

House Bill 1115

By: Representatives Dudgeon of the 24<sup>th</sup>, Parsons of the 42<sup>nd</sup>, and Martin of the 47<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 4 of Title 14 and Title 46 of the Official Code of Georgia  
2 Annotated, relating to general provisions applicable to Secretary of State corporations and  
3 public utilities and public transportation, respectively, so as to revise and update certain  
4 provisions relating to telecommunications; to remove telegraph companies from the  
5 jurisdiction of the Public Service Commission; to change certain provisions relating to  
6 exercise of power of eminent domain by telephone and telegraph companies; to change  
7 certain provisions relating to avoiding or attempting to avoid charges for use of  
8 telecommunications service; to change certain provisions relating to access to a live  
9 telephone operator; to eliminate provisions relating to granting of certificates to persons  
10 engaged in construction or operation of telephone line, plant, or system as of February 1950;  
11 to eliminate certain provisions relating to telegraph service; to amend various other titles of  
12 the Official Code of Georgia Annotated, so as to revise cross-references for purposes of  
13 conformity; to provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 1 of Chapter 4 of Title 14 of the Official Code of Georgia Annotated, relating to  
17 general provisions applicable to Secretary of State corporations, is amended by revising Code  
18 Section 14-4-2, relating to existing venue statutes unaffected by Chapter 4, as follows:

19 "14-4-2.

20 Nothing in this chapter shall affect existing statutes with respect to the venue of actions  
21 against railroad, electric, banking, trust, insurance, canal, navigation, express, and telegraph  
22 companies, which existing statutes include, as to express companies, those statutes codified  
23 as Code Sections 46-9-234 through 46-9-236; ~~as to telegraph companies, that statute~~  
24 ~~codified as Code Section 46-5-149~~; as to companies under the jurisdiction of the Georgia  
25 Public Service Commission, that statute codified as Code Section 46-2-92."

26 **SECTION 2.**

27 Code Section 36-34-2 of the Official Code of Georgia Annotated, relating to powers relating  
 28 to administration of government generally, is amended by revising subparagraph (A) of  
 29 paragraph (7) as follows:

30 "(A) The power to grant franchises to or make contracts with railroads, street railways,  
 31 or urban transportation companies, electric light or power companies, gas companies,  
 32 steam-heat companies, telephone ~~and telegraph~~ companies, water companies, and other  
 33 public utilities for the use and occupancy of the streets of the city, for the purpose of  
 34 rendering utility services, upon such conditions and for such time as the governing  
 35 authority of the municipal corporation may deem wise and subject to the Constitution  
 36 and the general laws of this state."

37 **SECTION 3.**

38 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public  
 39 transportation, is amended by revising subsection (a) of Code Section 46-2-20, relating to  
 40 jurisdiction of commission generally and powers and duties of commission generally, as  
 41 follows:

42 "(a) Except as otherwise provided by law, the commission shall have the general  
 43 supervision of all common carriers, express companies, railroad or street railroad  
 44 companies, dock or wharfage companies, terminal or terminal station companies,  
 45 telephone ~~and telegraph~~ companies, gas or electric light and power companies, and  
 46 persons or private companies who operate rapid rail passenger service lines within this  
 47 state; provided, however, that nothing in this subsection shall be deemed to extend the  
 48 jurisdiction of the commission to include the operations of the Metropolitan Atlanta  
 49 Rapid Transit Authority created in an Act approved March 10, 1965 (Ga. L. 1965, p.  
 50 2243), as amended."

51 **SECTION 4.**

52 Said title is further amended by revising Code Section 46-2-22, relating to jurisdiction of  
 53 commission over express companies and telegraph companies, as follows:

54 "46-2-22.

55 ~~All companies owning, controlling, or operating lines of express or telegraph which are in~~  
 56 ~~whole or in part in this state shall be under the control of the commission, which shall have~~  
 57 ~~full power to regulate the prices charged by any such company for any service performed~~  
 58 ~~by such company. All the powers given to the commission over railroads in this state and~~  
 59 ~~all the penalties prescribed against railroad companies are declared to be of force against~~  
 60 ~~companies owning, controlling, or operating lines of express or telegraph and doing~~

61 ~~business in this state and whose lines are in whole or in part in this state, so far as such~~  
 62 ~~powers and penalties can be made applicable thereto. The commission shall also have~~  
 63 ~~power and authority to require such companies to locate agencies at railroad stations~~  
 64 Reserved."

#### 65 **SECTION 5.**

66 Said title is further amended by revising Code Section 46-2-23, relating to rate-making power  
 67 of commission generally and special provisions concerning telecommunications companies,  
 68 as follows:

69 "46-2-23.

70 (a) The commission shall have exclusive power to determine what are just and reasonable  
 71 rates and charges to be made by any person, firm, or corporation subject to its jurisdiction.

72 (b) As to those telecommunications companies subject to the jurisdiction of the  
 73 commission, the commission is not required to fix and determine specific rates, tariffs, or  
 74 charges for the services offered by said telecommunications companies and in lieu thereof  
 75 may on application of an interested party or on its own motion after public notice and  
 76 hearing:

77 (1) Totally deregulate a service;

78 (2) Totally eliminate any tariffs on a service;

79 (3) Eliminate tariff rates for a service but retain tariffs for service standards and  
 80 requirements; or

81 (4) Eliminate tariff rates for a service but require that notice of any rate changes be  
 82 provided to the commission.

