

House Bill 887 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Powell of the 171st, England of the 116th, Watson of the 172nd, Parsons of the 44th, Jackson of the 128th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 36, 38, 46, and 50 of the Official Code of Georgia Annotated, relating to
2 local government, military, emergency management, and veteran affairs, public utilities and
3 public transportation, revenue and taxation, and state government respectively, so as to
4 facilitate and incentivize adequate and expanded broadband and other communications
5 services throughout the state; to specifically authorize municipal corporations to provide
6 broadband services; to change certain provisions of the "Local Government Cable Fair
7 Competition Act of 1999; to change and provide certain definitions in order to broaden the
8 scope and applicability of such Act; to establish certification of certain counties and
9 municipal corporations as broadband ready communities; to provide for duties and
10 responsibilities of the Georgia Emergency Management and Homeland Security Agency; to
11 provide methodology for local governments to apply to such agency for certification as a
12 broadband ready community; to provide for a model ordinance by such agency; to provide
13 for the OneGeorgia Authority to give priority to projects of broadband ready communities;
14 to provide for the director of emergency management and homeland security to develop a
15 grant program for the provision of broadband services to unserved areas throughout the state;
16 to provide for prioritization and requirements for the awarding of grants; to require the
17 development and publication of a map showing the unserved areas in the state; to provide for
18 the promulgation of rules and regulations; to specifically authorize electric membership
19 corporations and their affiliates to provide emerging communications technologies; to
20 simplify and provide uniformity in franchise fees for nonexclusive access and use of state
21 and local public rights of way; to provide for definitions; to provide for uniform rates for
22 activities of communications services providers within a public right of way; to provide for
23 uniform rates for certain attachments and collocations; to provide for applicability; to provide
24 for legislative findings and intent; to provide short titles; to provide for related matters; to
25 provide for effective dates; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 887 (SUB)

27 **PART I**

28 **SECTION 1-1.**

29 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
30 by revising Chapter 46, which was previously reserved, as follows:

31 "CHAPTER 46

32 36-46-1.

33 As used in this chapter, the term:

34 (1) 'Broadband services' shall have the same meaning as provided in Code
35 Section 50-39-1.

36 (2) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

37 (3) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-190.

38 36-46-2.

39 (a) A municipal corporation shall be authorized to provide broadband services in any area
40 determined by the director pursuant to Article 14 of Chapter 3 of Title 38 to be an unserved
41 area and that is:

42 (1) Within the corporate limits of such municipal corporation;

43 (2) Within the county in which such municipal corporation is located but outside its
44 corporate limits; and

45 (3) Outside of the county in which such municipal corporation is located, provided there
46 is an intergovernmental agreement with the political subdivision within which such
47 municipal corporation provides such broadband services.

48 (b) A municipal corporation that complies with the provisions of Chapter 90 of Title 36
49 shall be authorized to provide broadband services in any area that has not been determined
50 by the director pursuant to Article 14 of Chapter 3 of Title 38 to be an unserved area and
51 that is:

52 (1) Within the corporate limits of such municipal corporation;

53 (2) Within the county in which such municipal corporation is located but outside its
54 corporate limits; and

55 (3) Outside of the county in which such municipal corporation is located, provided there
56 is an intergovernmental agreement with the political subdivision within which such
57 municipal corporation provides such broadband services."

58

PART II

59

SECTION 2-1.

60 Said Title 36 is further amended by revising Code Section 36-90-1, relating to short title of
61 the Act, as follows:

62 "36-90-1.

63 This chapter shall be known and may be cited as the 'Local Government ~~Cable~~
64 Communications Services Fair Competition Act of ~~1999~~ 2018."

65

SECTION 2-2.

66 Said Title 36 is further amended by revising paragraphs (2), (3), (13), and (14) of Code
67 Section 36-90-2, relating to definitions, and adding a new paragraph to read as follows:

68 "(2) ~~'Cable service'~~ means:

69 ~~(A) The one-way transmission to subscribers of (i) video programming or (ii) other~~
70 ~~programming service; and~~

71 ~~(B) Subscriber interaction, if any, which is required for the selection or use of such~~
72 ~~video programming or other programming service.~~

73 ~~(3) 'Capital costs'~~ means all costs of providing a service which are capitalized in
74 accordance with generally accepted governmental accounting principles.

75 (3) 'Communications services' shall have the same meaning as provided in Code Section
76 50-39-1."

77 "(13) 'Service' means ~~cable service~~ communications services provided by a private
78 provider or a public provider.

79 (14) 'Subscriber' means any private person lawfully receiving any ~~cable service~~
80 communications services provided by a private or public provider by means of or in
81 connection with a ~~cable~~ communications services system."

82

SECTION 2-3.

83 Said Title 36 is further amended by revising Code Section 36-90-3, relating to notifications
84 to private providers before authorizing public provider, feasibility analysis and specific
85 findings required, components of business plan, public hearings, requirements of ordinance
86 or resolution, as follows:

87 "36-90-3.

