide exclusive communications service for the county's or
 195 municipal corporation's internal governmental purpose.

196 (b) The provisions of this chapter shall not apply to the provision of communications
 197 services in an unserved area. A public provider seeking to provide communications
 198 services in an unserved area shall file a petition with the Public Service Commission for

199 a determination that the area is unserved. Objections to the petition shall be filed in
200 accordance with the rules of the Public Service Commission.

201 36-90-8.

202 All meetings and records of public providers of a communications service shall be subject
203 to the Georgia public records and public meetings law contained, respectively, in Article 4
204 of Chapter 18 of Title 50 and Chapter 14 of Title 50; provided, however, that the
205 exemption set forth in paragraph (1) of subsection (b) of Code Section 50-18-72 regarding
206 trade secrets shall not apply to information provided to a governmental entity by a public
207 provider.

208 36-90-9.

209 The immunity from antitrust liability afforded to local governments by the provisions of
210 Code Sections 36-65-1 and 36-65-2 shall not apply to public providers in the offering and
211 providing of services as defined in this chapter; and public providers shall be subject to
212 applicable antitrust liabilities, subject, however, to the provisions of the federal Local
213 Government Antitrust Act of 1984, 15 U.S.C. Sections 34-36.

214 36-90-10.

215 (a) The public provider shall issue requests for proposals from private providers that
216 specify the nature and scope of the requested communications service, the area in which
217 it is to be provided, any specifications and performance standards, and information as to
218 the public provider's proposed participation in providing equipment infrastructure, or other
219 aspects of the communications service.

220 (b) The public provider shall provide notice that it is requesting proposals in accordance
221 with this Code section. The notice shall state the time and place where plans and
222 specifications for the proposed communications service may be obtained and the time and
223 place for opening proposals. Notice for requests for proposal shall be given by all of the
224 following methods:

225 (1) By mailing a notice of request for proposals to each private provider that has obtained
226 a license or permit to use the public rights of way to provide a communications service
227 within the public provider's jurisdiction by depositing such notices in the mail at least 30
228 days prior to the date specified for the opening of proposals;

229 (2) By posting a notice of request for proposals on the public provider's website at least
230 30 days before the time specified for the opening of proposals; and

231 (3) By publishing a notice of request for proposals in a newspaper of general circulation
232 in the area where the public provider is predominantly located at least 30 days before the
233 time specified for the opening of proposals.

234 (c) The public provider shall negotiate a contract with the most responsive private provider
235 for the provision of communications services specified in the request for proposals. If the
236 public provider is unable to successfully negotiate the terms of a contract with the most
237 responsive private provider within 60 days of the receipt of all proposals, the public
238 provider may proceed to negotiate with the next most responsive private provider. If the
239 public provider is unable to successfully negotiate the terms of a contract with the next
240 most responsive private provider within 60 days of commencing negotiations, the public
241 provider may proceed under this chapter to provide communications service.

242 (d) All proposals shall be sealed and shall be opened in public; provided, however, that a
243 private provider's trade secret or proprietary information shall not be shared publicly."

244 **SECTION 2.**

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