83 (c) In determining what actions, if any, are to be taken on applications under subsection  
 84 (b) of this Code section, the commission shall conduct hearings at which it shall consider  
 85 the following factors:

86 (1) The extent to which competing telecommunications services are available from  
 87 competitive providers in the relevant geographic market;

88 (2) The ability of competitive providers to make functionally equivalent or substitute  
 89 services readily available;

90 (3) The number and size of competitive providers of service;

91 (4) The overall impact of the proposed regulatory change on the continued availability  
 92 of existing services at just and reasonable rates;

93 (5) The impact of the proposed regulatory change upon efforts to promote universal  
 94 availability of basic telecommunications services at affordable rates and to permit  
 95 telecommunications companies subject to the jurisdiction of the commission to respond  
 96 to competitive thrusts; and

97 (6) Such other factors as the commission may determine are in the public interest.

98 (d) Nothing in this Code section shall authorize the application of subsection (b) of this  
99 Code section to any service unless functionally equivalent or substitute services are readily  
100 available from competitive providers in the relevant geographic market. This finding must  
101 be made on the record after public hearing.

102 (e) Any telecommunications service deregulated or detariffed under this Code section may  
103 be reregulated or resubjected to tariffing by the commission if the commission finds,  
104 through a proceeding initiated on its own or upon application by an interested party, that  
105 such reregulation or retariffing is in the public interest.

106 (f) Nothing in this Code section shall be interpreted as requiring the commission to alter,  
107 amend, or repeal any rule or regulation which relates to any telecommunications company  
108 and which has been adopted by the commission or which is under consideration for  
109 adoption by the commission as of April 14, 1988.

110 (g) No telecommunications company may use current revenues earned or expenses  
111 incurred in conjunction with services subject to regulation to subsidize services which are  
112 not regulated or tariffed. The commission may adopt procedural rules as necessary to  
113 implement this subsection.

114 ~~(h) Beginning one year after deregulation or eliminating tariffs on a service, the utility will~~  
115 ~~file within 60 days of such anniversary date with the commission a report showing the rates~~  
116 ~~or tariffs for such service on the effective date of deregulation or detariffing and the rates~~  
117 ~~or tariffs on the anniversary date. Such reports will continue to be filed on an updated basis~~  
118 ~~annually for a period of five years. The commission may prescribe the form and content~~  
119 ~~of such reports. The commission will thereafter as soon as practicable file a summary of~~  
120 ~~the results and contents of such reports with the House Energy, Utilities and~~  
121 ~~Telecommunications Committee and the Senate Regulated Industries and Utilities~~  
122 ~~Committee."~~

123 **SECTION 6.**

124 Said title is further amended by revising Code Section 46-5-1, relating to exercise of power  
125 of eminent domain by telephone and telegraph companies, placement of posts and other  
126 fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, liability  
127 of telegraph and telephone companies for damages, required information, and due  
128 compensation, as follows:

129 "46-5-1.

130 (a)(1) Any ~~telegraph~~ or telephone company chartered by the laws of this or any other  
131 state shall have the right to construct, maintain, and operate its lines and facilities upon,  
132 under, along, and over the public roads and highways and rights of way of this state with

133 the approval of the county or municipal authorities in charge of such roads, highways,  
 134 and rights of way. The approval of such municipal authorities shall be limited to the  
 135 process set forth in paragraph (3) of subsection (b) of this Code section, and the approval  
 136 of the county shall be limited to the permitting process set forth in subsection (c) of this  
 137 Code section. Upon making due compensation, as defined for municipal authorities in  
 138 paragraph (9) of subsection (b) of this Code section and as provided for counties in  
 139 subsection (c) of this Code section, a ~~telegraph~~ or telephone company shall have the right  
 140 to construct, maintain, and operate its lines through or over any lands of this state; on,  
 141 along, and upon the right of way and structures of any railroads; and, where necessary,  
 142 under or over any private lands; and, to that end, a ~~telegraph~~ or telephone company may  
 143 have and exercise the right of eminent domain.

144 (2) Notwithstanding any other law, a municipal authority or county shall not:

145 (A) Require any ~~telegraph~~ or telephone company to apply for or enter into an  
 146 individual license, franchise, or other agreement with such municipal authority or  
 147 county; or

148 (B) Impose any occupational license tax or fee as a condition of placing or maintaining  
 149 lines and facilities in its public roads and highways or rights of way, except as  
 150 specifically set forth in this Code section.

151 (3) A county or municipal authority shall not impose any occupational license, tax, fee,  
 152 regulation, obligation, or requirement upon the provision of the services described in  
 153 paragraphs (1) and (2) of Code Section 46-5-221, including any occupational license, tax,  
 154 fee, regulation, obligation, or requirement specifically set forth in any part of this chapter  
 155 other than Part 4.

156 (4) Whenever a ~~telegraph~~ or telephone company exercises its powers under paragraph  
 157 (1) of this subsection, the posts, arms, insulators, and other fixtures of its lines shall be  
 158 erected, placed, and maintained so as not to obstruct or interfere with the ordinary use of  
 159 such railroads or public roads and highways, or with the convenience of any landowners,  
 160 more than may be unavoidable. Any lines constructed by a ~~telegraph~~ or telephone  
 161 company on the right of way of any railroad company shall be subject to relocation so as  
 162 to conform to any uses and needs of such railroad company for railroad purposes. Such  
 163 fixtures, posts, and wires shall be erected at such distances from the tracks of said  
 164 railroads as will prevent any and all damage to said railroad companies by the falling of  
 165 said fixtures, posts, or wires upon said railroad tracks; and such ~~telegraph~~ or telephone  
 166 companies shall be liable to said railroad companies for all damages resulting from a  
 167 failure to comply with this Code section.