88 (a) Before a franchising authority may begin the authorization process of permitting a
89 public provider to deliver service, the franchising authority ~~must notify each private~~
90 ~~provider serving the targeted market that the franchising authority intends to begin the~~
91 ~~process of authorizing a public provider to provide cable service. The notice must state that~~

92 ~~the private provider is not meeting the present and future needs of the community and shall~~
 93 ~~set forth each such unmet need separately and fully in order that the private provider may~~
 94 ~~reasonably ascertain the scope and nature of the issues identified by the franchising~~
 95 ~~authority. The franchising authority must allow each private provider 30 days to present~~
 96 ~~a plan to address the identified needs not being met, including a reasonable period of time~~
 97 ~~to implement the plan. Neither the notification nor response to the notification provided for~~
 98 ~~in this subsection shall affect the franchise agreement between a private provider and a~~
 99 ~~franchising authority.~~

100 ~~(b) If the franchising authority does not accept the private provider's plan to address the~~
 101 ~~identified issues submitted as provided in subsection (a) of this Code section, the~~
 102 ~~franchising authority shall then shall conduct an independent feasibility analysis and~~
 103 ~~require the public provider to prepare a business plan to provide service. Such business~~
 104 ~~plan shall set forth assumptions and specific findings as to:~~

- 105 (1) ~~The cable service communications services market share to be obtained by the public~~
 106 ~~provider over a four-year period;~~
- 107 (2) The programming service offerings;
- 108 (3) Reasonable projections, for a period of at least four years, of the revenue and the
 109 direct, indirect, and imputed operating costs of providing service;
- 110 (4) The equipment needed to provide the service;
- 111 (5) The source and adequacy of the total direct and indirect capital to construct and
 112 operate the proposed system;
- 113 (6) The repayment of the debt service, including the length of payback of the principal
 114 debt;
- 115 (7) ~~A cost-benefit analysis that shows a range of assumptions relating to The projected~~
 116 ~~market penetration rates, subscription rates, operating costs, and capital outlay;~~
- 117 (8) Assumptions as to programming costs;
- 118 (9) Assumptions as to actual or potential competition from all other providers; and
- 119 (10) The allocation of costs between the public provider and other municipal operations;
 120 and,
- 121 ~~(11) The ability to address the issues cited in the notice to the private providers specified~~
 122 ~~in subsection (a) of this Code section.~~

123 ~~(c)~~(b) In order for the business plan provided for in subsection ~~(b)~~(a) of this Code section
 124 to be adopted and the process to move forward, the business plan shall include, at a
 125 minimum, the following components:

- 126 (1) The total homes passed, provided that such shall be certified by the appropriate
 127 official responsible for municipal tax or census;

- 128 ~~(2) Cable service~~ Communications services basic penetration, estimated subscribers, and
 129 total homes passed, provided that such shall be reflective of the market analysis and not
 130 presume a penetration achieved by the fourth year of operation in excess of 40 percent
 131 without full independent verification; and
- 132 (3) The overall estimated revenue takeout per home, ~~provided that the same shall not~~
 133 ~~exceed by more than 5 percent~~ and shall compare such revenue to the amount being
 134 achieved by ~~the~~ any private provider as developed from such publicly available
 135 information as franchise fee reports;
- 136 (4) ~~The estimated miles of cable plant, provided that such shall be determined based on~~
 137 ~~an actual survey conducted by public works employees and certified as to method and~~
 138 ~~findings by a responsible supervisor;~~
- 139 (5) ~~The average construction cost per cable service subscriber or cable plant mile or both,~~
 140 ~~provided that such shall be based on an estimate provided by an independent supplier;~~
 141 and
- 142 (6) ~~A definitive plan for the servicing of any capital utilized to fund the construction and~~
 143 ~~operation of the cable system, including a reasonable payback period at an interest rate~~
 144 ~~reflective of the public market and the inherent risks of the business.~~
- 145 ~~(d)~~(c) Prior to granting the authorization to the public provider, the franchising authority
 146 shall conduct at least two public hearings held at least two weeks apart. The public provider
 147 shall ~~publish~~ make its business plan available in its entirety ~~and provide a complete copy~~
 148 ~~to each private provider~~ at least 30 days before the first final public hearing. ~~Such~~ The
 149 notice of public hearing shall state that the business plan prepared by the public provider
 150 is available for public inspection ~~each business day prior to the authorization~~ and shall state
 151 the location where such inspection may be made. Notice of the time, place, and date of
 152 each hearing shall be published in a newspaper of general circulation within the jurisdiction
 153 of the county or ~~municipality~~ municipal corporation once a week for the two weeks
 154 preceding the week in which the hearing is to be held. ~~In addition, the private provider~~
 155 ~~shall be given two weeks' written notice of the proposed hearing.~~
- 156 ~~(e)~~(d) Any authorization by the franchising authority shall be by passage of an ordinance
 157 or resolution and must:
- 158 (1) Find that the public provider possesses satisfactory financial and technical capability
 159 to be a public provider of communications services;
- 160 (2) Set forth the terms and conditions with respect to franchise terms and conditions,
 161 conditions of access to public property, and pole attachment; and
- 162 (3) Adopt the business plan."

