

**South Carolina General Assembly**  
123rd Session, 2019-2020

Download [This Version](#) in Microsoft Word format

**Bill 3780**

~~Indicates Matter Stricken~~

Indicates New Matter

---

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

AMENDED

September 23, 2020

**H. 3780**

Introduced by Reps. White, Hixon, Taylor, Cobb-Hunter, Funderburk, Anderson, Hewitt, R. Williams, Davis, Brown, Weeks, Rivers, S. Williams and Gilliard

S. Printed 9/23/20--S.

Read the first time April 4, 2019.

**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 7, TITLE 59 SO AS TO CREATE THE "GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY (GREAT) PROGRAM", TO FACILITATE THE DEPLOYMENT OF BROADBAND TO UNSERVED AREAS OF THE STATE, TO PROVIDE DEFINITIONS, TO ESTABLISH THE GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY FUND, TO PROVIDE THAT ANY PROPERTY OWNED BY A MUNICIPALITY MAY BE LEASED OR RENTED IN CERTAIN SITUATIONS, TO PROVIDE THAT A MUNICIPALITY-OWNED UTILITY MAY BE LEASED, TO PROVIDE THAT A MUNICIPALITY IS AUTHORIZED TO SELL OR LEASE ANY PUBLIC ENTERPRISE THAT IT OWNS, TO PROVIDE THAT THE STATE SHALL ALLOW COLLOCATION, INSTALLATION, AND OPERATION OF CERTAIN EQUIPMENT BY A BROADBAND PROVIDER ON ANY EXISTING STRUCTURES, AND TO PROVIDE FOR A MONTHLY 911 SERVICE CHARGE; AND TO DESIGNATE THE EXISTING PROVISIONS OF CHAPTER 7, TITLE 59 AS "ARTICLE 1, GENERAL PROVISIONS".

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 58 of the 1976 Code is amended by adding:

"Article 25

Broadband Accessibility Act

Section 58-9-3000. (A) This article shall be known as the 'Broadband Accessibility Act'.

(B) The General Assembly finds that:

- (1) Despite the substantial efforts and billions of dollars invested by existing broadband service providers, locations within the state still lack access to broadband service, particularly in rural areas where the cost to deploy facilities is significantly higher than in more densely-populated areas.
- (2) Because the lack of broadband facilities and services in certain areas deprives citizens residing in those areas from access to opportunities, the state needs to take action to correct and eliminate discrepancies in access to broadband facilities and services.
- (3) With this chapter, the General Assembly intends to authorize electric cooperatives to (a) invest in or deploy broadband facilities and (b) provide broadband service in this state, while ensuring that appropriate protections are in place to ensure that electric cooperatives do not have an unfair competitive advantage over other broadband service providers, and that the provision of broadband service by electric cooperatives does not unduly burden their electric service customers.
- (4) It is the public policy of this state to encourage and facilitate the development and investment in broadband facilities in order to facilitate access to broadband services at all locations in the state, as this development is vital and necessary to induce, create, and promote industrial and economic development and to create job opportunities, enhance health care, and enhance educational advancement in the state.
- (5) It is the public policy of this state to encourage continued and expanded investment in broadband infrastructure in this state by existing and new broadband providers.
- (6) It is the public policy of the state to promote the authorization of advanced communications capabilities to be installed within existing easements and other rights-of-way in a manner that protects the rights of landowners.
- (7) It is the public policy of this state to promote the efficient deployment of broadband facilities in the state.
- (8) Utilizing electric easements to provide broadband services, especially existing overhead or underground facilities, does not change the physical use of the easement, interfere with or impair any vested rights of the owner or occupier of real property subject to the easement, or place any additional burdens on the property interests of an owner or occupier. Consequently, the installation and operation of broadband services within the easements are merely changes in the manner or degree of the granted use as appropriate to accommodate a new technology and, absent any applicable express prohibition contained in the instrument conveying or granting the easement, shall be deemed as a matter of law to be permitted use within the scope of every such easement.
- (9) The provisions of this chapter are reasonably related to the legislative objective of facilitating access to broadband services in unserved areas throughout the state.

