

House Bill 328 (AS PASSED HOUSE AND SENATE)

By: Representatives Momtahan of the 17th, Gullett of the 19th, Parsons of the 44th, and Hawkins of the 27th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated,
2 relating to telephone service general provisions, so as to establish a one-time right of way
3 permit fee and reduce annual right of way use fees as due compensation paid to municipal
4 authorities by telephone companies that do not have retail, end user customers located within
5 the boundaries of the municipal authority; to provide certain notice requirements; to establish
6 a civil penalty; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated, relating to
11 telephone service general provisions, is amended by revising Code Section 46-5-1, relating
12 to the exercise of power of eminent domain by telephone companies, placement of posts and
13 other fixtures, regulation of construction of fixtures, posts, and wires near railroad tracks,
14 liability of telephone companies for damages, required information, and due compensation,
15 as follows:

16 "46-5-1.

17 (a)(1) Any telephone company chartered by the laws of this or any other state shall have
18 the right to construct, maintain, and operate its lines and facilities upon, under, along, and
19 over the public roads and highways and rights of way of this state with the approval of
20 the county or municipal authorities in charge of such roads, highways, and rights of way.
21 The approval of such municipal authorities shall be limited to the process set forth in
22 paragraph (3) of subsection (b) of this Code section, and the approval of the county shall
23 be limited to the permitting process set forth in subsection (c) of this Code section. Upon
24 making due compensation, as defined for municipal authorities in ~~paragraph~~ paragraphs
25 (9) and (19) of subsection (b) of this Code section and as provided for counties in
26 subsection (c) of this Code section, a telephone company shall have the right to construct,
27 maintain, and operate its lines through or over any lands of this state; on, along, and upon
28 the right of way and structures of any railroads; and, where necessary, under or over any
29 private lands; and, to that end, a telephone company may have and exercise the right of
30 eminent domain.

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

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

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

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

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

53 (5) No county or municipal authority shall impose upon a telephone company any
54 build-out requirements on network construction or service deployment, and, to the extent
55 that a telephone company has elected alternative regulation pursuant to Code Section
56 46-5-165, such company may satisfy its obligations pursuant to paragraph (2) of Code
57 Section 46-5-169 by providing communications service, at the company's option, through
58 any affiliated companies and through the use of any technology or service arrangement;
59 provided, however, that such company shall remain subject to its obligations as set forth
60 in paragraphs (4) and (5) of Code Section 46-5-169. The obligations required pursuant
61 to paragraph (2) of Code Section 46-5-169 shall not apply to a telephone company that
62 has elected alternative regulation pursuant to Code Section 46-5-165 and does not receive
63 distributions from the Universal Access Fund as provided for in Code Section 46-5-167.

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

- 68 (A) The name, address, and telephone number of a principal office and local agent of
69 such telephone company;
- 70 (B) Proof of certification from the Georgia Public Service Commission of such
71 telephone company to provide telecommunications services in this state;
- 72 (C) Proof of insurance or self-insurance of such telephone company adequate to defend
73 and cover claims of third parties and of municipal authorities;
- 74 (D) A description of the telephone company's service area, which description shall be
75 sufficiently detailed so as to allow a municipal authority to respond to subscriber
76 inquiries. For the purposes of this paragraph, a telephone company may, in lieu of or
77 as a supplement to a written description, provide a map on 8 1/2 by 11 inch paper that
78 is clear and legible and that fairly depicts the service area within the boundaries of the
79 municipal authority. If such service area is less than the boundaries of an entire
80 municipal authority, the map shall describe the boundaries of the geographic area to be
81 served in clear and concise terms;
- 82 (E) A description of the services to be provided;
- 83 (F) An affirmative declaration that the telephone company shall comply with all
84 applicable federal, state, and local laws and regulations, including municipal ordinances
85 and regulations, regarding the placement and maintenance of facilities in the public
86 rights of way that are reasonable, nondiscriminatory, and applicable to all users of the
87 public rights of way, including the requirements of Chapter 9 of Title 25, the 'Georgia
88 Utility Facility Protection Act'; and
- 89 (G) A statement in bold type at the top of the application as follows: 'Pursuant to
90 paragraph (2) of subsection (b) of Code Section 46-5-1 of the Official Code of Georgia
91 Annotated, the municipal authority shall notify the applicant of any deficiencies in this
92 application within 15 business days of receipt of this application.'
- 93 (2) If an application is incomplete, the municipal authority shall notify the telephone
94 company within 15 business days of the receipt of such application; such notice shall

95 specifically identify all application deficiencies. If no such notification is given within
96 15 business days of the receipt of an application, such application shall be deemed
97 complete.