163

PART III

164

SECTION 3-1.

165 Title 38 of the Official Code of Georgia Annotated, relating to military, emergency
166 management, and veterans affairs, is amended by adding a new article to read as follows:

167

"ARTICLE 12168 38-3-180.169 As used in this article, the term:

170 (1) 'Agency' means the Georgia Emergency Management and Homeland Security
171 Agency as established by Code Section 38-3-20.

172 (2) 'Broadband network project' means any deployment of broadband services.

173 (3) 'Broadband services' shall have the same meaning as provided in Code
174 Section 50-39-1.

175 (4) 'Broadband services provider' means any provider of broadband services or a public
176 utility or any other person or entity that builds or owns a broadband network project.

177 (5) 'Director' means the director of emergency management and homeland security of the
178 Georgia Emergency Management and Homeland Security Agency appointed pursuant to
179 Code Section 38-3-20.

180 (6) 'Political subdivision' means a county, municipal corporation, or consolidated
181 government.

182 38-3-181.

183 (a) A political subdivision may apply to the agency for certification as a broadband ready
184 community. The agency shall by rules and regulations prescribe the form and manner for
185 making an application. The agency shall prescribe by rules and regulations a process for
186 public notice and comment on an application for a period of at least 30 days after such
187 application is received, except that such process shall not apply to an application by a
188 political subdivision that enacts a model ordinance developed by the agency under Code
189 Section 38-3-182.

190 (b) The agency shall approve an application and certify a political subdivision as a
191 broadband ready community if the agency determines that the political subdivision has
192 enacted an ordinance that complies with Code Section 38-3-182. If the process for public
193 notice and comment applies to an application, the agency shall, before approving such
194 application, consider any public comments made regarding such application.

195 38-3-182.

196 (a) A political subdivision shall not be certified as a broadband ready community unless
197 such political subdivision enacts an ordinance for reviewing applications and issuing
198 permits related to broadband network projects that provides for all of the following:

199 (1) Appointing a single point of contact for all matters related to a broadband network
200 project;

201 (2) Requiring such political subdivision to determine whether an application is complete
202 and notifying the applicant about such determination in writing within a certain time
203 period after receiving such application; provided, however, that any delay in the
204 processing of an application that is outside the control of such political subdivision and
205 that is directly caused by or attributable to a natural disaster, a state of emergency, a
206 mandated federal review or approval, the receipt of multiple applications by the same or
207 different applicants within a relatively short period of time, another political subdivision's
208 review or approval, or through fault of the applicant shall not count toward the days
209 allotted within such time period;

210 (3) If the political subdivision receives an application that is incomplete, requiring the
211 written notification provided for under paragraph (2) of this subsection to specify in detail
212 the required information that is incomplete;

213 (4) If such political subdivision does not make the written notification required under
214 paragraph (2) of this subsection, requiring such political subdivision to consider an
215 application to be complete;

216 (5) Within a certain time period after receiving an application that is complete, requiring
217 such political subdivision to approve or deny such application and provide the applicant
218 notification in writing of such approval or denial;

219 (6) That any fee imposed by such political subdivision to review an application, issue a
220 permit, or perform any other activity related to a broadband network project shall be
221 reasonable and cost based; and

222 (7) Any other information or specifications as may be required by the agency by rules
223 and regulations.

224 (b) The agency shall develop a model ordinance for the review of applications and the
225 issuance of permits related to broadband network projects that complies with subsection (a)
226 of this Code section that may be enacted by a political subdivision.

227 (c) If a political subdivision enacts an ordinance that differs from the model ordinance
228 developed by the agency, the political subdivision shall, when applying for certification
229 under Code Section 38-3-181, provide the agency with a written statement that describes
230 the ordinance enacted by such political subdivision and how such ordinance differs from
231 the model ordinance.

232 38-3-183.

233 A political subdivision that the agency has certified as a broadband ready community under
 234 Code Section 38-3-181 may be decertified by the agency if it:

235 (1) Imposes an unreasonable or noncost based fee to review an application or issue a
 236 permit for a broadband network project. Any application fee that exceeds \$100.00 shall
 237 be considered unreasonable unless such political subdivision can provide documentation
 238 justifying such fee based on a specific cost;

239 (2) Imposes a moratorium of any kind on the approval of applications or issuance of
 240 permits for broadband network projects or on construction related to broadband network
 241 projects;

242 (3) Discriminates among broadband services providers with respect to any action
 243 described in this article or otherwise related to a broadband network project, including
 244 granting access to public rights of way, infrastructure and poles, river and bridge
 245 crossings, or any other physical assets owned or controlled by such political subdivision;
 246 or

247 (4) As a condition for approving an application or issuing a permit for a broadband
 248 network project, requires the applicant to:

249 (A) Provide any service or make available any part of the broadband network project
 250 to such political subdivision; or

251 (B) Except for reasonable and cost based fees allowed, make any payment to or on
 252 behalf of such political subdivision.