Section 58-9-3010. As used in this article, unless the context otherwise requires:

- (1) 'attached facility' means a broadband facility or a broadband network or any portion of a broadband network, in each case located substantially:
  - (a) aboveground and attached to an electric cooperative's electric service infrastructure; or
  - (b) underground in an electric easement.
- (2) 'broadband affiliate' means a broadband service provider that is a separate legal entity from any electric cooperative but is wholly or partially owned by one or more electric cooperatives, or is controlled by, controls, or is under common control with one or more electric cooperatives.
- (3) 'broadband facility' means any infrastructure used to deliver broadband service or for the provision of broadband service.

(4) 'broadband network' means any and all infrastructure, equipment, materials, or component parts thereof that may be used to provide landline or wireless broadband service, whether now existing or that may be developed in the future including, but not limited to, wires; cables, including fiber optic and copper cables; conduits to the extent not prohibited by the National Electric Safety Code; antennas; equipment; fixtures; switching multiplexers; poles; routers; switches; servers; appurtenances; facilities; or other equipment, whether ancillary, auxiliary, or otherwise used to facilitate the provision of landline or wireless broadband service.

(5) 'broadband service' means a landline or wireless service that meets the definition of 'broadband service' in Section 58-9-10(17) and that has minimum download speeds of 25 megabits per second and minimum upload speeds of 3 megabits per second.

(6) 'broadband service provider' means:

(a) a person that provides retail broadband service to end-user customers; and

(b) an existing broadband service provider.

(7) 'commission' means the Public Service Commission of South Carolina.

(8) 'communications service provider' means a person that provides communications service as defined in Section 58-9-2610(B).

(9) 'electric easement' means a recorded or unrecorded easement or right-of-way or similar right in or to real property, including prescriptive rights, no matter how acquired, held by any electric provider for the siting of electric service infrastructure or for the purpose of delivering electric service, regardless of whether an electric cooperative's broadband affiliate or another broadband service provider uses the easement or other right to provide broadband service.

(10) 'electric cooperative' means an electric cooperative organized under Chapter 49 of Title 33.

(11) 'electric provider' means an electric cooperative, an investor-owned electric utility, and the South Carolina Public Service Authority.

(12) 'existing broadband service provider' means a person that was providing broadband service as defined in Section 58-9-10(17) on the effective date of this article.

(13) 'FCC' means the Federal Communications Commission or its successor.

(14) 'make-ready' means the modification or replacement of an electric cooperative's infrastructure or of the lines or equipment on the electric cooperative's infrastructure to accommodate additional attached facilities.

(15) 'person' means any natural person and any firm, association, corporation business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(16) 'retail broadband service' means any broadband service other than that provided for:

(a) the internal use of an electric cooperative;

(b) the internal use of another electric cooperative;

(c) resale by another electric cooperative or other broadband service provider; or

(d) use as a component part of communications services that other cable, telecommunications, or information services providers offer to their customers.

Section 58-9-3020. (A) Subject to the limitations set forth in this article, and in addition to all other purposes, powers, and authority currently granted to electric cooperatives under the laws of this state, an electric cooperative may do all of the following within areas in which it is authorized to provide electric service, and within such other areas as provided in subsection (B):

- (1) own, maintain, construct, install, and replace broadband facilities;
- (2) contract with a broadband service provider, including a broadband affiliate, to own, lease, manage, construct, superintend, install, operate, maintain, and replace a broadband network;
- (3) provide retail broadband service only through a broadband affiliate; and
- (4) contract with a broadband service provider that is not a broadband affiliate to provide retail broadband service to electric cooperative customers in compliance with the provisions of this article, provided however that nothing in this article is intended to nor shall it be construed as regulation of the rates, terms, and conditions of retail broadband service to end-user customers.

(B) An electric cooperative may provide retail broadband service only within:

- (1) areas in which it is authorized to provide electric service and areas within two miles of its authorized electric service area;
- (2) census block groups for federal funding programs in which the electric cooperative has been designated as a recipient for federal or state funding provided that:
  - (a) the funding is provided through a structured and defined program;
  - (b) the program is open to broadband service providers including, but not limited to, electric cooperatives offering broadband pursuant to this article; and
  - (c) the program is intended to support the deployment of broadband facilities or broadband service for unserved consumers;
- (3) census blocks for state funding programs in which the electric cooperative has been designated as a recipient for federal or state funding provided that:
  - (a) the funding is provided through a structured and defined program;
  - (b) the program is open to broadband service providers including, but not limited to, electric cooperatives offering broadband pursuant to this article; and
  - (c) the program is intended to support the deployment of broadband facilities or broadband service for unserved consumers.

