

Senate Bill 459

By: Senators Gooch of the 51st, Wilkinson of the 50th, Tillery of the 19th, Harper of the 7th,  
Ginn of the 47th and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 46 and 50 of the Official Code of Georgia Annotated, relating to public  
2 utilities and public transportation and state government, respectively, so as to provide  
3 funding for the deployment of certain communications services throughout this state; to  
4 change and provide for certain definitions; to change certain provisions relating to the  
5 Universal Access Fund so as to modernize such Act and to provide for a certain portion of  
6 such fund to be used for the deployment of broadband services in unserved areas; to provide  
7 for certain powers and duties of the Public Service Commission as to fund contributions and  
8 distributions; to provide for limitations and sunset provisions; to change certain provisions  
9 relating to Georgia Broadband Deployment Initiative to provide for such funding awards; to  
10 provide for related matters; to provide effective dates; to repeal conflicting laws; and for  
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public  
15 transportation, is amended by revising paragraph (2) of Code Section 46-5-162, relating to  
16 definitions regarding "The Telecommunications and Competition Development Act of 1995,"  
17 as follows:

18 "(2) 'Basic local exchange services' or 'universal access local exchange services' ~~mean~~  
19 means the provision to residential and single line business customers in Georgia of  
20 services composed of a touch tone switched access line and dial tone; of a quality  
21 sufficient for ~~two-way~~ two-way voice and 9600 baud data/fax communications. This  
22 service shall include 1+ dialing for access to competitive providers of  
23 telecommunications services by January 1, 1997. ~~The elements of universal access local~~  
24 ~~exchange services are subject to subsequent review and modification by the commission."~~

25

**SECTION 2.**

26 Said title is further amended by revising Code Section 46-5-167, relating to the Universal  
27 Access Fund, as follows:

28 "46-5-167.

29 (a) As used in this Code section, the term:

30 (1) 'Broadband services' shall have the same meaning as provided in Code  
31 Section 50-40-1.

32 (2) 'Unserved area' shall have the same meaning as provided in Code Section 50-40-1.

33 ~~(a)~~(b) The commission shall administer a Universal Access Fund to assure the provision  
34 of reasonably priced access to basic local exchange services and the deployment of  
35 broadband services to unserved areas throughout Georgia. The fund shall be administered  
36 by the commission pursuant to this Code section and under rules to be promulgated by the  
37 commission as needed to assure that the fund operates in a competitively neutral manner  
38 between competing telecommunications providers.

39 ~~(b)~~(c) All telecommunications companies holding a certificate of authority issued by the  
40 commission to provide services within Georgia shall contribute quarterly to the fund as  
41 provided in this subsection. The commission shall determine the manner of contribution  
42 using either one or a combination of the following two contribution methodologies:

43 (1) A charge for each working telephone number; or

44 (2) A proportionate amount based on each company's gross intrastate revenues from the  
45 provision of telecommunications services to end users.

46 ~~In calculating such contributions, the commission shall allow a local exchange company~~  
47 ~~holding a certificate of authority issued by the commission after July 1, 1995, and before~~  
48 ~~January 1, 2010, with primary headquarters in Georgia and more than 750 full-time~~  
49 ~~employees working in Georgia as of January 1, 2010, to utilize accumulated unexpired~~  
50 ~~Georgia net operating losses for taxable years ending prior to January 1, 2010, on a full~~  
51 ~~dollar-for-dollar basis to reduce up to 50 percent of its contribution to the Universal Access~~  
52 ~~Fund. Within the same tax year of the election, companies making such election shall~~  
53 ~~formally notify the Department of Revenue that the company agrees to forego any rights~~  
54 ~~or claims to the Georgia net operating losses so used. The commission may allow any~~  
55 ~~telecommunications company certified as a competitive local exchange carrier to request~~  
56 ~~a hearing seeking relief from this contribution requirement upon application,~~  
57 ~~demonstration, and good cause shown that such competitive local exchange carrier does~~  
58 ~~not receive a benefit from the reduction in intrastate switched access charges pursuant to~~  
59 ~~subsection (c) of Code Section 46-5-166.~~