253 38-3-184.

254 (a) Upon the request of a broadband services provider, the agency may decertify a political
 255 subdivision as a broadband ready community if such political subdivision fails to act in
 256 accordance with the ordinance required for certification under Code Section 38-3-182,
 257 modifies such ordinance so that such ordinance no longer complies with subsection (a) of
 258 Code Section 38-3-182, or violates any provision of Code Section 38-3-183.

259 (b) Upon a complaint that an application fee under an ordinance required for certification
 260 under Code Section 38-3-182 is unreasonable, the agency shall determine whether or not
 261 such fee is reasonable. In the proceeding for making such determination, the political
 262 subdivision shall have the burden of proving the reasonableness of any action undertaken
 263 by such political subdivision as part of the application process and the reasonableness of
 264 the costs of such actions.

265 38-3-185.

266 A broadband network project targeting industry development or construction of a new
 267 building for which a political subdivision that has been certified as a broadband ready
 268 community under Code Section 38-3-181 is seeking financing from the OneGeorgia
 269 Authority, pursuant to Chapter 34 of Title 50, shall be given priority by the OneGeorgia
 270 Authority.

271 38-3-186.

272 The director shall promulgate any reasonable and necessary rules and regulations to
 273 effectuate the provisions of this article."

274 **PART IV**

275 **SECTION 4-1.**

276 Said Title 38 is further amended in Code Section 38-3-20, relating to Georgia Emergency
 277 Management and Homeland Security Agency created, director, staff, offices, director's
 278 duties, and disaster coordinator, by adding a new subsection to read as follows:

279 "(g) The director of emergency management and homeland security shall also have such
 280 additional authority, duties, and responsibilities as authorized and described in Articles 12
 281 through 14 of this chapter."

282 **PART V**

283 **SECTION 5-1.**

284 The General Assembly recognizes that access to broadband services in today's society is
 285 essential to everyday life. Broadband access is a necessary utility as important as electricity,
 286 gas, or phone service. However, there is a growing need for the government to provide the
 287 much needed infrastructure to provide access to broadband services to homes and businesses
 288 that are without such access because of their location in rural and other areas. The General
 289 Assembly finds and declares that it is vital that the state provide equitable access to
 290 broadband services that will ensure that this necessary utility which provides support for
 291 education, work, engagement with government, health care, public safety, and leisure is
 292 available to all citizens of Georgia. The General Assembly also finds and declares that
 293 ensuring deployment of broadband services throughout this state is a public necessity, a basic
 294 function of government, and would benefit the entire state. The General Assembly further
 295 finds and declares that it is in the best interest of the state to spend state funds through the

296 establishment of a grant program to ensure that the much needed infrastructure exists for the
 297 public purpose of state-wide deployment of broadband services to unserved areas of the state.

298 **SECTION 5-2.**

299 Said Title 38 is further amended by adding a new article to read as follows:

300 "ARTICLE 13

301 38-3-190.

302 As used in this article the term:

303 (1) 'Agency' shall have the same meaning as provided in Code Section 38-3-180.

304 (2) 'Broadband services' shall have the same meaning as provided in Code
 305 Section 50-39-1.

306 (3) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

307 (4) 'Location' means any residence, dwelling, home, business, or building.

308 (5) 'Qualified broadband provider' means:

309 (A) An electric membership corporation organized under Article 4 of Chapter 3 of
 310 Title 46, association, company, firm, corporation, partnership, or political subdivision
 311 of the state that has been providing broadband services to at least 1,000 locations and
 312 has been conducting business in the state for at least three years with a demonstrated
 313 financial, technical, and operational capability to operate a broadband services
 314 network; or

315 (B) An electric membership corporation organized under Article 4 of Chapter 3 of
 316 Title 46 or a political subdivision of the state that is able to demonstrate financial,
 317 technical, and operational capability to operate a broadband services network.

318 (6) 'Unserved area' means a county, municipal corporation, census tract, or some other
 319 geographical area as determined by the director in which broadband services are not
 320 available to 20 percent or more of the locations as determined by the director pursuant
 321 to this article.

322 38-3-191.