(C) In order to assist an electric cooperative in the planning, engineering, construction, extension, provision, operation, repair and maintenance of broadband facilities, an electric cooperative or its broadband affiliate is authorized to:

- (1) apply for, accept, repay, and utilize loans, grants, and other financing from any person; and
- (2) enter into contracts, agreements, partnerships, or other types of business relationships with any person.

(D) This article does not require or obligate an electric cooperative to install or implement a broadband network or facilities or to provide broadband service; provided, however, nothing in this subsection relieves an electric cooperative from complying with the provisions of Section 58-9-3030(A) and (B).

(E) A broadband affiliate shall only serve the purposes of developing, providing, furnishing, or promoting broadband facilities and broadband services or a combination of such purposes.

Section 58-9-3030 (A) An electric cooperative shall provide communications service providers, including any broadband affiliates of such electric cooperative, with nondiscriminatory access in offering or granting rights to install or attach any attached facilities, including the right to use easements and rights-of-way, and must offer just, reasonable, and nondiscriminatory rates, fees, charges, terms, and conditions for attached facilities to communications service providers, which must pay such charges and comply with such terms and conditions. Access includes the right to nondiscriminatory use of all easements and rights-of-way and to all poles, ducts, conduits to the extent not prohibited by the National Electric Safety Code, and similar support structures owned or controlled by the electric cooperative or, if applicable, its broadband affiliate, including access to the replacement or expansion of such facilities for the purpose of attaching equipment for the provision of broadband service.

(1) Except as expressly provided otherwise, nothing in this article alters, amends, or otherwise affects the provisions of any agreement that, as of the effective date of this article, addresses the attachment or placement of facilities by communications service providers on or in the poles or structures of an electric cooperative.

(2) Notwithstanding subitem (1), a communications service provider may submit to an electric cooperative a written request to negotiate agreements addressing the attachment or placement of facilities, after the date of the written request, by the communications service provider on or in the existing or new poles or structures of the electric cooperative. Unless the communications service provider and the electric cooperative agree otherwise, such agreements must not address facilities that were attached or placed prior to the date of the written request to negotiate. The parties must negotiate in good faith for at least sixty days after the written request, after which either party may petition the commission to determine just and reasonable rates, terms, and conditions for the agreements. The commission must make such determination within one hundred eighty days of the filing of the petition for that determination and the commission's determination must apply retroactively to all facilities attached or placed between the date of the written request to negotiate and the date of the commission's determination. Between the date of the written request to negotiate and the date of the commission's determination:

(a) the terms and conditions of any existing agreement addressing such attachments or placements apply, subject to true-up, to put the parties in the positions in which they would have been had the commission's determination been in effect on the date of the written request to negotiate; and

(b) in the absence of such existing agreement, unless the parties agree otherwise, the commission, within thirty days of the petition for a determination, must establish interim rates, terms, and conditions that will apply, subject to true-up, to put the parties in the positions in which they would have been had the commission's determination been in effect on the date of the written request to negotiate.

(B)(1) Except as provided in item (2), an electric cooperative shall not withhold authorization or delay its decision to provide authorization to a communications service provider to install, maintain, own, operate, or use the communications service provider's attached facilities on electric service infrastructure owned or controlled by the electric cooperative. A communications service provider shall not delay installation, maintenance, or relocation of attachments owned or controlled by the communications service provider on infrastructure owned or controlled by an electric cooperative except as may be required by law, regulation, or agreement. All review by an electric cooperative of requests by a communications service provider to attach facilities, make-ready activities, and all pole or support structure replacement or expansions undertaken pursuant to this section shall be completed by the electric cooperative, its broadband affiliate, or by the communications service provider, as applicable, within the timeframes and other make-ready requirements set forth in 47 C.F.R. Section 1.1411 under federal law for utilities subject to regulation by the FCC pursuant to the Federal Pole Attachments Act (47 U.S.C.A. Section 224) as it exists on September 15, 2020, unless the commission finds, upon petition by the electric cooperative, its affiliate, or the communications service provider that the public interest and necessity require an extension of such timelines.

(2) A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities, provided the communications service provider pays the reasonable and actual cost of the pole owner caused by its attachment.