60 ~~(c) Contributions to the fund shall be determined if, after notice and opportunity for~~  
61 ~~hearing, the commission calculates the difference in the reasonable actual costs of basic~~

62 ~~local exchange services throughout Georgia and the maximum amounts that may be~~  
63 ~~charged for such services and shall also account for reductions in intrastate switched access~~  
64 ~~charges pursuant to subsection (c) of Code Section 46-5-166.~~

65 ~~(d)(1) Nothing in this subsection shall require any Tier 2 local exchange company to~~  
66 ~~raise any of its rates. Nothing in this subsection shall authorize any Tier 2 local exchange~~  
67 ~~company to receive any subsidy from the Universal Access Fund. For purposes of this~~  
68 ~~subsection, the term 'subsidy' means any payment authorized by paragraph (2) of this~~  
69 ~~subsection in excess of the intrastate access charge reductions pursuant to subsection (c)~~  
70 ~~of Code Section 46-5-166.~~

71 ~~(2) After notice and opportunity for hearing, the commission shall determine the amount~~  
72 ~~of moneys in the fund that shall be distributed quarterly. Such determination shall be~~  
73 ~~made as follows:~~

74 ~~(A) Distributions to carriers that have reduced intrastate switched access charges~~  
75 ~~pursuant to subsection (c) of Code Section 46-5-166 shall be limited to an amount~~  
76 ~~reflective of such access charge reductions and shall also be reduced by the amount per~~  
77 ~~access line, which if added to the carrier's basic local exchange service rate, in~~  
78 ~~accordance with a schedule established by the commission, results in an amount that~~  
79 ~~would be equal to 110 percent of the July 1, 2009, residential state-wide weighted~~  
80 ~~average rate for basic local exchange services imputed across all access lines and~~  
81 ~~adjusted annually for inflation measured by the change in GDP-PI. Any distributions~~  
82 ~~pursuant to this subparagraph shall be limited to a period of no more than ten years; and~~

83 ~~(B) Except for those distributions to Tier 2 local exchange companies that have~~  
84 ~~reduced intrastate switched access charges pursuant to subsection (c) of Code Section~~  
85 ~~46-5-166, distributions to a Tier 2 local exchange carrier subject to rate of return~~  
86 ~~regulation shall also be reduced by the amount per access line, which if added to the~~  
87 ~~carrier's basic local exchange service rate, in accordance with a schedule established by~~  
88 ~~the commission, results in an amount that would be equal to 110 percent of the July 1,~~  
89 ~~2009, residential state-wide weighted average rate for basic local exchange services~~  
90 ~~imputed across all access lines and adjusted annually for inflation measured by the~~  
91 ~~change in GDP-PI. The commission shall determine any such distributions upon~~  
92 ~~application, demonstration, and good cause shown that the reasonable actual costs to~~  
93 ~~provide basic local exchange services exceed the maximum fixed price permitted for~~  
94 ~~such basic local exchange services; any distributions pursuant to this subparagraph shall~~  
95 ~~be limited to a period of no more than 20 years.~~

96 ~~(e) The commission shall require any local exchange company seeking reimbursement~~  
97 ~~from the fund pursuant to subparagraph (d)(2)(B) of this Code section to file the~~

98 ~~information reasonably necessary to determine the actual and reasonable costs of providing~~  
 99 ~~basic local exchange services.~~

100 (d) The commission shall determine the amount of contributions to be made to the fund  
 101 based upon the requests for distributions made and the limitations set forth in subsection  
 102 (e) of this Code section.

103 (e)(1) The commission shall determine distributions from the Rural Broadband Portion  
 104 of the fund to expand broadband services to unserved areas of the state based on funding  
 105 award recommendations received from the Department of Community Affairs. The  
 106 commission shall review any such recommendations and upon approval shall provide  
 107 distributions from the Rural Broadband Portion of the fund; provided, however, that the  
 108 total amount of distributions from the Rural Broadband Portion of the fund shall be  
 109 limited to \$10 million in any calendar year beginning January 1, 2021. No distributions  
 110 from the Rural Broadband Portion of the fund shall be made after December 31, 2024.