323 (a) On or before July 1, 2019, the director shall develop the 'Georgia Broadband
 324 Deployment Initiative,' to provide funding to qualified broadband providers who request
 325 the least amount of money to offer broadband services in unserved areas of the state. The
 326 goal of such program shall be to provide broadband services coverage throughout the entire
 327 state. The grants awarded shall reflect the state's share of the cost of deployment of
 328 broadband services to unserved areas as authorized by this chapter. The amount of any

329 grant awarded shall be directly tied to the cost of the deployment of broadband services by
330 the qualified broadband provider. The grants awarded shall only provide funds for capital
331 expenses and shall not be used by the qualified broadband provider for operation and
332 maintenance expenses.

333 (b) The program shall consist of a minimum of five rounds of grants, one each year for
334 five years. The director shall be authorized to extend the program for more than five years
335 if unserved areas still exist in the state.

336 (c) The first round of grants shall be awarded when moneys are appropriated or grants or
337 other funds are received to fund the awarding of the grant program.

338 (d) Qualified broadband providers submitting proposals shall receive priority if such
339 proposals to provide broadband services:

340 (1) Include a proposed system design that is scalable to higher broadband speeds in the
341 future;

342 (2) Include elements of cooperation with or broadband services enhancement for
343 businesses; industrial parks; education centers; hospitals and other health care facilities
344 such as telehealth facilities and emergency care facilities; government buildings; public
345 safety departments; or other providers of public services;

346 (3) Expand broadband services in unserved areas with a lower nonmilitary population
347 than other unserved areas in the state;

348 (4) Include an unserved area certified as a broadband ready community as provided in
349 Article 12 of this chapter; or

350 (5) Include a monetary investment in the unserved area that is equal to or greater than
351 the amount of money requested in the proposal, whether or not such investment is made
352 solely by such qualified broadband provider or by such qualified broadband provider in
353 conjunction with one or more local governments, one or more commercial or industrial
354 entities, or any combination thereof.

355 (e) As part of the proposal process any qualified broadband provider submitting a proposal
356 shall be required to disclose whether such qualified broadband provider is required under
357 any federal law, rule, or regulation to provide broadband services to any portion of the
358 unserved area for which such proposal is submitted and whether any grants or other
359 funding from the federal government, the state, or a local government to provide broadband
360 services to any portion of such unserved area have been received by such qualified
361 broadband provider.

362 (f) The director shall not discriminate between different types of technology used to
363 provide the broadband services nor shall the director condition the award of any grant to
364 specific requirements related to the qualified broadband provider's management of its
365 broadband services network.

366 (g) The director shall establish the criteria for determining proposal eligibility and any
367 grant terms and conditions that are reasonable and necessary to ensure that the grant funds
368 are utilized to provide broadband services to the areas for which the grants are awarded;
369 provided, however, that any qualified broadband provider receiving a grant under this
370 article shall be required to agree:

371 (1) Not to charge more for broadband services to customers in any unserved area for
372 which it receives a grant than it does for the same or similar broadband services to
373 customers in other areas of the state;

374 (2) To serve 96 percent of any locations requesting broadband services in any unserved
375 area for which it receives a grant;

376 (3) To meet or exceed in any unserved area for which it receives a grant a minimum level
377 of dependable service as established by the director; and

378 (4) That its plan to provide broadband services shall be substantially completed within
379 the time period specified in the grant proposal.

380 (h) In addition to the requirements of subsection (g) of this Code section, the director shall
381 evaluate proposals based on upstream and downstream speeds, data cap limits, signal
382 latency, reliability of the technology utilized, historic service issues in other areas served
383 by the qualified broadband provider, and the length of time it will take to deploy the
384 broadband services in the unserved area.

385 (i) The director shall condition the release of any grant funds upon the substantial
386 completion, as determined by the director, of the proposed broadband services deployment
387 and upon confirmation of the level of service proposed in the grant proposal as
388 demonstrated by operational testing. Once the grant funds have been released, the qualified
389 broadband provider shall have ownership and control of the broadband services network
390 built with such funds.

391 38-3-192.

392 Notwithstanding any provision of law to the contrary, any data or information shared by
393 a qualified broadband provider pursuant to this article that is designated by such qualified
394 broadband provider as a trade secret, as such term is defined in Code Section 10-1-761,
395 shall not be subject to public inspection absent an order of the superior court that the data
396 or information are not trade secrets and are subject to disclosure.

397 38-3-193.

398 The director shall ensure that the grant program complies with any laws, rules, or
399 regulations of the Federal Communications Commission.

400 38-3-194.

401 (a)(1) On June 30, 2019, and each June 30 thereafter, the director of shall report to the
 402 Lieutenant Governor, the Speaker of the House of Representatives, and the Governor on
 403 the program's progress in achieving the purposes of this article, including, at a minimum:

404 (A) The number, amounts, and recipients of grants awarded; and

405 (B) The status of any funded grant proposals.

406 (2) The report required under paragraph (1) of this subsection, shall be published on the
 407 website of the agency.

