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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

(a)(1) Any 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 paragraphs (9) and (19) of subsection (b) of this Code section and as provided for counties in subsection (c) of this Code section, a 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 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 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 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 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 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 telephone company any build-out requirements on network construction or service deployment, and, to the extent that a 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. The obligations required pursuant to paragraph (2) of Code Section 46-5-169 shall not apply to a telephone company that has elected alternative regulation pursuant to Code Section 46-5-165 and does not receive distributions from the Universal Access Fund as provided for in Code Section 46-5-167.

(b)(1) Except as set forth in paragraph (6) of this subsection, any 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 telephone company;

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

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

(D) A description of the 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 telephone company may, in lieu of or as a 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 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 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 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 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 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 telephone company by submitting a notice of termination to the affected municipal authority. For purposes of this Code section, such notice shall identify the 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 telephone company that has previously obtained permits for the placement of its facilities, has specified the name of such 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 telephone company except as set forth in paragraphs (8), (9), (11), and (17), and (19) of this subsection.

(7) Any 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 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 telephone company giving that company 15 calendar days from the date of receipt of such notice to comply with this subsection. 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 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 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 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, which shall include message revenue, such as that which is coin paid, and other revenue derived from public and semi-public telephone services provided within the basic service area;
(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 basic area revenue, as defined in 47 C.F.R. 32.5060(a)-(b);
(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; 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;
(H)(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)(J) 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) or (19) 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; provided, however, that nothing in this paragraph shall prohibit municipal authorities from imposing fees for wireless facilities, wireless support structures, collocations, or modifications that are not prohibited by Code Section 36-66B-7 or from imposing rates or fees that are permitted by Code Sections 36-66B-5 and 36-66C-5.

(11) A telephone company with facilities in the public rights of way of a municipal authority shall begin assessing due compensation, as defined in subsection (a) of this Code section, on subscribers paragraph (9) of this subsection, on the date that service commences unless such company is currently paying a municipal authority's occupational license tax. Such due compensation Due compensation as defined in paragraph (19) of this subsection shall begin to accrue starting on the date the telephone company completes installation of the facilities in the public rights of way of a municipal authority that are subject to paragraph (19) of this subsection. Due compensation under paragraphs (9) and (19) of this subsection 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 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 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 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) If, after a municipal authority provides written notice under paragraph (11), any 
telephone company fails to comply with the due compensation requirements of 
paragraph (9) or (19) of this subsection for four or more consecutive quarters, such 
telephone company shall be subject to a civil penalty; provided, however, that the penalty 
shall be imposed within three years following the end of the first quarter in which the 
telephone company failed to comply with such requirements and shall not exceed ten 
percent of the total due compensation owed and unpaid to the municipal authority since 
the inception of the three-year period. The municipal authority issuing the penalty may 
suspend the telephone company's ability to receive any new permits from the municipal 
authority until the telephone company has paid the amount assessed for the civil penalty 
and unpaid due compensation; provided, however, that the municipal authority shall not 
suspend such ability of any telephone company that has deposited the amount of the 
penalty and unpaid due compensation in escrow pending an adjudication of the merits of 
the dispute by a court of competent jurisdiction.

(14) The information provided pursuant to paragraph (1) of this subsection and any 
records or information furnished or disclosed by a telephone company to an affected 
municipal authority pursuant to paragraph (12) of this subsection shall be exempt from 
public inspection under Article 4 of Chapter 18 of Title 50. It shall be the duty of such 
telephone company to mark all such documents as exempt from Article 4 of Chapter 18 
of Title 50, and the 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.
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.

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

A 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.

Nothing in this Code section shall affect the authority of a municipal authority to require 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.

If a telephone company does not have retail, end user customers located within the boundaries of a municipal authority, then the following shall apply:

(A) 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 telephone company begins providing service after January 1, 2008, and such 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 effective January 1, 2023, for telephone companies that
provide any broadband services to any location within the boundaries of a municipal
authority, payment at the rate of 5¢ per linear foot annually shall be considered due
compensation, and for telephone companies that do not provide any broadband services
to any location within the boundaries of a municipal authority, payment at the rate of
19¢ per linear foot annually shall be considered the payment of due compensation. As
used in this subparagraph, the term 'broadband services' shall have the same meaning
as provided in Code Section 50-40-1;
(B) In addition to the annual rate under subparagraph (A) of this paragraph, due
compensation may also include a one-time permit application processing fee not to
exceed the lesser of the municipal authority's actual and reasonable direct costs for
administration of the telephone company's use of the right of way or $100.00; and
(C) Any telephone company that is paying due compensation under paragraph (9) of
this subsection shall not be required to pay the fees set forth in this paragraph.
(19)(20) Nothing in this Code section shall be construed to affect any franchise fee or
due compensation payments which were in dispute on or before January 1, 2008
December 31, 2022.
(21) If a telephone company paying due compensation pursuant to paragraph (9) will
begin paying due compensation pursuant to paragraph (19), or vice versa, such telephone
company shall notify the municipal authority of this change in writing, no less than ten
calendar days prior to the end of the first quarter in which the new due compensation
payments are to be assessed or begin accruing.
(c) If a telephone company accesses the public roads and highways and rights of way of
a county and such county requires such 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 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.