

Senate Bill 379

By: Senators Johnson of the 1st, Hooks of the 14th, Meyer von Bremen of the 12th, Pearson of the 51st, Smith of the 52nd and others

**AS PASSED**

**AN ACT**

To amend Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and telegraph service, so as to provide for the comprehensive revision of provisions relating to local government franchising authority; to change certain provisions relating to the power of eminent domain by telegraph and telephone companies, the placement of posts and other fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, and liability of telegraph and telephone companies; to provide for definitions, procedures, conditions, and limitations relating thereto; to provide for related matters; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to telephone and telegraph service, is amended by revising Code Section 46-5-1, relating to the power of eminent domain by telephone and telegraph companies, the placement of posts and other fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks, and liability of telegraph and telephone companies for damages, 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 the approval of the county or municipal authorities in charge of such roads, highways, and rights of way. The approval of such municipal authorities shall be limited to the process set forth in paragraph (3) of subsection (b) of this Code section, and the approval of the county shall be limited to the permitting process set forth in subsection (c) of this Code section. Upon making due compensation, as defined for municipal authorities in paragraph (9) of subsection (b) of this Code section and as provided for counties in subsection (c) of this Code section, a telegraph or telephone company shall have the right

to construct, maintain, and operate its lines through or over any lands of this state; on, along, and upon the right of way and structures of any railroads; and, where necessary, under or over any private lands; and, to that end, a telegraph or telephone company may have and exercise the right of eminent domain.

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

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

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

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

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

(5) No county or municipal authority shall impose upon a telegraph or telephone company any build-out requirements on network construction or service deployment, and, to the extent that a telegraph or telephone company has elected alternative regulation pursuant to Code Section 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code Section 46-5-169 by providing communications service, at the company's option, through any affiliated companies and through the use of any

technology or service arrangement; provided, however, that such company shall remain subject to its obligations as set forth in paragraphs (4) and (5) of Code Section 46-5-169.

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

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

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

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

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

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

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

(G) A statement in bold type at the top of the application as follows: 'Pursuant to paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia Annotated, the municipal authority shall notify the applicant of any deficiencies in this application within 15 business days of receipt of this application.'

(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 shall specifically identify all application deficiencies. If no such notification is given

within 15 business days of the receipt of an application, such application shall be deemed complete.

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

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

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

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

(7) Any telegraph or telephone company that has placed lines and facilities in the public roads and highways or rights of way of a municipal authority without first obtaining permits or otherwise notifying the appropriate municipal authority of its presence in the public roads and highways or rights of way shall provide the information required by paragraph (1) of this subsection, if applicable, to such municipal authority on or before

October 1, 2008. As of October 1, 2008, if any telegraph or telephone company, other than those who meet the requirements of paragraph (6) of this subsection, has failed or fails to provide the information required by paragraph (1) of this subsection to the municipal authority in which its lines or facilities are located, such municipal authority shall provide written notice to such telegraph or telephone company giving that company 15 calendar days from the date of receipt of such notice to comply with subsection (b) of this Code section. In the event the 15 calendar day cure period expires without compliance, such municipal authority may petition the Georgia Public Service Commission which shall, after an opportunity for a hearing, order the appropriate relief.

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

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

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

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

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

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

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

(E) Local private line revenue, as defined in 47 C.F.R. 35.5040; provided, however, 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 paragraph (a) of this subsection, 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.

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

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

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

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

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

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

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

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

(c) If a telegraph or telephone company accesses the public roads and highways and rights of way of a county and such county requires such telegraph or telephone company to pay due compensation, such due compensation shall be limited to an administrative cost recoupment fee which shall not exceed such county's direct, actual costs incurred in its permitting process, including issuing and processing permits, plan reviews, physical inspection and direct administrative costs; and such costs shall be demonstrable and shall

be equitable among applicable users of such county's roads and highways or rights of way. Permit fees shall not include the costs of highway or rights of way acquisition or any general administrative, management, or maintenance costs of the roads and highways or rights of way and shall not be imposed for any activity that does not require the physical disturbance of such public roads and highways or rights of way or does not impair access to or full use of such public roads and highways or rights of way. Nothing in this Code section shall affect the authority of a county to require a telegraph or telephone company to comply with reasonable regulations for construction of telephone lines and facilities in public highways or rights of way pursuant to the provisions of paragraph (6) of Code Section 32-4-42."

## **SECTION 2.**

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