408 (b) The state auditor, on a periodic basis, but no less often than once every three years,
 409 shall conduct a performance audit of the grant program to examine and determine the
 410 program's economy, efficiency, and effectiveness and to provide an accounting of the funds
 411 of the grant program. The state auditor shall provide an audit report to the Lieutenant
 412 Governor, the Speaker of the House of Representatives, and the Governor by December
 413 31 of the year in which the audit was conducted.

414 38-3-195.

415 Subject to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the director
 416 is authorized to promulgate and enforce such rules and regulations as may be deemed
 417 necessary to carry out the provisions of this article."

418 **PART VI**

419 **SECTION 6-1.**

420 Said Title 38 is further amended by adding a new article to read as follows:

421 "ARTICLE 14

422 38-3-200.

423 As used in this article the term:

424 (1) 'Agency' shall have the same meaning as provided in Code Section 38-3-180.

425 (2) 'Broadband services' shall have the same meaning as provided in Code
 426 Section 50-39-1.

427 (3) 'Broadband services provider' shall have the same meaning as provided in Code
 428 Section 38-3-180.

429 (4) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

430 (5) 'Location' shall have the same meaning as provided in Code Section 38-3-190.

431 (6) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-190.

432 38-3-201.

433 The director shall determine those areas in the state that are unserved areas and shall
434 publish such findings pursuant to Code Section 38-3-202.

435 38-3-202.

436 (a) The director shall consult with the Federal Communications Commission in
437 determining if a reliable map showing the unserved areas of the state exists in sufficient
438 detail required for the director to determine the percentage of locations to which broadband
439 services are not available. If on or before January 1, 2019, the director determines that
440 such a map does not exist then he or she shall create such a map.

441 (b) On or before June 30, 2019, the director shall publish on the website of the agency a
442 map showing the unserved areas in the state; provided, however, that if as provided in
443 subsection (a) of this Code section, it is determined that a reliable map exists that was not
444 created by the director or his or her designee, then the website may link to such existing
445 map.

446 (c) All local governments shall cooperate with the director and the agency's designated
447 agents by providing requested information as to addresses and locations of broadband
448 services and other communications technologies within their jurisdictions.

449 (d) All broadband services providers in the state shall be required to provide such
450 information as the director determines is necessary to develop a map or to make a
451 determination as to the percentage of locations to which broadband services are not
452 available. All information provided by a broadband services provider pursuant to this
453 article shall be presumed to be confidential, proprietary, a trade secret, as such term is
454 defined in Code Section 10-1-761, and subject to exemption from disclosure under state
455 and federal law, and shall not be subject to disclosure under Article 4 of Chapter 18 of Title
456 50, except in the form of a map where information that could be used to determine
457 provider-specific information about the network of the broadband services provider is not
458 disclosed. Except as provided in this Code section, such provider-specific information
459 shall not be released to any person other than to the submitting broadband services
460 provider, the agency, employees of the agency, and attorneys employed by or under
461 contract with the agency without express permission of the submitting broadband services
462 provider. Such information shall be used solely for the purposes stated under this article."

463

PART VII

464

SECTION 7-1.

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

468 "46-3-200.

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

470 (1) To furnish electrical energy and service;

471 (2) To assist its members in the efficient and economical use of energy;

472 (3) To engage in research and to promote and develop energy conservation and sources
473 and methods of conserving, producing, converting, and delivering energy; ~~and~~474 (4) To provide and operate emerging communications technologies as provided in Code
475 Section 46-5-223; and476 ~~(4)~~(5) To engage in any lawful act or activity necessary or convenient to effect the
477 foregoing purposes."

478

SECTION 7-2.

479 Said Title 46 is further amended by revising Code Section 46-5-221, relating to definitions
480 for competitive emerging communications technologies, as follows:

481 "46-5-221.

482 As used in this article, the term:

483 (1) 'Affiliate' means another person which controls, is controlled by, or is under common
484 control with such person.485 (1) 'Broadband ~~service~~ services' means a wired or wireless terrestrial service that consists
486 of the capability to transmit at a rate not less than 200 kilobits per second in either the
487 upstream or the downstream direction and in combination with such service ~~provide~~
488 provides either:

489 (A) Access to the Internet; or

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

491 For the purposes of this article, broadband ~~service~~ services shall not include any
492 information content or service applications provided over such access ~~service~~ services nor
493 any intrastate service that was subject to a tariff in effect as of September 1, 2005.

494 (1.1) 'Electric membership corporation' or 'EMC' means an electric membership
495 corporation organized under this title or any prior electric membership corporation law
496 of this state, or a corporation which elected, in accordance with the provisions thereof,
497 to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

498 (1.2) 'Emerging communications technologies' means broadband services, VoIP, IP
 499 enabled services, wireless services, and all facilities and equipment associated therewith.

500 (1.3) 'IP enabled services' means any service, capability, functionality, or application that
 501 enables an end user to send or receive a communication in existing Internet Protocol
 502 format, or any successor format, regardless of whether such communication is voice,
 503 data, or video.