168 (5) No county or municipal authority shall impose upon a ~~telegraph~~ or telephone  
 169 company any build-out requirements on network construction or service deployment, and,

170 to the extent that a ~~telegraph or~~ telephone company has elected alternative regulation  
 171 pursuant to Code Section 46-5-165, such company may satisfy its obligations pursuant  
 172 to paragraph (2) of Code Section 46-5-169 by providing communications service, at the  
 173 company's option, through any affiliated companies and through the use of any  
 174 technology or service arrangement; provided, however, that such company shall remain  
 175 subject to its obligations as set forth in paragraphs (4) and (5) of Code Section 46-5-169.  
 176 The obligations required pursuant to paragraph (2) of Code Section 46-5-169 shall not  
 177 apply to a telephone company that has elected alternative regulation pursuant to Code  
 178 Section 46-5-165 and does not receive distributions from the Universal Access Fund as  
 179 provided for in Code Section 46-5-167.

180 (b)(1) Except as set forth in paragraph (6) of this subsection, any ~~telegraph or~~ telephone  
 181 company that places or seeks to place lines and facilities in the public roads and highways  
 182 or rights of way of a municipal authority shall provide to such municipal authority the  
 183 following information:

184 (A) The name, address, and telephone number of a principal office and local agent of  
 185 such ~~telegraph or~~ telephone company;

186 (B) Proof of certification from the Georgia Public Service Commission of such  
 187 ~~telegraph or~~ telephone company to provide telecommunications services in this state;

188 (C) Proof of insurance or self-insurance of such ~~telegraph or~~ telephone company  
 189 adequate to defend and cover claims of third parties and of municipal authorities;

190 (D) A description of the ~~telegraph or~~ telephone company's service area, which  
 191 description shall be sufficiently detailed so as to allow a municipal authority to respond  
 192 to subscriber inquiries. For the purposes of this paragraph, a ~~telegraph or~~ telephone  
 193 company may, in lieu of or as supplement to a written description, provide a map on 8  
 194 1/2 by 11 inch paper that is clear and legible and that fairly depicts the service area  
 195 within the boundaries of the municipal authority. If such service area is less than the  
 196 boundaries of an entire municipal authority, the map shall describe the boundaries of  
 197 the geographic area to be served in clear and concise terms;

198 (E) A description of the services to be provided;

199 (F) An affirmative declaration that the ~~telegraph or~~ telephone company shall comply  
 200 with all applicable federal, state, and local laws and regulations, including municipal  
 201 ordinances and regulations, regarding the placement and maintenance of facilities in the  
 202 public rights of way that are reasonable, nondiscriminatory, and applicable to all users  
 203 of the public rights of way, including the requirements of Chapter 9 of Title 25, the  
 204 'Georgia Utility Facility Protection Act'; and

205 (G) A statement in bold type at the top of the application as follows: 'Pursuant to  
 206 paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia

207 Annotated, the municipal authority shall notify the applicant of any deficiencies in this  
208 application within 15 business days of receipt of this application.'

209 (2) If an application is incomplete, the municipal authority shall notify the ~~telegraph or~~  
210 telephone company within 15 business days of the receipt of such application; such notice  
211 shall specifically identify all application deficiencies. If no such notification is given  
212 within 15 business days of the receipt of an application, such application shall be deemed  
213 complete.

214 (3) Within 60 calendar days of the receipt of a completed application, the municipal  
215 authority may adopt such application by adoption of a resolution or ordinance or by  
216 notification to the ~~telegraph or~~ telephone company. The failure of a municipal authority  
217 to adopt an application within 60 calendar days of the receipt of a completed application  
218 shall constitute final adoption of such application.

219 (4) If it modifies its service area or provisioned services identified in the original  
220 application, the ~~telegraph or~~ telephone company shall notify the municipal authority of  
221 changes to the service area or the services provided. Such notice shall be given at  
222 least 20 days prior to the effective date of such change. Such notification shall contain  
223 a geographic description of the new service area or areas and new services to be provided  
224 within the jurisdiction of the affected municipal authority, if any. The municipal  
225 authority shall provide to all ~~telegraph and~~ telephone companies located in its rights of  
226 way written notice of annexations and changes in municipal corporate boundaries which,  
227 for the purposes of this Code section, shall become effective 30 days following receipt.

228 (5) An application adopted pursuant to this Code section may be terminated by a  
229 ~~telegraph or~~ telephone company by submitting a notice of termination to the affected  
230 municipal authority. For purposes of this Code section, such notice shall identify the  
231 ~~telegraph or~~ telephone company, the affected service area, and the effective date of such  
232 termination, which shall not be less than 60 calendar days from the date of filing the  
233 notice of termination.

