

House Bill 243

By: Representatives Hawkins of the 27th, Parsons of the 44th, Stephens of the 164th, Dunahoo of the 30th, and Pruett of the 149th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and
2 public transportation, so as to provide limitations on fees that may be charged for installation
3 of telephone facilities; to provide for the due compensation to be paid to municipal
4 authorities by telephone companies that do not have certain end user customers; to revise
5 terminology for purposes of conformity; to provide for related matters; to provide for an
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public
10 transportation, is amended in Code Section 46-5-1, relating to exercise of power of eminent
11 domain by telephone companies, placement of posts and other fixtures, regulation of
12 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
13 companies for damages, required information, and due compensation, by repealing
14 paragraph (9) of subsection (b) and enacting a new paragraph (9) to read as follows:

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

23 (A) Basic local service revenue, as defined in 47 C.F.R. Section 32.5000 as such
24 definition existed on January 1, 2017;

25 (B) Basic area revenue, as defined in 47 C.F.R. Section 32.5001 as such definition
26 existed on January 1, 2017;

27 (C) Optional extended area revenue, as defined in 47 C.F.R. Section 32.5002 as such
 28 definition existed on January 1, 2017;

29 (D) Public telephone revenue which shall include message revenue, such as that which
 30 is coin paid, and other revenue derived from public and semi-public telephone services
 31 provided within the basic service area;

32 (E) Private line revenue, as defined in 47 C.F.R. Section 32.5040 as such definition
 33 existed on January 1, 2017; provided, however, that the portion of such accounts
 34 attributable to audio and video program transmission service where both terminals of
 35 the private line are within the corporate limits of the municipal authority shall not be
 36 included;

37 (F) Other basic exchange revenue, as defined in 47 C.F.R. Section 32.5060 as such
 38 definition existed on January 1, 2017;

39 (G) Network access revenue, as defined in 47 C.F.R. Section 32.4999 as such
 40 definition existed on January 1, 2017;

41 (H) Directory revenue, as defined in 47 C.F.R. Section 32.5230 as such definition
 42 existed on January 1, 2017; provided, however, that the portion of such accounts
 43 attributable to revenue derived from listings in portions of directories not considered
 44 white pages shall not be included;

45 (I) Nonregulated operating revenue, as defined in 47 C.F.R. Section 32.5280 as such
 46 definition existed on January 1, 2017; provided, however, that the portion of such
 47 accounts attributable to revenue derived from private lines shall not be included; and

48 (J) Uncollectible revenue, as defined in 47 C.F.R. Section 32.5300 as such definition
 49 existed on January 1, 2017.

50 Any charge imposed by a municipal authority shall be assessed in a nondiscriminatory
 51 and competitively neutral manner."

52 **SECTION 2.**

53 Said title is further amended in Code Section 46-5-1, relating to exercise of power of eminent
 54 domain by telephone companies, placement of posts and other fixtures, regulation of
 55 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
 56 companies for damages, required information, and due compensation, by revising
 57 paragraphs (10) and (18) of subsection (b) and revising subsection (c) as follows:

58 "(10)(A) Any due compensation paid to municipal authorities pursuant to paragraph (9)
 59 of this subsection or subparagraph (B) of this paragraph shall be in lieu of any other
 60 permit fee, encroachment fee, degradation fee, disruption fee, business license tax,
 61 occupational license tax, occupational license fee, or other fee otherwise permitted
 62 pursuant to the provisions of subparagraph (A) of paragraph (7) of Code Section

63 36-34-2 or Code Section 32-4-92, et seq., or any other provision of law regardless of
64 nomenclature.

65 (B) If a telephone company that holds a certificate of authority granted by the
66 commission does not have retail end user customers located within the boundaries of
67 a municipal authority, then the payment by such company at a rate of an annual amount
68 not to exceed \$100.00 per linear mile or portion thereof shall be considered the payment
69 of due compensation. Any telephone company that is paying due compensation under
70 paragraph (9) of this subsection shall not be required to pay the additional fees set forth
71 in this subparagraph. Any telephone company that is paying video franchise fees
72 pursuant to Chapter 76 of Title 36 or due compensation pursuant to this Code section
73 shall not be charged any additional permit fee, encroachment fee, degradation fee,
74 disruption fee, business license tax, occupational license tax, occupational license fee,
75 or other fee otherwise permitted pursuant to the provisions of subparagraph (A) of
76 paragraph (7) of Code Section 36-34-2 or Code Section 32-4-92, et seq., or any other
77 provision of law regardless of nomenclature."

78 "(18) If a telephone company does not have retail; end user customers located within the
79 boundaries of a municipal authority, then the payment by such company at the same rates
80 that such payments were being made as of January 1, 2008, to a municipal authority for
81 the use of its rights of way shall be considered the payment of due compensation;
82 provided, however, that ~~at the expiration date of any existing agreement for use of such~~
83 ~~municipal rights of way or December 31, 2012, whichever is earlier, the payment at rates~~
84 ~~in accordance with the rates set by regulations promulgated by the Department of~~
85 ~~Transportation shall be considered the payment of due compensation. Provided, further,~~
86 ~~that if a telephone company begins providing service after January 1, 2008, and such~~
87 ~~telephone company does not have retail, end user customers located within the~~
88 ~~boundaries of a municipal authority, the payment by such company at rates in accordance~~
89 ~~with the rates set by regulations promulgated by the Department of Transportation to a~~
90 ~~municipal authority for the use of its rights of way shall be considered the payment of due~~
91 ~~compensation effective December 31, 2018, payment at rates that do not exceed the lesser~~
92 ~~of:~~

93 (A) The actual and reasonable cost of the municipal authority's administration of the
94 telephone company's use of its rights of way; or

95 (B) One hundred dollars per linear mile annually
96 shall be considered the payment of due compensation."

97 "(c) If a telephone company accesses the public roads and highways and rights of way of
98 a county and such county requires such telephone company to pay due compensation, such
99 due compensation shall be limited to an administrative cost recoupment fee which shall not

100 exceed such county's direct, actual costs incurred in its permitting process, including
101 issuing and processing permits, plan reviews, physical inspection and direct administrative
102 costs; and such costs shall be demonstrable and shall be equitable among applicable users
103 of such county's roads and highways or rights of way. Permit fees shall not include the
104 costs of highway or rights of way acquisition or any general administrative, management,
105 or maintenance costs of the roads and highways or rights of way and shall not be imposed
106 for any activity that does not require the physical disturbance of such public roads and
107 highways or rights of way or does not impair access to or full use of such public roads and
108 highways or rights of way.

109 (d) Nothing in this Code section shall affect the authority of a county to require a
110 telephone company to comply with reasonable regulations for construction of telephone
111 lines and facilities in public highways or rights of way pursuant to the provisions of
112 paragraph (6) of Code Section 32-4-42."

113 **SECTION 3.**

114 Said title is further amended in Code Section 46-5-1, relating to exercise of power of eminent
115 domain by telephone companies, placement of posts and other fixtures, regulation of
116 construction of fixtures, posts, and wires near railroad tracks, liability of telephone
117 companies for damages, required information, and due compensation, by replacing "Georgia
118 Public Service Commission" with "commission" everywhere such term occurs.

119 **SECTION 4.**

120 This Act shall become effective upon its approval by the Governor or upon its becoming law
121 without such approval.

122 **SECTION 5.**

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