(C)(1) An electric cooperative that provides any broadband facility or any broadband service that is not retail broadband service to a broadband affiliate or to any other person or entity must do so pursuant to a written contract, at market rates, and on terms and conditions that are not harmful to competition. Within fifteen business days of entering any such contract, an electric cooperative must file notice of the contract with the commission in a docket designated by the commission. If, after consultation with the electric cooperative that has filed such notice, a communications services provider believes the electric cooperative has violated the provisions of this subsection, a communications services provider may submit a complaint pursuant to the provisions of Section 33-49-150 asserting that the electric cooperative has violated the provisions of this subsection. Upon submitting such complaint, the electric cooperative must provide any relevant contracts to the communications services provider pursuant to a nondisclosure agreement. If the communications services provider and the electric cooperative cannot agree to the terms of a nondisclosure agreement within ten days after the submission of the complaint, either may petition the commission to determine the terms and conditions of such nondisclosure agreement and the commission must do so within ten days of the filing of the petition. No complaint submitted pursuant to this subsection shall be the subject of a motion to dismiss or a motion to stay or otherwise delay the proceedings for failure to set forth sufficient factual allegations to support the claim until fifteen business days after the communications service provider submitting the complaint has been provided any relevant contract. If the complaint results in a contested case before the commission, the electric cooperative subject to the complaint and the communications service provider submitting the complaint shall be permitted to conduct discovery in accordance with the commission's rules and regulations. The Office of Regulatory Staff is given authority to investigate such complaints and the commission is given authority and jurisdiction to resolve any disputed issues concerning such complaints. For the purposes of determining whether a contract is harmful to competition pursuant to this subsection:

(a) the commission may consider whether the contract is exclusive, but the exclusivity of a contract does not, in and of itself, constitute harm to competition; and

(b) any contract that by its own terms is available for adoption by any communications service provider is, by operation of law, at market rates and on terms and conditions that are not harmful to competition.

(2) The notice requirements of item (1) do not apply to:

(a) broadband services or broadband facilities that are provided for the internal electric operations use of the electric cooperative or another electric cooperative; or

(b) any agreements entered into prior to the effective date of this article.

(3) No sooner than five years from the effective date of this article, on petition by any interested party, the commission may consider whether there remains a continued need for the notice filing requirements of item (1) and, if it determines that the need no longer exists, the commission may terminate the notice filing requirement of item (1).

(D)(1) Except as otherwise provided in this article, a communications service provider that has attached, or applied to attach, facilities on electric cooperative infrastructure shall abide by the terms, conditions, and schedules required of them in pole attachment agreements and will transfer its attached facilities to new or updated electric cooperative infrastructure in accordance with the terms, conditions, or schedules required therein, or, in the absence of any such terms, conditions or schedules, transfer its attached facilities to new or updated electric cooperative infrastructure within a reasonable amount of time.

(2) A communications service provider that has attached, or applied to attach, facilities on electric cooperative infrastructure and the electric cooperative must cooperate with the owner of the pole and all other attaching

entities in good faith to fully comply with National Electric Safety Code requirements for electric infrastructure attachments.

(3) Except in compliance with the provisions of a written agreement that provide otherwise, a communications service provider must not attach to electric cooperative infrastructure without the knowledge and permission of the electric cooperative.

(E) An electric cooperative shall not directly provide retail broadband service but may cause or allow a broadband affiliate to offer retail broadband service. As long as an electric cooperative maintains its exclusive right to provide electric service to customers within its exclusive service territory, both the electric cooperative that has a broadband affiliate and the broadband affiliate shall:

(1) maintain or cause to be maintained an accounting system for the broadband affiliate separate from the electric cooperative's accounting system, following generally accepted accounting principles or another reasonable and customary allocation method;

(2)(a) not cause or allow the electric cooperative to use its exclusive right to provide electric services within its exclusive territory to cross-subsidize the broadband affiliate or its provision of broadband service. To prevent cross-subsidization between broadband service activities and electricity service activities, any electric cooperative with a broadband affiliate that provides retail broadband service shall:

(i) fully allocate all costs of electricity service activities and broadband service activities, including costs of any shared services between electricity service activities and broadband affiliate broadband service activities in accordance with:

(A) the provisions of this section; and

(B) the applicable uniform system of accounts and generally accepted accounting principles that are applicable to electric cooperatives under federal and state laws, rules, and regulations;

(ii) not charge any costs of broadband service activities to the electricity service customers of such electric cooperative.

