

The Senate Committee on Regulated Industries and Utilities offered the following substitute to SB 232:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 public transportation, so as to specifically authorize electric membership corporations and
3 their affiliates and subsidiaries to provide emerging communications technologies; to provide
4 and change certain definitions; to prohibit cross-subsidation of certain activities of electric
5 membership corporations; to establish certain requirements for attachments to utility poles
6 owned by EMCs offering emerging communications technologies; to require electric
7 membership corporations to obtain certain franchises; to provide for applicability; to provide
8 for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
11 transportation, is amended by revising Code Section 46-3-200, relating to purposes of electric
12 membership corporations, as follows:

13 "46-3-200.

14 An electric membership corporation may serve any one or more of the following purposes:

- 15 (1) To furnish electrical energy and service;
- 16 (2) To assist its members in the efficient and economical use of energy;
- 17 (3) To engage in research and to promote and develop energy conservation and sources
18 and methods of conserving, producing, converting, and delivering energy; ~~and~~
- 19 (4) To provide and operate emerging communications technologies as provided in Code
20 Section 46-5-223; and
- 21 ~~(4)~~(5) To engage in any lawful act or activity necessary or convenient to effect the
22 foregoing purposes."
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SECTION 2.

Said Title 46 is further amended by revising Code Section 46-5-221, relating to definitions, as follows:

"46-5-221.

As used in this article, the term:

(1) 'Affiliate' means another person which controls, is controlled by, or is under common control with such person.

(2) 'Assigned area' shall have the same meaning as provided in Code Section 46-3-3.

~~(1) 'Broadband service' means a service that consists of the capability to transmit at a rate not less than 200 kilobits per second in either the upstream or downstream direction and in combination with such service provide either:~~

~~(A) Access to the Internet; or~~

~~(B) Computer processing, information storage, or protocol conversion.~~

'Broadband services' means Internet access capable of transmitting data at a rate of at least 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction to end users. For the purposes of this article, ~~broadband service~~ the term does not include any information content or service applications provided over such access service nor any intrastate service that was subject to a tariff in effect as of September 1, 2005.

(1.1) 'Communications services provider' means a cable operator as defined in 47 U.S.C. Section 522(5), as it existed on January 1, 2018; a telecommunications carrier as defined in 47 U.S.C. Section 153(512), as it existed on January 1, 2018; a provider of information services as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; and a wireless services provider.

(1.2) 'Electric membership corporation' or 'EMC' means an electric membership corporation organized under this title or any prior electric membership corporation law of this state, or a corporation which elected, in accordance with the provisions thereof, to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

(1.3) 'EMC gas affiliate' shall have the same meaning as provided in Code Section 46-4-152.

(1.4) 'Emerging communications technologies' means broadband services, VoIP, IP enabled services, wireless services, and all facilities and equipment associated therewith.

(1.5) 'IP enabled services' means any service, capability, functionality, or application that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

60 (1.6) 'Served area' means a geographic area of the state, identified as a census block, that
 61 has a provider of terrestrial broadband services other than an EMC or an affiliate of an
 62 EMC.

63 (1.7) 'Unserved area' means a geographic area of the state, identified as a census block,
 64 that does not have a provider of terrestrial broadband services other than an EMC or an
 65 affiliate of an EMC.

66 (1.8) 'Unserved location' means a physical address or group of addresses within a served
 67 area that does not have a provider of terrestrial broadband services other than an EMC
 68 or an affiliate of an EMC.

69 (2) 'VoIP' means Voice over Internet Protocol services offering real-time multidirectional
 70 voice functionality utilizing any Internet protocol.

71 (3) 'Wireless ~~service~~ services' means:

72 (A) Commercial ~~commercial~~ mobile radio service carried on between mobile stations
 73 or receivers and land stations and by mobile stations communicating among
 74 themselves; or

75 (B) Commercial fixed radio service carried on between or among land stations or
 76 receivers."

77 **SECTION 3.**

78 Said Title 46 is further amended by revising Code Section 46-5-222, relating to commission
 79 has no authority over setting of rates or terms and conditions for the offering of broadband
 80 service, voice over Internet protocol, or wireless service, and limitations, as follows:

81 "46-5-222.

82 (a) The Public Service Commission shall not have any jurisdiction, right, power, authority,
 83 or duty to impose any requirement or regulation relating to the setting of rates or terms and
 84 conditions for the offering ~~of broadband service, VoIP, or wireless services~~ or provision
 85 of emerging communications technologies.

86 (b) This Code section shall not be construed to affect:

87 (1) State laws of general applicability to all businesses, including, without limitation,
 88 consumer protection laws and laws relating to restraint of trade;

89 (2) Any authority of the Public Service Commission with regard to consumer
 90 complaints; or

91 (3) Any authority of the Public Service Commission to act in accordance with federal
 92 laws or regulations of the Federal Communications Commission, including, without
 93 limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled
 94 network elements and to arbitrate and enforce interconnection agreements.

95 (c) Except as otherwise expressly provided in this Code section, nothing in this ~~Code~~
 96 ~~section article~~ shall be construed to restrict or expand any other authority or jurisdiction of
 97 the Public Service Commission."

98 SECTION 4.

99 Said Title 46 is further amended by adding two new Code sections to read as follows:

100 "46-5-223.