111 (2)(A) The commission shall determine any distributions from the Rural Local  
 112 Exchange Portion of the fund upon application by a Tier 2 local exchange company  
 113 subject to rate of return regulation to provide basic local exchange services and based  
 114 upon demonstration and good cause shown to the commission that:

115 (i) The reasonable actual costs of providing such basic local exchange services  
 116 exceed the maximum fixed price permitted for such basic local exchange services plus  
 117 the amount per access line; and

118 (ii) The amount in division (i) of this subparagraph when added to such Tier 2 local  
 119 exchange company's basic local exchange service rate, in accordance with a schedule  
 120 established by the commission, results in an amount that would equal 110 percent of  
 121 the July 1, 2009, residential state-wide weighted average rate for basic local exchange  
 122 services imputed across all access lines and adjusted annually for inflation measured  
 123 by the change in GDP-PI.

124 (B) The commission shall require any Tier 2 local exchange company subject to rate  
 125 of return regulation that applies for distributions from the Rural Local Exchange  
 126 Portion of the fund to provide to the commission the information reasonably necessary  
 127 to determine the actual and reasonable costs of providing basic local exchange services.

128 (C) The total amount of distributions from the Rural Local Exchange Portion of the  
 129 fund shall be limited to \$30 million in any calendar year beginning January 1, 2021.

130 (D) Notwithstanding any other provision of law, a Tier 2 local exchange company  
 131 subject to rate of return regulation shall be permitted to apply to the commission to  
 132 increase the maximum fixed price permitted for its basic local exchange services upon  
 133 a demonstration that the fixed price plus any disbursements the company receives from  
 134 the Rural Local Exchange Portion of the fund exceed the company's reasonable actual

135 costs to provide basic local exchange services. No distributions from the Rural Local  
 136 Exchange Portion of the fund shall be made after December 31, 2029.

137 (f) The commission shall have the authority to make adjustments to the contribution or  
 138 distribution levels based on yearly reconciliations and to order further contributions or  
 139 distributions as needed between companies to equalize reasonably the burdens of providing  
 140 basic local exchange ~~service services~~ throughout Georgia and providing broadband services  
 141 in unserved areas of this state.

142 (g) A ~~local exchange company~~ telecommunications company holding a certificate of  
 143 authority issued by the commission to provide services within Georgia or other company  
 144 ~~shall not~~ may establish a surcharge for the Universal Access Fund on customers' bills to  
 145 collect contributions required under this Code section ~~without first submitting.~~ Such  
 146 company shall submit to the Public Service Commission the methodology and data used  
 147 by such company for ~~approval by the commission and upon a showing to the commission~~  
 148 ~~that the surcharge does not result in an increase in the company's service rates in~~  
 149 developing such surcharge; provided, however, that such company shall not be required to  
 150 submit for approval the methodology and data for separate line items or surcharges that are  
 151 specifically authorized or required by federal law or other provisions of state law.

152 (h) The commission shall be authorized to promulgate rules and regulations to implement  
 153 and administer this Code section."

154 **SECTION 3.**

155 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
 156 by revising paragraph (5) of Code Section 50-40-1, relating to definitions regarding the  
 157 promotion and deployment of broadband services, as follows:

158 "(5) 'Eligible applicants' means any or all public bodies or private entities, designated by  
 159 the Department of Community Affairs pursuant to paragraph (2) of subsection (b) of  
 160 Code Section 50-40-81, as ~~political subdivisions~~ qualified to apply for funds under this  
 161 article."

162 **SECTION 4.**

163 Said title is further amended by revising Code Section 50-40-81, relating to development of  
 164 Georgia Broadband Deployment Initiative, funding awards, considerations, priorities, and  
 165 compliance with federal provisions, as follows:

166 "50-40-81.

167 (a) On or before July 1, 2019, the Department of Community Affairs shall develop the  
 168 'Georgia Broadband Deployment Initiative' program to provide funding awards to expand  
 169 broadband services to unserved areas of the state. The goal of such program shall be to

170 provide broadband services coverage throughout the entire state. The funding awards of  
 171 the program shall represent the state's investment in the deployment of broadband services  
 172 to unserved areas and shall be used only for capital expenses and expenses directly related  
 173 to the purchase or lease of property or communications services or facilities, including,  
 174 without limitation, backhaul and transport, to facilitate the provision of broadband services.