234 (6) Any ~~telegraph or~~ telephone company that has previously obtained permits for the  
235 placement of its facilities, has specified the name of such ~~telegraph or~~ telephone company  
236 in such permit application, has previously placed its facilities in any public right of way,  
237 and has paid and continues to pay any applicable municipal authority's occupational  
238 license taxes, permit fees, franchise fees, except as set forth in paragraph (8) of this  
239 subsection, or, if applicable, county permit fees shall be deemed to have complied with  
240 this Code section without any further action on the part of such ~~telegraph or~~ telephone  
241 company except as set forth in paragraphs (8), (9), (11), and (17) of this subsection.

242 (7) Any ~~telegraph or~~ telephone company that has placed lines and facilities in the public  
243 roads and highways or rights of way of a municipal authority without first obtaining

244 permits or otherwise notifying the appropriate municipal authority of its presence in the  
 245 public roads and highways or rights of way shall provide the information required by  
 246 paragraph (1) of this subsection, if applicable, to such municipal authority on or before  
 247 October 1, 2008. As of October 1, 2008, if any ~~telegraph or~~ telephone company, other  
 248 than those who meet the requirements of paragraph (6) of this subsection, has failed or  
 249 fails to provide the information required by paragraph (1) of this subsection to the  
 250 municipal authority in which its lines or facilities are located, such municipal authority  
 251 shall provide written notice to such ~~telegraph or~~ telephone company giving that company  
 252 15 calendar days from the date of receipt of such notice to comply with subsection (b) of  
 253 this Code section. In the event the 15 calendar day cure period expires without  
 254 compliance, such municipal authority may petition the Georgia Public Service  
 255 Commission which shall, after an opportunity for a hearing, order the appropriate relief.

256 (8)(A) In the event any ~~telegraph or~~ telephone company has an existing, valid  
 257 municipal franchise agreement as of January 1, 2008, the terms and conditions of such  
 258 existing franchise agreement shall only remain effective and enforceable until the  
 259 expiration of the existing agreement or December 31, 2012, whichever shall first occur.

260 (B) In the event any ~~telegraph or~~ telephone company is paying an existing occupational  
 261 license tax or fee, based on actual recurring local services revenues, as of January 1,  
 262 2008, such payment shall be considered the payment of due compensation without  
 263 further action on the part of the municipal authority. In the event that the rate of such  
 264 existing tax or fee exceeds 3 percent of actual recurring local service revenues, that rate  
 265 shall remain effective until December 31, 2012; thereafter, the payment by such  
 266 ~~telegraph or~~ telephone company at the rate of 3 percent shall be considered the payment  
 267 of due compensation without further action on the part of the municipal authority.

268 (9) As used in this Code section, 'due compensation' for a municipal authority means an  
 269 amount equal to no more than 3 percent of actual recurring local service revenues  
 270 received by such company from its retail, end user customers located within the  
 271 boundaries of such municipal authority. 'Actual recurring local service revenues' means  
 272 those revenues customarily included in the Uniform System of Accounts as prescribed  
 273 by the Federal Communications Commission for Class 'A' and 'B' companies; provided,  
 274 however, that only the local service portion of the following accounts shall be included:

275 (A) Basic local service revenue, as defined in 47 C.F.R. 32.5000;

276 (B) Basic area revenue, as defined in 47 C.F.R. 32.5001;

277 (C) Optional extended area revenue, as defined in 47 C.F.R. 32.5002;

278 (D) Public telephone revenue, as defined in 47 C.F.R. 32.5010;

279 (E) Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however,  
 280 that the portion of such accounts attributable to audio and video program transmission

281 service where both terminals of the private line are within the corporate limits of the  
 282 municipal authority shall not be included;

283 (F) Other local exchange revenue, as defined in 47 C.F.R. 32.5060;

284 (G) Local exchange service, as defined in 47 C.F.R. 32.5069;

285 (H) Network access revenue, as defined in 47 C.F.R. 32.5080;

286 (I) Directory revenue, as defined in 47 C.F.R. 32.5320; provided, however, that the  
 287 portion of such accounts attributable to revenue derived from listings in portion of  
 288 directories not considered white pages shall not be included;

289 (J) Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided,  
 290 however, that the portion of such accounts attributable to revenues derived from private  
 291 lines shall not be included; and

292 (K) Uncollectible revenue, as defined in 47 C.F.R. 32.5300.

293 Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory  
 294 and competitively neutral manner.

295 (10) Any due compensation paid to municipal authorities pursuant to paragraph (9) of  
 296 this subsection shall be in lieu of any other permit fee, encroachment fee, degradation fee,  
 297 disruption fee, business license tax, occupational license tax, occupational license fee, or  
 298 other fee otherwise permitted pursuant to the provisions of subparagraph (A) of paragraph  
 299 (7) of Code Section 36-34-2 or Code Section 32-4-92 et seq. or any other provision of  
 300 law regardless of nomenclature.

301 (11) A ~~telegraph~~ or telephone company with facilities in the public rights of way of a  
 302 municipal authority shall begin assessing due compensation, as defined in subsection (a)  
 303 of this Code section, on subscribers on the date that service commences unless such  
 304 company is currently paying a municipal authority's occupational license tax. Such due  
 305 compensation shall be paid directly to each affected municipal authority within 30  
 306 calendar days after the last day of each calendar quarter. In the event that due  
 307 compensation is not paid on or before 30 calendar days after the last day of each calendar  
 308 quarter, the affected municipal authority shall provide written notice to such ~~telegraph~~ or  
 309 telephone company, giving such company 15 calendar days from the date such company  
 310 receives such notice to cure any such nonpayment. In the event the due compensation  
 311 remitted to the affected municipal authority is not postmarked on or before the expiration  
 312 of the 15 day cure period, such company shall pay interest thereon at a rate of 1 percent  
 313 per month to the affected municipal authority. If the 15 day cure period expires on a  
 314 Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day.  
 315 A ~~telegraph~~ or telephone company shall not be assessed any interest on late payments if  
 316 due compensation was submitted in error to a neighboring municipal authority.