(A) Costs of broadband service activities do not include the appropriate costs of construction, installation, attachment, operation, management services, administrative services, repair, and maintenance of the facilities or infrastructure associated with the portion of communications infrastructure and facilities or services that are used by the electric cooperative for internal information and control technology systems necessary for the provision of electricity services.

(B) The electric cooperative must charge its broadband affiliate, and the broadband affiliate must cover in the prices it charges for its broadband services, amounts that fully compensate the electric cooperative for the direct, indirect, and shared costs associated with the portion of the infrastructure and facilities or services that are used by the broadband affiliate. Such costs are not limited to marginal or incremental costs but instead must include the appropriate costs of construction, installation, attachment, operation, management services, administrative services, repair, and maintenance of the facilities or infrastructure regardless of whether they are in the space apportioned for electric, communications, or any other facilities or structures;

(iii) not use below-market loans or below-market funding from programs that are not intended to support the deployment of broadband facilities or broadband service in order to support broadband facilities or to provide broadband service unless the electric cooperative or its broadband affiliate imputes the difference between market rates and the below-market loans or below-market funding into the costs of its broadband facilities and broadband service. The provisions of this subitem (iii) shall not apply to loans or funding from programs that are intended to support the deployment of broadband facilities or broadband service.

(b) Nothing in subsection (E)(2) prohibits an electric cooperative from:

- (i) loaning funds to a broadband affiliate if the interest rate on the loan is no less than the electric cooperative's lowest cost of capital;
- (ii) exchanging services or materials for other services or materials of equivalent value;
- (iii) providing reduced-cost broadband service to low-income retail customers; or
- (iv) conducting and funding due diligence, operational analysis, entity set-up, and associated noncapital expenditures relating to and prior to the establishment of a broadband affiliate.

(F) The commission and the Office of Regulatory Staff have the authority and jurisdiction set forth in Section 33-49-150(b) to enforce compliance with this section with regard to communications services providers, electric cooperatives, and broadband affiliates that conduct any activities addressed by this section.

(G) Nothing in this article:

- (1) subjects an electric cooperative to regulation by the FCC;
- (2) constitutes an exercise of, or an obligation or intention to exercise, the right of a state under 47 U.S.C. Section 224(c) to regulate the rates, terms, and conditions for pole attachments, as defined in 47 U.S.C. Section 224(a)(4); or
- (3) constitutes a certification, or an obligation to certify, to the FCC under 47 U.S.C. Section 224.

Section 58-9-3040. (A) If the owner of an interest in real property subject to an electric easement contends that the owner's property has been taken, destroyed, or physically damaged by the construction, installation, use, or enlargement of broadband networks within the electric easement on the owner's property that is not expressly provided for by the terms of the electric easement, the owner may file a civil action in the circuit court for the county in which the property is located to recover damages as specified by this section. All such actions must be brought within two years after the later of:

- (1) the effective date of this article; or
- (2) the date broadband networks are first constructed or installed within the electric easement on the owner's real property. Nothing in this article shall revive any right or remedy which may have become barred by lapse of time or by any law of this state prior to the effective date of this article.

(B)(1) In any action under subsection (A), if the court determines that the construction, installation, use, or enlargement of a broadband network exceeds the scope of the rights granted under the provisions of this section or by the electric easement on the owner's real property, the measure of damages shall be an amount equal to the difference, if any, between the following:

- (a) the fair market value of the owner's real property immediately before the construction or installation of broadband networks within the electric easement on the owner's real property; and
  - (b) the fair market value of the owner's real property immediately after the construction or installation of broadband networks within the electric easement on the owner's real property and taking into account the incidental benefits to the owner's property resulting from the potential availability of broadband services to the property.
- (2) Any decreases in the fair market value of owner's property which are not attributable to the construction or installation of broadband networks within the electric easement on the owner's real property shall not be included for purposes of calculating damages in item (1).