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

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

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

117 (6) Any telephone company that has previously obtained permits for the placement of
118 its facilities, has specified the name of such telephone company in such permit
119 application, has previously placed its facilities in any public right of way, and has paid
120 and continues to pay any applicable municipal authority's occupational license taxes,
121 permit fees, franchise fees, except as set forth in paragraph (8) of this subsection, or, if

122 applicable, county permit fees shall be deemed to have complied with this Code section
123 without any further action on the part of such telephone company except as set forth in
124 paragraphs (8), (9), (11), ~~and (17), and (19)~~ of this subsection.

125 (7) Any telephone company that has placed lines and facilities in the public roads and
126 highways or rights of way of a municipal authority without first obtaining permits or
127 otherwise notifying the appropriate municipal authority of its presence in the public roads
128 and highways or rights of way shall provide the information required by paragraph (1)
129 of this subsection, if applicable, to such municipal authority on or before October 1, 2008.
130 As of October 1, 2008, if any telephone company, other than those who meet the
131 requirements of paragraph (6) of this subsection, has failed or fails to provide the
132 information required by paragraph (1) of this subsection to the municipal authority in
133 which its lines or facilities are located, such municipal authority shall provide written
134 notice to such telephone company giving that company 15 calendar days from the date
135 of receipt of such notice to comply with this subsection. In the event the 15 calendar day
136 cure period expires without compliance, such municipal authority may petition the
137 Georgia Public Service Commission which shall, after an opportunity for a hearing, order
138 the appropriate relief.

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

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

149 at the rate of 3 percent shall be considered the payment of due compensation without
 150 further action on the part of the municipal authority.

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

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

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

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

161 (D) Public telephone revenue, ~~as defined in 47 C.F.R. 32.5010~~, which shall include
 162 message revenue, such as that which is coin paid, and other revenue derived from
 163 public and semi-public telephone services provided within the basic service area;

164 (E) Local private line revenue, as defined in 47 C.F.R. ~~35.5040~~ 32.5040; provided,
 165 however, that the portion of such accounts attributable to audio and video program
 166 transmission service where both terminals of the private line are within the corporate
 167 limits of the municipal authority shall not be included;

168 (F) Other ~~local exchange~~ basic area revenue, as defined in 47 C.F.R. 32.5060(a)-(b);

169 ~~(G) Local exchange service, as defined in 47 C.F.R. 32.5069;~~

170 ~~(H)~~(G) Network access revenue, as defined in 47 C.F.R. ~~32.5080~~ 32.4999;

171 ~~(H)~~(H) Directory revenue, as defined in 47 C.F.R. 32.5230; provided, however, that the
 172 portion of such accounts attributable to revenue derived from listings in portion of
 173 directories not considered white pages shall not be included;

174 ~~(F)~~(I) Nonregulated operating revenue, as defined in 47 C.F.R. 32.5280; provided,
 175 however, that the portion of such accounts attributable to revenues derived from private
 176 lines shall not be included; and

177 ~~(K)~~(J) Uncollectible revenue, as defined in 47 C.F.R. 32.5300.

178 Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory
 179 and competitively neutral manner.

180 (10) Any due compensation paid to municipal authorities pursuant to paragraph (9) or
 181 (19) of this subsection shall be in lieu of any other permit fee, encroachment fee,
 182 degradation fee, disruption fee, business license tax, occupational license tax,
 183 occupational license fee, or other fee otherwise permitted pursuant to the provisions of
 184 subparagraph (A) of paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92 et
 185 seq., or any other provision of law regardless of nomenclature; provided, however, that
 186 nothing in this paragraph shall prohibit municipal authorities from imposing fees for
 187 wireless facilities, wireless support structures, collocations, or modifications that are not
 188 prohibited by Code Section 36-66B-7 or from imposing rates or fees that are permitted
 189 by Code Sections 36-66B-5 and 36-66C-5.