317 (12) Each municipal authority may, no more than once annually, audit the business  
318 records of a ~~telegraph~~ or telephone company to the extent necessary to ensure payment  
319 in accordance with this Code section. As used in this Code section, 'audit' means a  
320 comprehensive review of the records of a company which is reasonably related to the  
321 calculation and payment of due compensation. Once any audited period of a company  
322 has been the subject of a requested audit, such audited period of such company shall not  
323 again be the subject of any audit. In the event of a dispute concerning the amount of due  
324 compensation due to an affected municipal authority under this Code section, an action  
325 may be brought in a court of competent jurisdiction by an affected municipal authority  
326 seeking to recover an additional amount alleged to be due or by a company seeking a  
327 refund of an alleged overpayment; provided, however, that any such action shall be  
328 brought within three years following the end of the quarter to which the disputed amount  
329 relates, although such time period may be extended by written agreement between the  
330 company and such affected municipal authority. Each party shall bear the party's own  
331 costs incurred in connection with any dispute. The auditing municipal authority shall  
332 bear the cost of the audit; provided, however, that if an affected municipal authority files  
333 an action to recover alleged underpayments of due compensation and a court of  
334 competent jurisdiction determines the company has underpaid due compensation due for  
335 any 12 month period by 10 percent or more, such company shall be required to pay such  
336 municipal authority's reasonable costs associated with such audit along with any due  
337 compensation underpayments; provided, further, that late payments shall not apply. All  
338 undisputed amounts due to a municipal authority resulting from an audit shall be paid to  
339 the municipal authority within 45 days, or interest shall accrue.

340 (13) The information provided pursuant to paragraph (1) of this subsection and any  
341 records or information furnished or disclosed by a ~~telegraph~~ or telephone company to an  
342 affected municipal authority pursuant to paragraph (12) of this subsection shall be exempt  
343 from public inspection under Code Section 50-18-70. It shall be the duty of such  
344 ~~telegraph~~ or telephone company to mark all such documents as exempt from Code  
345 Section 50-18-70, et seq., and the ~~telegraph~~ or telephone company shall defend,  
346 indemnify, and hold harmless any municipal authority and any municipal officer or  
347 employee in any request for, or in any action seeking, access to such records.

348 (14) No acceptance of any payment shall be construed as a release or as an accord and  
349 satisfaction of any claim an affected municipal authority may have for further or  
350 additional sums payable as due compensation.

351 (15) Any amounts overpaid by a company as due compensation shall be deducted from  
352 future due compensation owed.

353 (16) A ~~telegraph~~ or telephone company paying due compensation pursuant to this Code  
354 section may designate that portion of a subscriber's bill attributable to such charge as a  
355 separate line item of the bill and recover such amount from the subscriber.

356 (17) Nothing in this Code section shall affect the authority of a municipal authority to  
357 require ~~telegraph~~ or telephone companies accessing the public roads and highways and  
358 rights of way of a municipal authority to obtain permits and otherwise comply with the  
359 reasonable regulations established pursuant to paragraph (10) of subsection (a) of Code  
360 Section 32-4-92.

361 (18) If a ~~telegraph~~ or telephone company does not have retail, end user customers located  
362 within the boundaries of a municipal authority, then the payment by such company at the  
363 same rates that such payments were being made as of January 1, 2008, to a municipal  
364 authority for the use of its rights of way shall be considered the payment of due  
365 compensation; provided, however, that at the expiration date of any existing agreement  
366 for use of such municipal rights of way or December 31, 2012, whichever is earlier, the  
367 payment at rates in accordance with the rates set by regulations promulgated by the  
368 Department of Transportation shall be considered the payment of due compensation.  
369 Provided, further, that if a ~~telegraph~~ or telephone company begins providing service after  
370 January 1, 2008, and such ~~telegraph~~ or telephone company does not have retail, end user  
371 customers located within the boundaries of a municipal authority, the payment by such  
372 company at rates in accordance with the rates set by regulations promulgated by the  
373 Department of Transportation to a municipal authority for the use of its rights of way  
374 shall be considered the payment of due compensation.

375 (19) Nothing in this Code section shall be construed to affect any franchise fee payments  
376 which were in dispute on or before January 1, 2008.

377 (c) If a ~~telegraph~~ or telephone company accesses the public roads and highways and rights  
378 of way of a county and such county requires such ~~telegraph~~ or telephone company to pay  
379 due compensation, such due compensation shall be limited to an administrative cost  
380 recoupment fee which shall not exceed such county's direct, actual costs incurred in its  
381 permitting process, including issuing and processing permits, plan reviews, physical  
382 inspection and direct administrative costs; and such costs shall be demonstrable and shall  
383 be equitable among applicable users of such county's roads and highways or rights of way.  
384 Permit fees shall not include the costs of highway or rights of way acquisition or any  
385 general administrative, management, or maintenance costs of the roads and highways or  
386 rights of way and shall not be imposed for any activity that does not require the physical  
387 disturbance of such public roads and highways or rights of way or does not impair access  
388 to or full use of such public roads and highways or rights of way. Nothing in this Code  
389 section shall affect the authority of a county to require a ~~telegraph~~ or telephone company

390 to comply with reasonable regulations for construction of telephone lines and facilities in  
 391 public highways or rights of way pursuant to the provisions of paragraph (6) of Code  
 392 Section 32-4-42."