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

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

507 (A) Commercial ~~commercial~~ mobile radio service carried on between mobile stations
 508 or receivers and land stations and by mobile stations communicating among
 509 themselves; or

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

512 **SECTION 7-3.**

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

516 "46-5-222.

517 (a) The Public Service Commission shall not have any jurisdiction, right, power, authority,
 518 or duty to impose any requirement or regulation relating to the setting of rates or terms and
 519 conditions for the offering of broadband ~~service~~ services, VoIP, or wireless services.

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

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

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

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

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

532 **SECTION 7-4.**

533 Said Title 46 is further amended by adding a new Code section to read as follows:

534 "46-5-223.535 An EMC shall be authorized to:536 (1) Provide and operate emerging communications technologies.537 (2) Create an affiliate that shall be authorized to provide and operate emerging
538 communications technologies.539 (3) Enter into a partnership with a provider of emerging communications technologies
540 to provide and operate emerging communications technologies.541 (4) Apply for, accept, repay, and utilize loans, grants, and other financing from the
542 federal government, this state, or any department or agency thereof, or from any other
543 public or private party, in order to provide funding to assist the EMC or an affiliate of
544 such EMC in the planning, engineering, construction, extension, operation, repair, and
545 maintenance of emerging communications technologies and facilities which such EMC
546 or an affiliate of such EMC shall be authorized to provide under this article."547 **PART VIII**548 **SECTION 8-1.**549 This part shall be known and may be cited as the "Uniform Franchise Fee Structure for
550 Communications Services Providers Act."551 **SECTION 8-2.**552 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
553 by adding a new chapter to read as follows:554 "CHAPTER 39555 50-39-1.556 As used in this chapter, the term:557 (1) 'Attachment' means the connection or fastening of a wire or cable by a
558 communications services provider to a utility pole.559 (2) 'Authority' means the Department of Transportation, any local governing authority,
560 any political subdivision providing retail electric service, and any electric membership
561 corporation established under Article 4 of Chapter 3 of Title 46.562 (3) 'Broadband network project' shall have the same meaning as provided in Code
563 Section 38-3-180.

564 (4) 'Broadband services' means a wired or wireless terrestrial service that consists of the
565 capability to transmit at a rate not less 10 megabits per second in the downstream
566 direction and at least 1 megabit per second in the upstream direction to end users and in
567 combination with such service provides:

568 (A) Access to the Internet; or

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

570 For the purposes of this chapter, broadband services shall not include any information
571 content or service applications provided over such access services nor any intrastate
572 service that was subject to a tariff in effect as of September 1, 2005.

573 (5) 'Broadband services provider' shall have the same meaning as provided in Code
574 Section 38-3-180.

575 (6) 'Collocate' or 'collocation' means to install, mount, maintain, operate, or replace one
576 or more communications facilities on or within an existing wireless support structure or
577 utility pole. The term shall not include the installation of a new utility pole or wireless
578 support structure or utility pole in a public right of way.

579 (7) 'Communications facility' means that set of equipment and network components and
580 associated facilities used by a communications services provider to facilitate
581 communications services.

582 (8) 'Communications services' means cable service as defined in 47 U.S.C.
583 Section 522(6), as it existed on January 1, 2018; telecommunications service as defined
584 in 47 U.S.C. Section 153(53), as it existed on January 1, 2018; information service as
585 defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; video service; or
586 wireless services.

587 (9) 'Communications services provider' means a cable operator as defined in 47 U.S.C.
588 Section 522(5), as it existed on January 1, 2018; a telecommunications carrier as defined
589 in 47 U.S.C. Section 153(51), as it existed on January 1, 2018; a provider of information
590 services as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; and
591 a wireless services provider.

592 (10) 'Interstate highways' shall have the same meaning as provided in Code
593 Section 32-1-3.

594 (11) 'Law' means any federal, state, or local law, statute, common law, code, rule,
595 regulation, order, resolution, or ordinance.

596 (12) 'Local governing authority' means county or municipal corporation that has adopted
597 land use or zoning regulations for all or for the majority of land use within its jurisdiction
598 or has adopted separate regulations pertaining to the location, construction, collocation,
599 modification, or operation of wireless facilities.

600 (13) 'Person' means an individual, corporation, limited liability company, partnership,
 601 association, trust, or other entity or organization, including an authority.

602 (14) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3.
 603 The term shall not include interstate highways.

604 (15) 'Rural county' means a county having a population of less than 50,000 according to
 605 the United States decennial census of 2010 or any future such census; provided, however,
 606 that for counties which contain a military base or installation, the military personnel and
 607 their dependents living in such county shall be excluded from the total population of such
 608 county for purposes of this definition.

609 (16) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-200.

610 (17) 'Utility pole' means a pole or similar structure that is or may be used in whole or in
 611 part by or for wireline communications, electric distribution, lighting, traffic control,
 612 signage, or a similar function, or for the collocation of communications facilities. The
 613 term shall not include wireless support structures or electric transmission structures.