101 (a)(1) Subject to the provisions of subsection (c) of this Code section, an EMC:

102 (A) That obtains a certificate of authority issued pursuant to Code Section 46-5-163
 103 shall be authorized to provide and operate emerging communications technologies
 104 within such EMC's assigned area and within a five-mile radius thereof; and

105 (B) Shall be authorized to create an affiliate that shall be authorized to provide and
 106 operate emerging communications technologies within such EMC's assigned area and
 107 within a five-mile radius thereof, provided that such affiliate obtains a certificate of
 108 authority issued pursuant to Code Section 46-5-163.

109 (b) Subject to the provisions of subsection (c) of this Code section, an EMC shall be
 110 authorized to apply for, accept, repay, and utilize loans, grants, and other financing from
 111 the federal government, this state, or any department or agency thereof, or from any other
 112 public or private party, in order to provide funding to assist the EMC or an affiliate of such
 113 EMC in the planning, engineering, construction, extension, operation, repair, and
 114 maintenance of emerging communications technologies which the EMC or an affiliate of
 115 such EMC shall be authorized to provide under this article.

116 (c) In order to encourage and promote fair competition in the overall retail emerging
 117 technologies market, and to protect the privacy of electric and natural gas consumers, no
 118 cross-subsidization shall be permitted between an EMC's natural gas activities or an EMC's
 119 electricity services, and the provision or operation of emerging communications
 120 technologies by such EMC or through an affiliate of such EMC. Any EMC that provides
 121 or operates emerging communications technologies shall:

122 (1) Ensure that cross-subsidizations do not occur between the electricity services of an
 123 EMC, the gas activities of its EMC gas affiliate, and the emerging communications
 124 technologies it provides;

125 (2) Fully allocate all electricity activities costs, gas activities costs, or emerging
 126 communications technologies activities costs including costs for any shared services,
 127 between the EMC's electricity activities, the gas activities of its EMC gas affiliate, and
 128 the EMC's emerging communications technologies activities, in accordance with the
 129 applicable uniform system of accounts and generally accepted accounting principles that
 130 are applicable to EMCs under either federal or state laws, rules, or regulations;

- 131 (3) Not charge any costs of the EMC's electricity activities or any costs of its EMC gas
132 affiliate to the emerging communications technologies customers of such EMC;
133 (4) Not charge any costs of the EMC's emerging communications technologies activities
134 to the EMCs electricity activities or its EMC gas affiliate's activities; and
135 (5) Not, for the protection and privacy of customer information, release any proprietary
136 customer information about any of such EMC's emerging communications technologies
137 customers to its electricity division, affiliate, or subsidiary or its EMC gas affiliate
138 without obtaining prior verifiable authorization from such customers.

139 46-5-224.

140 (a) In order for an EMC or its affiliate to offer one or more emerging communications
141 technologies, an EMC shall:

142 (1) Ensure that any rates and fees charged by such EMC for attachments to utility poles
143 by communications services providers shall be nondiscriminatory regardless of the
144 services provided by the communications services provider and shall not exceed the
145 annual recurring rate permitted under rules and regulations adopted pursuant to 47 U.S.C.
146 Section 224(d) by the Federal Communications Commission, as such existed on
147 January 1, 2018, and any regulations and Federal Communications Commission decisions
148 promulgated thereunder; provided, however, that this paragraph shall only apply if the
149 EMC or its affiliate is providing an emerging technology to an area other than to an
150 unserved area or unserved location;

151 (2) Establish nondiscriminatory, competitively neutral and commercially reasonable
152 terms and conditions for attachments to utility poles by any provider of emerging
153 communications technologies, which terms and conditions shall comply with the federal
154 pole attachment requirements provided in 47 U.S.C. Section 224, as such existed on
155 January 1, 2018, and any regulations and Federal Communications Commission decisions
156 promulgated thereunder; and

157 (3) Not require compliance by a provider of emerging communications technologies with
158 utility pole attachment specifications that exceed the specifications in the National
159 Electrical Safety Code, applicable fire safety codes, and any building code or similar code
160 of general applicability for the protection of the public health, safety, or welfare that was
161 adopted by the applicable local government jurisdiction prior to the filing of a utility pole
162 attachment application.

163 (b) For purposes of this Code section, an EMC may file a petition with the Georgia
164 Technology Authority along with data demonstrating that no broadband services are
165 offered to a physical address or group of physical addresses in a served area. Upon receipt
166 of such petition and data, the Georgia Technology Authority shall determine whether such

167 physical address or group of addresses is an unserved location. The Georgia Technology
168 Authority shall provide notice of the petition and any data provided by the EMC in support
169 of such petition or that the Georgia Technology Authority has related to the area that is the
170 subject of such petition to any communications services provider offering broadband
171 services in the served area. The communications services provider shall have 45 days after
172 the date such notice is sent to furnish information to the Georgia Technology Authority
173 showing that the physical address or group of addresses that are the subject of the petition
174 currently have broadband services available. The Georgia Technology Authority shall
175 issue its determination within 75 days of the date the notice is sent to the communications
176 services provider.

177 46-5-225.

178 Nothing in this chapter shall authorize an EMC or any other provider of emerging
179 communications technologies to provide cable television or video service without first
180 obtaining a state or local cable or video franchise.

181 46-5-226.

182 An EMC or an affiliate of an EMC that was offering retail broadband services prior to
183 January 1, 2018, shall be authorized to continue to offer such retail broadband services and
184 shall not be subject to the provisions of Code Sections 46-5-223 through 46-5-225."

185 **SECTION 5.**

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