393 **SECTION 7.**

394 Said title is further amended by revising subsection (a) of Code Section 46-5-2, relating to  
 395 avoiding or attempting to avoid charges for use of telecommunications service, penalties, and  
 396 computation of damages, as follows:

397 "(a) It shall be unlawful for any person to avoid or attempt to avoid or to cause another to  
 398 avoid the lawful charges, in whole or in part, for any telecommunication service as defined  
 399 in subsection (a) of Code Section 46-5-3 or for the transmission of a message, signal, or  
 400 other communication by telephone ~~or telegraph~~ or over telecommunication ~~or telegraph~~  
 401 facilities by the use of any fraudulent scheme, means, or method, or by the use of any  
 402 unlawful telecommunication device as defined in subsection (a) of Code Section 46-5-3 or  
 403 other mechanical, electric, or electronic device; provided, however, that this Code section  
 404 and Code Sections 46-5-3 and 46-5-4 shall not apply to amateur radio repeater operation  
 405 involving a dial interconnect."

406 **SECTION 8.**

407 Said title is further amended by revising Code Section 46-5-26, relating to access to live  
 408 telephone operator, as follows:

409 "46-5-26.

410 (a) Each telecommunications utility and telecommunications company that provides  
 411 operator service shall ensure that a caller may obtain access to a live operator through a  
 412 method designed to be easily and clearly understandable and accessible to the caller. ~~A~~  
 413 ~~telecommunications utility or telecommunications company shall submit to the Public~~  
 414 ~~Service Commission the method by which the telecommunications utility or~~  
 415 ~~telecommunications company shall provide access to a live operator for review, except for~~  
 416 ~~a telecommunications utility or telecommunications company whose operator services are~~  
 417 ~~under the jurisdiction, regulation, and rules of the Public Service Commission.~~ This Code  
 418 section applies regardless of the method by which the telecommunications utility or  
 419 telecommunications company provides the operator service. The requirements of this Code  
 420 section shall not apply to telephones located in prisons or jail facilities or to wireless  
 421 telecommunication services. For the purpose of this Code section, 'operator services' means  
 422 services that are provided when a caller dials '0'.

423 (b) The failure of a telecommunications utility or telecommunications company to provide  
 424 access to a live operator as required in subsection (a) of this Code section shall not serve  
 425 as the basis for a cause of action for personal injuries or damage to property."

426 **SECTION 9.**

427 Said title is further amended by revising Code Section 46-5-41, relating to obtaining of  
 428 certificate of public convenience and necessity for construction, operation, acquisition, or  
 429 extension of telephone lines, plants, or systems, as follows:

430 "46-5-41.

431 ~~Except as provided in Code Section 46-5-46, no~~ No person shall construct or operate any  
 432 telephone line, plant, or system or any extension thereof or acquire ownership or control  
 433 thereof, either directly or indirectly, without first obtaining from the Public Service  
 434 Commission a certificate that the present or future public convenience and necessity  
 435 require or will require such construction, operation, or acquisition."

436 **SECTION 10.**

437 Said title is further amended by repealing in its entirety Code Section 46-5-46, relating to  
 438 granting of certificates to persons engaged in construction or operation of telephone line,  
 439 plant, or system as of February, 1950, which reads as follows:

440 "46-5-46.

441 (a) Any person engaged in the construction or operation of any telephone line, plant, or  
 442 system or any extension thereof as of February 17, 1950, shall be entitled to receive a  
 443 certificate of public convenience and necessity from the commission authorizing such  
 444 person to continue the construction or operation of such line, plant, or system or any  
 445 extension thereof in the territory being served by such person on February 17, 1950, if by  
 446 February 17, 1951, such person files maps with the commission showing the territory being  
 447 served by such person.

448 (b) If more than one person files maps pursuant to subsection (a) of this Code section  
 449 indicating service in the same territory, the commission shall, after a hearing conducted  
 450 after the giving of reasonable notice to the interested parties, determine from such evidence  
 451 as it may reasonably require which of such persons shall be entitled to the certificate. In  
 452 making such determination, the commission shall consider the ability of such persons to  
 453 furnish thereafter reasonably adequate service in the territory in question.

454 (c) Pending the granting of a certificate as provided in this Code section, any person may  
 455 lawfully continue the construction or operation of any telephone line, plant, or system or  
 456 any extension thereof in the territory being served by that person on February 17, 1950.

457 (d) This Code section shall not be construed to require any person to secure a certificate  
 458 for an extension within any municipality within which that person has lawfully commenced  
 459 operations prior to February 17, 1950, or for an extension within or to territory already  
 460 served by such person, which extension is necessary in the ordinary course of business.

461 (e) This Code section shall not be construed to require any person to secure a certificate  
 462 for the construction of substitute facilities within or to any municipality or territory already  
 463 served by that person or for an extension into territory contiguous to that already occupied  
 464 by that person and not receiving similar service from another person if no certificate of  
 465 public convenience and necessity has been issued to or applied for by any other person."