614 (18) 'Wireless services' shall have the same meaning as provided in Code
 615 Section 46-5-221.

616 (19) 'Wireless services provider' means a person that provides wireless services.

617 (20) 'Wireless support structure' means a freestanding structure, such as a monopole;
 618 tower, either guyed or self-supporting; billboard; or other existing or proposed structure
 619 designed to support or capable of supporting facilities that provide wireless services.
 620 Such term shall not include a utility pole or an electric transmission structure.

621 50-39-2.

622 (a) The provisions of this Code section shall only apply to activities of a communications
 623 services provider within a right of way.

624 (b) An authority shall not enter into an exclusive arrangement with any person for use of
 625 a right of way for the construction, installation, maintenance, modification, operation,
 626 marketing, or replacement of communications facilities or the collocation of said
 627 communications facilities.

628 (c) The authority, in the exercise of its administration and regulation related to the
 629 management of a right of way, shall be competitively neutral with regard to other similarly
 630 situated users of the right of way, and terms governing such authority's right of way shall
 631 not be unreasonable, discriminatory, and shall not violate any applicable law.

632 (d) The authority may require a communications services provider to repair all damage to
 633 a right of way directly caused by the activities of such communications services provider,
 634 while occupying, installing, repairing, modifying, replacing, or maintaining
 635 communications services facilities in the right of way, and to return such right of way to

636 its functional equivalence before the damage pursuant to the competitively neutral,
637 reasonable requirements, and specifications of the authority. If the communications
638 services provider fails to make such repairs required by the authority within 90 days after
639 the receipt of written notice, the authority may effect those repairs and charge the
640 applicable party the reasonable, documented cost of such repairs.

641 50-39-3.

642 (a) Any rates and fees charged by an authority for attachments and collocations to
643 authority utility poles or authority wireless support structures by communications services
644 providers shall be nondiscriminatory regardless of the services provided by the
645 communications services provider and shall not exceed the annual recurring rate or differ
646 from the terms and conditions permitted under rules and regulations adopted pursuant to
647 47 U.S.C. 224(d) by the Federal Communications Commission, as such existed on
648 January 1, 2018, with respect to attachments and collocations located in any rural county
649 or any unserved area located in any other county which are owned by a broadband services
650 provider to provide broadband services to such rural county or unserved area. The Federal
651 Communications Commission rate shall be applicable in any rural county or any unserved
652 area after the commencement of any construction of a broadband network project and such
653 rates, terms, and conditions shall be effective for not less than ten years.

654 (b) All other terms and provisions of any authority agreement governing or affecting a
655 communications services provider's attachments or collocations on authority poles shall be
656 fair, reasonable, and nondiscriminatory.

657 (c) This Code section shall not constitute certification as provided in Section 224(c) of the
658 Federal Communications Act of 1934, as amended, as it existed on January 1, 2018. If a
659 court of competent jurisdiction determines that this Code section is tantamount to
660 certification, this Code section shall become null and void.

661 (d) This Code section shall not apply to any attachment regulated by the Federal
662 Communications Commission under Section 224 of the Federal Communications Act of
663 1934, as amended, as it existed on January 1, 2018.

664 50-39-4.

665 The Department of Transportation shall amend its Utilities Accommodation Policy to
666 reflect the provisions of this chapter that are applicable to the Department of
667 Transportation; provided, however, that if such amended Utilities Accommodation Policy
668 is not approved by the Federal Highway Administration such that the Department of
669 Transportation would no longer be eligible for federal transportation funding, then this
670 chapter shall be deemed to be null and void in terms of its applicability to the Department

671 of Transportation. In the event that such amended Utilities Accommodation Policy is not
672 approved by the Federal Highway Administration, the Department of Transportation shall
673 notify the chairperson of the House Committee on Ways and Means, the chairperson of
674 Senate Regulated Industries and Utilities Committee, the Speaker of the House of
675 Representatives, the Lieutenant Governor, and the Governor in writing within ten days of
676 receipt of such disapproval. Such notification shall include a copy of Utilities
677 Accommodation Policy that was not approved, a notation as to the specific language that
678 was not approved, and an explanation why such language could not have been modified
679 in keeping with the provisions of this chapter in a manner that the Federal Highway
680 Administration would approve."

681

PART IX

682

SECTION 9-1.

683 (a) Except as provided in subsection (b) of this part, this Act shall become effective on
684 July 1, 2018.

685 (b) For purposes of the Department of Transportation amending its Utilities
686 Accommodation Policy to reflect the provisions of Chapter 39 of Title 50 that are
687 applicable to the Department of Transportation and providing any notification required
688 pursuant to Code Section 50-39-3 of Part VIII of this Act, this Act shall become effective
689 upon its approval by the Governor or upon its becoming law without such approval.

690

SECTION 9-2.

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