(3) The damages, if any, shall be fixed as of the date of construction or installation of broadband networks and shall not be deemed to continue, accumulate, or accrue. The judgment in any such action for the plaintiff shall



include the plaintiff's costs and litigation expenses. Costs and litigation expenses authorized by this section may be claimed, taxed, and awarded under the same procedures that apply to costs in other civil actions. Payment of the judgment in any such action shall vest in the electric provider or electric cooperative all property rights necessary to construct, use, install, operate, replace, and maintain, from time to time, the broadband networks within the electric easement on the owner's real property and the electric easement shall be thereafter permanently expanded to include the right to construct, use, install, operate, replace, and maintain the broadband network and broadband services. The judgment shall have the same effect as a conveyance executed by the owner in due form under applicable law and shall run with the land. A certified copy of the judgment may be filed by the electric provider or electric cooperative, a broadband affiliate, or other broadband operator in the land records of the county in which the subject property is located, but is not required to make such broadening of the electric easement effective. The expansion for the broadband network shall include the broadband network within the maintenance, egress, and ingress provisions of the electric easement.

(C) Evidence of past, current, or future revenues or profits derived or to be derived by an electric provider, electric cooperative, broadband affiliate, or unaffiliated broadband operator or broadband service provider from providing broadband services is not admissible for any purpose in an action under this section.

(D) An owner bringing an action under this section may not bring an action on behalf of a class or in any other representative capacity or any form of collective action. The limitation in this subsection is a substantive limitation and allowing an owner to bring a class action or other representative action for a violation of this chapter would abridge, enlarge, or modify the substantive rights created by this section.

(E) An electric provider, electric cooperative, broadband affiliate, or unaffiliated broadband operator or broadband service provider may receive such rights from an owner of real property by service agreement or service regulation, membership agreement, license agreement, or other agreement to serve the property with advanced communications capabilities without granting an easement or right-of-way. The grant or agreement may permit the construction, installation, replacement, operation, use, and maintenance of the advanced communications capabilities on the property without the requirement of further consent of any other tenant, concessionaire, or occupant of that property.

(F) With respect to the installation of broadband networks within an electric easement in effect prior to the effective date of this article, the electric provider or electric cooperative shall provide the same notice as is required by the express terms of the electric easement, if any, or as required by other applicable law for the construction or installation of the electric delivery network within the electric easement. With respect to the installation of broadband networks within an electric easement that is acquired other than by condemnation after the effective date of this article, the electric provider or electric cooperative shall provide such notice as is required by the express terms of the document creating the electric easement, if any; or under applicable law. Notice shall be sufficient if mailed to the name and address of the owner or owners listed in the real property ad valorem tax records for the county where the real property is located. Nothing in this section shall require the notice from the electric provider or electric cooperative when the electric easement is acquired by condemnation or pursuant to an expansion of the electric easement by civil action commenced by the owner.

(G) Nothing in this article shall be deemed to relieve the broadband operator, broadband service provider, electric provider, or electric cooperative from liability for bodily injury or physical damage to real or personal property located adjacent to the electric easement, subject to the limitations set forth in this article.

Section 58-9-3050. (A) An electric cooperative may not condition the receipt of electric service on, nor provide more favorable terms for electric service for, persons that receive broadband service from the electric cooperative's broadband affiliate or any other broadband service provider.

(B) An electric cooperative may not share confidential information from an unaffiliated communications service provider obtained in a pole attachment request and approval process including, but not limited to, requested locations for pole attachments, the locations of customers to be served, or any identifying information regarding customers with its broadband affiliate or any other communications service provider.

(C) An electric cooperative shall not disconnect any customer from receiving electric services based on the customer's failure to pay for broadband service provided to the customer by the electric cooperative's broadband affiliate."

SECTION 2. Section 33-49-20 of the 1976 Code is amended to read:

"Section 33-49-20. In this chapter, unless the context otherwise requires:

- (1) 'person' includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic;
- (2) 'member' means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership;
- (3) 'articles of incorporation' includes the articles of conversion of a converted corporation;
- (4) 'commission' means the South Carolina Public Service Commission;
- (5) 'corridor' means the area within 300 feet of an electric supplier's distribution lines as described in Act 432 of 1969;
- (6) 'broadband affiliate' is as defined in Section 58-9-3010(2);
- (7) 'broadband network' is as defined in Section 58-9-3010(4);
- (8) 'broadband service' is as defined in Section 58-9-3010(5).

Corporations organized under this chapter and corporations which become subject to this chapter in the manner provided herein are hereinafter referred to as 'cooperatives'."