466

467

### SECTION 11.

468 Said title is further amended by repealing in its entirety Article 3 of Chapter 5, relating to  
 469 telegraph service, and designating such article as reserved as follows:

470

### "ARTICLE 3

471 ~~46-5-140.~~472 ~~As used in this article, the term:~~

473 ~~(1) 'Telegraph company' means every corporation, company, association, joint-stock~~  
 474 ~~association, partnership, and person, their lessees, trustees, or receivers appointed by any~~  
 475 ~~court whatsoever, owning, operating, or managing any telegraph line or part of a~~  
 476 ~~telegraph line used in the conduct of the business of affording for hire communication by~~  
 477 ~~telegraph within this state.~~

478 ~~(2) 'Telegraph line' means conduits, poles, wires, cables, crossarms, instruments,~~  
 479 ~~machines, appliances, instrumentalities, and all devices, including radio and other~~  
 480 ~~advancements of the art of telegraphy, real estate, easements, apparatus, property, and~~  
 481 ~~routes used and operated to facilitate the business of affording communication service by~~  
 482 ~~telegraph to the public for hire within this state.~~

483 ~~46-5-141.~~

484 ~~All corporate powers and privileges granted to telegraph companies in this state shall be~~  
 485 ~~granted in the manner described in this Code section. Whenever at least five persons who~~  
 486 ~~are 18 years of age or over and who are citizens of the United States, two-thirds of whom~~  
 487 ~~are residents of this state, propose to form a corporation for constructing, equipping, and~~  
 488 ~~operating any telegraph line or for carrying on the business of a telegraph company, they~~  
 489 ~~shall make and file in the office of the Secretary of State, in duplicate, a petition for charter,~~  
 490 ~~under their hands and seals, setting forth:~~

- 491 ~~(1) The name of the corporation proposed;~~  
 492 ~~(2) The object for which it is formed;~~  
 493 ~~(3) The amount of its proposed capital stock;~~  
 494 ~~(4) The number of shares of such capital stock;~~  
 495 ~~(5) The places from and to which such telegraph line is intended to be constructed,~~  
 496 ~~equipped, and operated, or, if already constructed, then the places from and to which the~~  
 497 ~~same is intended to be operated, giving as nearly as practicable the counties and cities~~  
 498 ~~through which it may or does pass;~~  
 499 ~~(6) The location of the principal office of such corporation by city and county, which~~  
 500 ~~shall be in this state;~~  
 501 ~~(7) The time of commencement and duration of said corporation, the period of duration~~  
 502 ~~not to exceed 50 years; and~~  
 503 ~~(8) The name and residence of each applicant.~~

504 ~~46-5-142.~~

505 ~~Upon the filing of the petition for charter as specified in Code Section 46-5-141, the~~  
 506 ~~applicants shall pay to the Secretary of State the fee of \$100.00. The Secretary of State~~  
 507 ~~shall thereafter transmit a copy of the petition to the Public Service Commission for~~  
 508 ~~approval prior to the issuance of a license. The Public Service Commission shall then~~  
 509 ~~approve or disapprove the issuance of a license based, in part, upon whether the proposed~~  
 510 ~~telegraph company has a sufficient amount of capitalization for incorporation. The Public~~  
 511 ~~Service Commission shall thereafter notify the Secretary of State in writing of its decision.~~  
 512 ~~If the petition is approved, the Secretary of State shall then issue to the applicants a license~~  
 513 ~~as commissioners to open books of subscription to the capital stock of the corporation at~~  
 514 ~~such times and places as a majority of the commissioners may determine after having given~~  
 515 ~~public notice thereof in the legal organ of the county where the principal office of the~~  
 516 ~~company will be located for at least two weeks and in one or more of the public~~  
 517 ~~newspapers of this state for at least two weeks.~~

518 ~~46-5-143.~~

519 ~~As soon as possible after the capital stock has been fully subscribed, the commissioners~~  
 520 ~~shall call a meeting of the subscribers to the capital stock for the purpose of electing~~  
 521 ~~directors and transacting such other business as may come before the meeting. Notice of~~  
 522 ~~the meeting shall be given by depositing in the post office, properly addressed to each~~  
 523 ~~subscriber, at least ten days before the time fixed, a written or printed notice stating the~~

524 ~~object, time, and place of such meeting. In all elections for directors of the proposed~~  
525 ~~corporation, each subscriber to the capital stock shall be entitled to one vote for each share~~  
526 ~~of the capital stock subscribed for by him, which vote may be cast in person or by written~~  
527 ~~proxy. At least three persons, two-thirds of whom shall be residents of Georgia, shall be~~  
528 ~~elected as directors of the proposed corporation.~~

529 ~~46-5-144.~~

530 ~~(a) The commissioners shall make a full report of their proceedings and of the proceedings~~  
531 ~~of the meeting of the stockholders, including a copy of the notice provided for in Code~~  
532 ~~Section 46-5-143; a copy of the list of subscribers, with a statement of their respective~~  
533 ~~residences and the number of shares subscribed for by each; and the names and residences~~  
534 ~~of the directors elected at the stockholders' meeting and their respective terms of office.~~  
535 ~~This report shall be sworn to by at least a majority of the commissioners and shall be filed~~  
536 ~~with the Secretary of State in duplicate. Attached to the report of the commissioners shall~~  
537 ~~be the publishers' affidavits certifying that the aforementioned required publication has~~  
538 ~~been completed. The Secretary of State shall forward a copy of the report to the Public~~  
539 ~~Service Commission for its approval.~~