190 (11) A telephone company with facilities in the public rights of way of a municipal
 191 authority shall begin assessing on subscribers due compensation, as defined in ~~subsection~~
 192 ~~(a) of this Code section, on subscribers~~ paragraph (9) of this subsection, on the date that
 193 service commences unless such company is currently paying a municipal authority's
 194 occupational license tax. ~~Such due compensation~~ Due compensation as defined in
 195 paragraph (19) of this subsection shall begin to accrue starting on the date the telephone
 196 company completes installation of the facilities in the public rights of way of a municipal
 197 authority that are subject to paragraph (19) of this subsection. Due compensation under
 198 paragraphs (9) and (19) of this subsection shall be paid directly to each affected
 199 municipal authority within 30 calendar days after the last day of each calendar quarter.
 200 In the event that due compensation is not paid on or before 30 calendar days after the last

201 day of each calendar quarter, the affected municipal authority shall provide written notice
202 to such telephone company, giving such company 15 calendar days from the date such
203 company receives such notice to cure any such nonpayment. In the event the due
204 compensation remitted to the affected municipal authority is not postmarked on or before
205 the expiration of the 15 day cure period, such company shall pay interest thereon at a rate
206 of 1 percent per month to the affected municipal authority. If the 15 day cure period
207 expires on a Saturday, a Sunday, or a state legal holiday, the due date shall be the next
208 business day. A telephone company shall not be assessed any interest on late payments
209 if due compensation was submitted in error to a neighboring municipal authority.

210 (12) Each municipal authority may, no more than once annually, audit the business
211 records of a telephone company to the extent necessary to ensure payment in accordance
212 with this Code section. As used in this Code section, 'audit' means a comprehensive
213 review of the records of a company which is reasonably related to the calculation and
214 payment of due compensation. Once any audited period of a company has been the
215 subject of a requested audit, such audited period of such company shall not again be the
216 subject of any audit. In the event of a dispute concerning the amount of due
217 compensation due to an affected municipal authority under this Code section, an action
218 may be brought in a court of competent jurisdiction by an affected municipal authority
219 seeking to recover an additional amount alleged to be due or by a company seeking a
220 refund of an alleged overpayment; provided, however, that any such action shall be
221 brought within three years following the end of the quarter to which the disputed amount
222 relates, although such time period may be extended by written agreement between the
223 company and such affected municipal authority. Each party shall bear the party's own
224 costs incurred in connection with any dispute. The auditing municipal authority shall
225 bear the cost of the audit; provided, however, that if an affected municipal authority files
226 an action to recover alleged underpayments of due compensation and a court of
227 competent jurisdiction determines the company has underpaid due compensation due for

228 any 12 month period by 10 percent or more, such company shall be required to pay such
229 municipal authority's reasonable costs associated with such audit along with any due
230 compensation underpayments; provided, further, that late payments shall not apply. All
231 undisputed amounts due to a municipal authority resulting from an audit shall be paid to
232 the municipal authority within 45 days, or interest shall accrue.

233 (13) If, after a municipal authority provides written notice under paragraph (11), any
234 telephone company fails to comply with the due compensation requirements of
235 paragraph (9) or (19) of this subsection for four or more consecutive quarters, such
236 telephone company shall be subject to a civil penalty; provided, however, that the penalty
237 shall be imposed within three years following the end of the first quarter in which the
238 telephone company failed to comply with such requirements and shall not exceed ten
239 percent of the total due compensation owed and unpaid to the municipal authority since
240 the inception of the three-year period. The municipal authority issuing the penalty may
241 suspend the telephone company's ability to receive any new permits from the municipal
242 authority until the telephone company has paid the amount assessed for the civil penalty
243 and unpaid due compensation; provided, however, that the municipal authority shall not
244 suspend such ability of any telephone company that has deposited the amount of the
245 penalty and unpaid due compensation in escrow pending an adjudication of the merits of
246 the dispute by a court of competent jurisdiction.