175 (b)(1) Funding awards, in the form of grants or loans, shall be competitively awarded to  
 176 eligible applicants based on criteria consistent with this article and other factors  
 177 established by the department; provided, however, that the department shall not  
 178 discriminate between different types of broadband services technology as long as the  
 179 technology is capable of transmitting data at the rates specified for each unserved area.

180 (2) The department shall designate ~~political subdivisions~~ as eligible applicants that shall  
 181 be qualified to apply for funding awards under this article. All such eligible applicants  
 182 that are political subdivisions are hereby granted all powers necessary for any and all  
 183 purposes of the program, and in the case of any development authority included as an  
 184 eligible applicant, the exercise of such powers is hereby found and determined to promote  
 185 the development of trade, commerce, industry, and employment opportunities.

186 (c) Funding awards shall be based on appropriations of funds or receipt of other funds to  
 187 support the program. For the purpose of accessing funds available under the Rural  
 188 Broadband Portion of the Universal Access Fund, the department shall submit appropriate  
 189 funding award recommendations to the Public Service Commission pursuant to Code  
 190 Section 46-5-167. Notwithstanding any other provision of law, a distribution to any  
 191 eligible applicant from the Rural Broadband Portion of the Universal Access Fund shall not  
 192 be considered a distribution to a telephone or telecommunications company from the  
 193 Universal Access Fund.

194 (d) The department shall consider each of the following in the funding awards process:

195 (1) The effectiveness of ~~the~~ any partnership between an eligible applicant that is a  
 196 political subdivision and a qualified broadband services provider;

197 (2) The benefit to the unserved area in terms of the population served and the capacity  
 198 and scalability of the technology to be deployed; and

199 (3) The total project cost and the ability to leverage other available federal, local, and  
 200 private funds.

201 (e) In addition to the criteria provided in subsection (d) of this Code section, the  
 202 department may establish any other criteria for determining any funding awards that are  
 203 reasonable and necessary to ensure that the funds are utilized to provide broadband services  
 204 to the unserved areas. Such criteria may include, but shall not be limited to:

205 (1) Whether the eligible applicant or the qualified broadband services provider in ~~the~~ a  
 206 partnership with an eligible applicant, as applicable, is willing to agree to:

- 207 (A) Not charge more for broadband services to customers in any unserved area for  
 208 which a funding award is received than it does for the same or similar broadband  
 209 services to customers in other areas of the state;
- 210 (B) Serve 90 percent of any locations requesting broadband services in any unserved  
 211 area for which a funding award is received; and
- 212 (C) Meet or exceed in any unserved area for which it receives a grant a minimum level  
 213 of dependable service as established by the department;
- 214 (2) The benefit to businesses; industrial parks; education centers; hospitals and other  
 215 health care facilities, such as telehealth facilities and emergency care facilities;  
 216 government buildings; public safety departments; or other providers of public services  
 217 located within the unserved area;
- 218 (3) Data cap limits, signal latency, and reliability of the technology to be utilized;
- 219 (4) Historic service issues in other areas served by the eligible applicant or the qualified  
 220 broadband provider in the a partnership with the eligible applicant, as applicable; and
- 221 (5) The length of time it will take to deploy the broadband services in the unserved area.
- 222 (f) The department shall give competitive priority to any unserved area certified as a  
 223 broadband ready community as provided in Article 3 of this chapter. ~~Partnerships that~~  
 224 ~~include qualified broadband providers that cooperate~~ Cooperation in providing information  
 225 requested pursuant to subsection (d) of Code Section 50-40-21, as applicable, shall also  
 226 factor favorably into the competitive funding awards process.
- 227 (g) The department shall ensure that the program complies with all applicable federal laws,  
 228 rules, and regulations."

229 **SECTION 5.**

230 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 231 without such approval for purposes of promulgating rules and regulations. This Act shall  
 232 become effective on July 1, 2021, for all other purposes.

233 **SECTION 6.**

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