540 ~~(b) Upon the filing of the report and its approval by the Public Service Commission, the~~  
541 ~~Secretary of State shall issue a certificate of the complete organization of the corporation,~~  
542 ~~duly authenticated under his official signature and the seal of the state, and the proceedings~~  
543 ~~shall be recorded in his office in a book for that purpose.~~

544 ~~(c) Upon the recording of such proceedings in the manner required by this Code section,~~  
545 ~~the corporation shall be deemed fully organized and shall become and be duly incorporated~~  
546 ~~under the corporate name set forth in the written declaration on file in the office of the~~  
547 ~~Secretary of State and shall be authorized to proceed to business. Unless such corporation~~  
548 ~~shall have so completed its organization within two years after the date of the filing of the~~  
549 ~~written declaration for that purpose in the office of the Secretary of State, the license to the~~  
550 ~~commissioners shall be held and deemed revoked and forfeited.~~

551 ~~46-5-145.~~

552 ~~Any telegraph company incorporated under this article may amend its charter as provided~~  
553 ~~by Code Sections 14-4-100 through 14-4-105.~~

554 ~~46-5-146.~~

555 ~~(a) Any corporations created under and by virtue of this article shall exist and shall have~~  
556 ~~and enjoy succession under its corporate name and may, under such name:~~

- 557 ~~(1) Make and enter into contracts;~~  
 558 ~~(2) Sue and be sued;~~  
 559 ~~(3) Purchase and hold such real or personal property as may be required for the purposes~~  
 560 ~~of the corporation within the scope of its business and sell, alienate, mortgage, pledge,~~  
 561 ~~convey, or otherwise dispose of the same, with all rights and privileges therewith~~  
 562 ~~connected; and~~  
 563 ~~(4) Make and establish such bylaws, rules, and regulations for its government as may be~~  
 564 ~~necessary.~~
- 565 ~~(b) Such corporation shall also have power:~~
- 566 ~~(1) To have and use a corporate seal, and to alter the same at pleasure;~~  
 567 ~~(2) To appoint such officers or agents as may be necessary for the proper management~~  
 568 ~~of the affairs of such corporation; and~~  
 569 ~~(3) To erect and maintain telegraph lines in and throughout this state or elsewhere in the~~  
 570 ~~United States, with all necessary stations, offices, apparatus, improvements, and~~  
 571 ~~machinery, and to employ the same with any new inventions which may from time to~~  
 572 ~~time be acquired, in the rapid transmission, for remuneration and profit, of information,~~  
 573 ~~messages, and intelligence to and from the various places and stations on the telegraph~~  
 574 ~~line of such corporation.~~

575 ~~46-5-147.~~

576 ~~Every telegraph company which has a line of wires in this state and which is engaged in~~  
 577 ~~telegraphing for the public shall, during its usual business hours, receive dispatches or~~  
 578 ~~messages, whether from other telegraphic lines or from individuals, and, on payment or~~  
 579 ~~tender of the usual charge according to the regulations established by the commission, shall~~  
 580 ~~transmit and deliver the same with impartiality and good faith and with due diligence,~~  
 581 ~~under penalty of \$25.00, which penalty may be recovered by action in a court having~~  
 582 ~~jurisdiction thereof, by either the sender of the dispatch or message or the person to whom~~  
 583 ~~sent or directed, whichever may first bring an action, provided that nothing in this Code~~  
 584 ~~section shall be construed as impairing or in any way modifying the right of any person to~~  
 585 ~~recover damages for any breach of contract or duty by any telegraph company; and such~~  
 586 ~~penalty and such damages may, if the party so elects, be recovered in the same action.~~

587 ~~46-5-148.~~

588 ~~Reserved.~~

589 ~~46-5-149.~~

590 ~~(a) Whenever any person has any claim or demand upon any telegraph company having~~  
 591 ~~offices or more than one place of doing business in this state, such person may institute an~~  
 592 ~~action against such telegraph company within the county where the principal office of such~~  
 593 ~~company is located, or in any county where such telegraph company may have an agency~~  
 594 ~~or place of business, or where such place of business was located at the time the cause of~~  
 595 ~~action accrued or the contract was made out of which the cause of action arose.~~

596 ~~(b) In all actions brought under this Code section, service shall be effected upon such~~  
 597 ~~telegraph company by leaving a copy of the summons and complaint with the agent of the~~  
 598 ~~company, if any; if there is no such agent in the county, then a copy of the summons and~~  
 599 ~~complaint shall be left at the agency or place of doing business where the same was located~~  
 600 ~~at the time such cause of action accrued or the contract was made out of which the cause~~  
 601 ~~of action arose. Reserved."~~

602 **SECTION 12.**

603 Code Section 50-16-42 of the Official Code of Georgia Annotated, relating to revocable  
 604 license agreements without competitive bidding authorized, terms and conditions, telegraph  
 605 or telephone lines construction provisions unaffected, and exceptions, is amended by revising  
 606 subsection (c) as follows:

607 "(c) This Code section shall not be construed or interpreted as amending, conflicting with,  
 608 or superseding any or all of Code Section 46-5-1, relating to the construction of telegraph  
 609 or telephone lines."

610 **SECTION 13.**

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