247 ~~(13)~~(14) The information provided pursuant to paragraph (1) of this subsection and any
248 records or information furnished or disclosed by a telephone company to an affected
249 municipal authority pursuant to paragraph (12) of this subsection shall be exempt from
250 public inspection under Article 4 of Chapter 18 of Title 50. It shall be the duty of such
251 telephone company to mark all such documents as exempt from Article 4 of Chapter 18
252 of Title 50, and the telephone company shall defend, indemnify, and hold harmless any
253 municipal authority and any municipal officer or employee in any request for, or in any
254 action seeking, access to such records.

255 ~~(14)~~(15) No acceptance of any payment shall be construed as a release or as an accord
256 and satisfaction of any claim an affected municipal authority may have for further or
257 additional sums payable as due compensation.

258 ~~(15)~~(16) Any amounts overpaid by a company as due compensation shall be deducted
259 from future due compensation owed.

260 ~~(16)~~(17) A telephone company paying due compensation pursuant to this Code section
261 may designate that portion of a subscriber's bill attributable to such charge as a separate
262 line item of the bill and recover such amount from the subscriber.

263 ~~(17)~~(18) Nothing in this Code section shall affect the authority of a municipal authority
264 to require telephone companies accessing the public roads and highways and rights of
265 way of a municipal authority to obtain permits and otherwise comply with the reasonable
266 regulations established pursuant to paragraph (10) of subsection (a) of Code
267 Section 32-4-92.

268 ~~(18)~~(19) If a telephone company does not have retail, end user customers located within
269 the boundaries of a municipal authority, then the payment following shall apply:

270 (A) Payment by such company at the same rates that such payments were being made
271 as of ~~January 1, 2008~~ January 1, 2013, to a municipal authority for the use of its rights
272 of way shall be considered the payment of due compensation; provided, however, that
273 ~~at the expiration date of any existing agreement for use of such municipal rights of way~~
274 ~~or December 31, 2012, whichever is earlier, the payment at rates in accordance with the~~
275 ~~rates set by regulations promulgated by the Department of Transportation shall be~~
276 ~~considered the payment of due compensation. Provided, further, that if a telephone~~
277 ~~company begins providing service after January 1, 2008, and such telephone company~~
278 ~~does not have retail, end user customers located within the boundaries of a municipal~~
279 ~~authority, the payment by such company at rates in accordance with the rates set by~~
280 ~~regulations promulgated by the Department of Transportation to a municipal authority~~
281 ~~for the use of its rights of way~~ effective January 1, 2023, for telephone companies that

282 provide any broadband services to any location within the boundaries of a municipal
283 authority, payment at the rate of 5¢ per linear foot annually shall be considered due
284 compensation, and for telephone companies that do not provide any broadband services
285 to any location within the boundaries of a municipal authority, payment at the rate of
286 19¢ per linear foot annually shall be considered the payment of due compensation. As
287 used in this subparagraph, the term 'broadband services' shall have the same meaning
288 as provided in Code Section 50-40-1;

289 (B) In addition to the annual rate under subparagraph (A) of this paragraph, due
290 compensation may also include a one-time permit application processing fee not to
291 exceed the lesser of the municipal authority's actual and reasonable direct costs for
292 administration of the telephone company's use of the right of way or \$100.00; and

293 (C) Any telephone company that is paying due compensation under paragraph (9) of
294 this subsection shall not be required to pay the fees set forth in this paragraph.

295 ~~(19)~~(20) Nothing in this Code section shall be construed to affect any franchise fee or
296 due compensation payments which were in dispute on or before January 1, 2008
297 December 31, 2022.

298 (21) If a telephone company paying due compensation pursuant to paragraph (9) will
299 begin paying due compensation pursuant to paragraph (19), or vice versa, such telephone
300 company shall notify the municipal authority of this change in writing, no less than ten
301 calendar days prior to the end of the first quarter in which the new due compensation
302 payments are to be assessed or begin accruing.

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

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

318 **SECTION 2.**

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