

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

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

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

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

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

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

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

## SECTION 6.

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

"46-5-1.

(a)(1) Any telegraph or telephone company chartered by the laws of this or any other state shall have the right to construct, maintain, and operate its lines and facilities upon, 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~~ telephone company within 15 business days of the receipt of such application; such notice  
210 shall specifically identify all application deficiencies. If no such notification is given  
211 within 15 business days of the receipt of an application, such application shall be deemed  
212 complete.

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

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

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

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

241 (7) Any ~~telegraph or~~ telephone company that has placed lines and facilities in the public  
242 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

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

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

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

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

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

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

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

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

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

(11) A ~~telegraph~~ or telephone company with facilities in the public rights of way of a municipal authority shall begin assessing due compensation, as defined in subsection (a) of this Code section, on subscribers on the date that service commences unless such company is currently paying a municipal authority's occupational license tax. Such due compensation shall be paid directly to each affected municipal authority within 30 calendar days after the last day of each calendar quarter. In the event that due compensation is not paid on or before 30 calendar days after the last day of each calendar quarter, the affected municipal authority shall provide written notice to such ~~telegraph~~ or telephone company, giving such company 15 calendar days from the date such company receives such notice to cure any such nonpayment. In the event the due compensation remitted to the affected municipal authority is not postmarked on or before the expiration of the 15 day cure period, such company shall pay interest thereon at a rate of 1 percent per month to the affected municipal authority. If the 15 day cure period expires on a Saturday, a Sunday, or a state legal holiday, the due date shall be the next business day. A ~~telegraph~~ or telephone company shall not be assessed any interest on late payments if 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~~  
~~telecommunications utility or telecommunications company shall submit to the Public~~  
~~Service Commission the method by which the telecommunications utility or~~  
~~telecommunications company shall provide access to a live operator for review, except for~~  
~~a telecommunications utility or telecommunications company whose operator services are~~  
~~under the jurisdiction, regulation, and rules of the Public Service Commission.~~ This Code  
413 section applies regardless of the method by which the telecommunications utility or  
414 telecommunications company provides the operator service. The requirements of this Code  
415 section shall not apply to telephones located in prisons or jail facilities or to wireless  
416 telecommunication services. For the purpose of this Code section, 'operator services' means  
417 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

## SECTION 11.

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

### "ARTICLE 3

465-140.

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.

483 465-141.

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.