SECTION 3. Section 33-49-150 of 1976 Code is amended as follows:

"Section 33-49-150. (a) The Office of Regulatory Staff under the provisions of this section is hereby vested with the authority and jurisdiction to make inspections, audits, and examinations of electric cooperatives pursuant to the provisions of Chapter 4, Title 58 relating to the compliance of electric cooperatives with the provisions of Sections 33-49-255, 33-49-280, 33-49-420, 33-49-430, 33-49-440, 33-49-450, 33-49-610, 33-49-615, 33-49-620, 33-49-625, 33-49-630, 33-49-640, 33-49-645, 33-49-1410, 33-49-1420, 33-49-1430, 33-49-1440, 58-27-820, and 58-27-840. The Office of Regulatory Staff is granted authority and jurisdiction over electric cooperatives that provide only wholesale services with regard to any of the foregoing statutory provisions to the extent that those provisions are applicable to the wholesale electric cooperatives. The Office of Regulatory Staff does not have the authority or jurisdiction to make inspections, audits, or examinations of subsidiaries of an electric cooperative provided that the subsidiary is not subsidized by, or any financial credit risk to, electric cooperative ratepayers and that the subsidiary has not taken action, on behalf of the electric cooperative, on any of the electric cooperative's duties as provided in the sections listed above. Where an electric cooperative board of trustees has exercised its business judgment in accordance with sound business and management practices and consistent with the long-term financial stability of the cooperative and the benefit of its members, the Office of Regulatory Staff is not authorized to disturb the resulting decisions of the electric cooperative board of trustees. Upon completion of an authorized inspection, audit, or examination, the Office of Regulatory Staff must report its findings to the management and board of the electric cooperative and attempt to resolve with the management and board any compliance issues that are identified. The commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits, or examinations.

(b) The Office of Regulatory Staff is further vested with the authority and jurisdiction to make inspections, audits, and examinations sufficient to ascertain the compliance of communications service providers, electric cooperatives, and broadband affiliates with the provisions of Sections 58-9-3030 and 58-9-3050. For inspections, audits, and examinations executed in accordance with this subsection, the following procedures apply:

(1) Consistent with the powers provided in Section 33-49-150(b), the Office of Regulatory Staff shall make an inspection, audit, and examination upon the issuance of a complaint, submitted to the Office of Regulatory Staff, by a communications service provider, broadband affiliate, or electric cooperative that has reason to believe a violation of Sections 58-9-3030 or 58-9-3050 is occurring or has occurred. To the extent that a communications service provider is an attacher only, the Office of Regulatory Staff shall confine their inspection, audit, and examination to the attacher's compliance with attacher obligations pursuant to applicable laws, regulations, and agreements. The Office of Regulatory Staff shall provide notice of the complaint to each communications service provider, broadband affiliate, or electric cooperative named in the complaint. The provisions of Section 58-4-55 including, but not limited to, the treatment of information deemed confidential or proprietary, shall apply to any such inspections, audits, and examinations. Information deemed confidential or proprietary must be made available to other parties or to the complaint only pursuant to the terms and conditions of an appropriate nondisclosure agreement. If the parties cannot agree to such terms and conditions, the commission shall provide the parties an opportunity to be heard and then establish the terms and conditions of an appropriate nondisclosure agreement.

(2) Unless the parties to the complaint agree otherwise, the Office of Regulatory Staff must complete its inspection, audit, and examination within forty-five days of issuance of the complaint initiated by a communications service provider, electric cooperative, or a broadband affiliate. Upon completion of an authorized inspection, audit, and examination, the Office of Regulatory Staff must report its findings to the management and board of the electric cooperative, broadband affiliate or the communications service provider that is the subject of the complaint and to the party that made the complaint. The Office of Regulatory Staff will attempt to resolve with the management and board of the electric cooperative, broadband affiliate, or the management of the communications service provider any compliance issues that are identified. The commission is vested with the authority and jurisdiction, upon the filing of a complaint, to determine any disputed issues arising from the inspection, audit, and examination and any issues arising from or under the provisions of Sections 58-9-3030 and 58-9-3050 that are not resolved pursuant to subsection (b). In determining such issues, and only to the extent necessary to resolve such disputed issues, the commission is granted authority and jurisdiction over any and all electric cooperatives, broadband affiliates, and communications service providers that conduct any activities pursuant to Sections 58-9-3030 and 58-9-3050.

(3) The commission must enter a final order deciding a complaint filed with the commission pursuant to subsection (b)(2) within ninety days of filing.

(4) Except as expressly provided in subsection (b), nothing in subsection (b) expands, diminishes, or otherwise affects any existing jurisdiction of the commission."

SECTION 4. Sections 33-49-250(10) and (11) of the 1976 Code are amended to read:

"(10) to conduct its business and exercise any or all of its powers within or without this State; ~~and~~

(11) to do and perform any and all other acts and things and to have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized; and

(12) to wholly or partially own, lease, maintain, construct, install, operate and replace a broadband network directly or indirectly as provided for and subject to the limitations and requirements set forth in Article 25, Chapter 9 of Title 58."

SECTION 5. Title 58, Chapter 31 of the 1976 Code is amended by adding:

"Section 58-31-230. (A) As used in this section, unless the context otherwise requires:

(1) 'unaffiliated communications service provider' means a 'communications service provider', as defined under Section 58-9-3010(8), and including, but not limited to, electric cooperatives and their broadband affiliates, that is not controlled by or under common control with the Public Service Authority.

(2) 'excess fiber capacity' means fiber optic capacity owned or controlled by the Public Service Authority, constructed to provide internal communications in support of the provision of electric services, and that is unused, available, and in excess of the capacity needed by the Public Service Authority, including its reserve margins, for its internal communications in furtherance of its provision of electric service.

(B) Subject to the provisions set forth in this section, the Public Service Authority shall only lease excess fiber capacity that is used for providing any broadband service to a third party through an arrangement in which the unaffiliated communications service provider provides the broadband service.

(C) The Public Service Authority may cause or allow unaffiliated communications service providers to lease excess fiber capacity through an arrangement in which the unaffiliated communications service provider uses such capacity to provide broadband service; provided such lease shall, subject to the requirements of Section 58-31-30(a)(13), charge rates, fees, or other charges on a nondiscriminatory basis pursuant to a written contract, at market rates and on terms and conditions that are not harmful to competition.

(D) With regard to the lease of excess fiber capacity pursuant to subsection (C), the Public Service Authority must:

- (1) submit rates, terms, and conditions to the Office of Regulatory Staff for review and comment;
- (2) post rates, fees, and other charges along with terms and conditions on its publicly available website;
- (3) within fifteen business days of entering any written contract post conspicuous notice of the contract on its publicly available website; and
- (4) within ten days after a written request, make each contract for the lease of excess fiber capacity available for public inspection on an unredacted basis.

(E) Nothing in this section conveys or confers any implied or express grant of authority to the Public Service Authority to directly provide broadband service or act as a broadband service provider, as these terms are defined in Section 58-9-3010(5) and (6) and any legal rights which may or may not belong to the Public Service Authority related to broadband services, if any, are neither expanded nor contracted by this section.

(F) To the extent the Public Service Authority determines, in its sole discretion, to provide any communications service provider, including, without limitation, electric cooperatives and their broadband affiliates, access to any pole, duct, conduit, easement, or right-of-way owned or controlled by the Public Service Authority, for the purpose of providing retail broadband service, it must provide such access to any other communications service provider for the purpose of providing retail broadband service on a nondiscriminatory basis and subject to the Public Service Authority's terms and conditions. Nothing in this section shall prohibit the Public Service Authority from denying access to a pole, duct, or conduit if it determines there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles. The terms of this subsection (F) shall not apply to leasing by the Authority of excess fiber capacity.

(G) The Administrative Law Court shall have authority and jurisdiction to enforce compliance with this section.

(H) Nothing in this section:

- (1) subjects the Public Service Authority to regulation by the FCC;
- (2) constitutes an exercise of, or an obligation or intention to exercise, the right of a state under 47 U.S.C. Section 224(c) to regulate the rates, terms, and conditions for pole attachments, as defined in 47 U.S.C. Section 224(a)(4); or
- (3) constitutes a certification or an obligation to certify to the FCC under 47 U.S.C. Section 224."

SECTION 6. This act does not convey or confer any implied or express grant of authority to an investor owned electric utility to provide broadband facilities or broadband services as defined in this act and any legal rights which may or may not belong to investor owned electric utilities to provide broadband facilities or broadband services at the time of the passage of this act are neither expanded nor contracted by its passage.

SECTION 7. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on September 23, 2020 at 7:46 PM