

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to  
2 electrical service, so as to require electric suppliers to provide cable companies  
3 nondiscriminatory access to electrical facilities on just and reasonable rates, terms, and  
4 conditions; to provide legislative findings; to provide definitions; to provide procedures and  
5 remedies; to provide for a repeal under certain circumstances; to provide for related matters;  
6 to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The General Assembly finds that:

- 10 (1) The deployment of facilities based communications services should be promoted;
- 11 (2) Cable companies should be encouraged to attach their facilities to poles already  
12 existing in current rights of way rather than acquiring or condemning additional property  
13 to construct duplicative sets of poles and to promote the deployment of facilities based  
14 communications services; and
- 15 (3) The provisions set forth in this Act will encourage collocation of facilities in order to  
16 discourage the unnecessary use of eminent domain and promote the deployment of  
17 facilities based communications services.

18 **SECTION 2.**

19 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,  
20 is amended by revising Code Section 46-3-13, relating to enforcement of the "Georgia  
21 Territorial Electric Service Act" by the Public Service Commission, as follows:

22 "46-3-13.

23 Except as provided in subsection (s) of Code Section 46-3-16, at ~~At~~ any time, upon its own  
24 complaint or the complaint of any other electric supplier or any other interested party, the  
25 commission shall have the authority and jurisdiction, after notice to all affected electric

26 suppliers and other interested parties, and after a hearing, to enforce the provisions of this  
27 part by appropriate orders."

28 **SECTION 3.**

29 Said chapter is further amended by adding a new Code Section to read as follows:

30 "46-3-16.

31 (a) As used in this Code section, the term:

32 (1) 'Cable attachment' means any attachment by a cable company to an electrical  
33 facility.

34 (2) 'Cable company' means a cable television operator as defined in Section 602(5) of the  
35 federal Communications Act of 1934 that offers or provides, or intends to offer or  
36 provide, cable television service, including any broadband cable communications  
37 services, voice service, Internet access service, or any other service similar to such  
38 services, including the transport or delivery of services between or to cable companies  
39 or end users.

40 (3) 'Electrical facility' means any pole, duct, conduit, or right of way, including without  
41 limitation transmission poles and towers, owned or controlled by an electric supplier.

42 (4) 'Electric supplier' means electric membership corporations as defined in Code Section  
43 46-3-171; without limitation, any corporation or utility that is cooperatively organized;  
44 and any public utility that is owned or authorized by the state or a political subdivision  
45 thereof created pursuant to Article 3 of this chapter.

46 (5) 'Make ready' means all work necessary or appropriate to make space for or otherwise  
47 accommodate new, additional, or changed cable attachments, including, but not limited  
48 to, necessary or appropriate rearrangements, removal and replacement of the electrical  
49 facility or cable attachments, and other work related thereto.

50 (b) An electric supplier shall provide cable companies with nondiscriminatory access to  
51 all electrical facilities on just and reasonable rates, terms, and conditions.

52 (c) An electric supplier shall approve or deny in writing any cable attachment request no  
53 later than 15 business days after the receipt thereof; and if make-ready construction by the  
54 electric supplier is required, an estimate for such costs shall be provided to the requesting  
55 cable company. Any denial shall include, in sufficient detail, the grounds therefor not  
56 inconsistent with the provisions of this Code section. An electric supplier may deny a  
57 cable company access to its electrical facilities on a nondiscriminatory basis if there is  
58 insufficient capacity and for reasons of safety, reliability, and generally applicable  
59 engineering principles. No electric supplier may deny a cable company access to its  
60 electrical facilities on the ground that there is insufficient capacity or for reasons of safety,  
61 reliability, and generally applicable engineering principles if:

- 62 (1) Those limitations can be remedied by setting a new pole or other electrical facility  
63 or by rearranging or otherwise reengineering the electrical facilities; and
- 64 (2) The cable company agrees to pay the reasonable, actual, and verifiably comparable  
65 costs of setting a new pole or other electrical facility or rearranging or otherwise  
66 reengineering the electrical facilities to resolve those capacity, safety, reliability, or  
67 engineering issues.
- 68 (d) A cable company that requests a cable attachment shall be held responsible for the  
69 reasonable, actual, and verifiable costs incurred by the electric supplier or any other  
70 attaching entity in accommodating the request.
- 71 (e) A cable company with an existing cable attachment shall not be required to bear any  
72 of the costs of rearranging or relocating its cable attachment if such rearrangement or  
73 relocation is required as the result of an additional attachment or the adjustment of an  
74 existing attachment sought by any other entity or sought by an electric supplier.
- 75 (f) If make ready is required by an electric supplier, such make-ready work shall be  
76 commenced by the electric supplier within 20 business days of the electric supplier's receipt  
77 of consent to its make-ready cost estimate by the requesting cable company; and the  
78 electric supplier shall ensure the make-ready work performed is consistent with the electric  
79 supplier's standard work order process. The electric supplier shall use its best efforts to  
80 complete all make-ready work within 60 business days of receipt of consent to the  
81 make-ready work estimate by the requesting cable company.
- 82 (g) Following receipt of a request from a cable company, an electric supplier shall  
83 negotiate in good faith the rates, terms, and conditions for access to and the use of the  
84 electrical facilities. Following a request from a cable company that is a party to an existing  
85 agreement with an electric supplier, made either pursuant to the terms of the existing  
86 agreement or within 90 days prior to or following the end of the term of the agreement, the  
87 parties to the existing agreement shall negotiate in good faith the rates, terms, and  
88 conditions for the continued access to and use of the electrical facilities. In the event the  
89 parties are unable to reach agreement within 90 days of a request to negotiate or if either  
90 party believes in good faith that an impasse has been reached prior to the expiration of the  
91 90 day period, either party may bring an action to the commission as provided in this Code  
92 section.
- 93 (h) All rental rates, including rent, fees, and charges demanded, invoiced, or assessed by  
94 an electric supplier, shall be just, reasonable, and cost based. An electric supplier shall not  
95 increase its rental rates more than once annually and then only after providing the cable  
96 company with at least 120 days' advance written notice containing justification for the  
97 proposed increase. Every invoice provided by an electric supplier to a cable company shall

98 be itemized in sufficient detail and have appropriate supporting documentation attached to  
99 permit the cable company to ascertain the basis of the rates, fees, and charges therein.  
100 (i) For a year for which there is a pole count or audit, the following adjustment shall be  
101 made:  
102 (1) The difference between the number of poles found by the pole audit for the year in  
103 question and the number of attachments for which the attacher was most recently  
104 invoiced for adjustment payments shall be prorated evenly based on the assumption that  
105 such attacher's attachments were added evenly over the period since the last pole audit;  
106 and  
107 (2) If the number of poles in the previous annual rental invoice is greater than the  
108 number found by the pole audit in the current year, then the cable company shall be  
109 entitled to a credit or pro rata refund from the electric supplier.  
110 (j) Except as otherwise provided in subsection (m) of this Code section, an electric  
111 supplier shall not impose requirements or conditions upon overlapping activities of a cable  
112 company.  
113 (k) An electric supplier shall not require any cable company having or seeking attachments  
114 to indemnify or insure such electric supplier from or against any losses, damages, claims  
115 for damages, or other liability to the extent that such arises from the negligence or willful  
116 misconduct of the electric supplier or its agents, employees, contractors, or licensees as a  
117 condition to granting access or making attachments.  
118 (l) The electric supplier has the option to perform periodic safety inspections and pole  
119 inventories not more than once every five years, unless otherwise mutually agreed by the  
120 parties, to determine any safety violations caused by an attacher upon 180 days' advance  
121 written notice. Such notice shall describe the scope of the inspection, and the electric  
122 supplier shall use best efforts to get all entities with attachments to participate in the safety  
123 inspection. The cable company shall pay a pro rata share of the electric supplier's  
124 inspection costs and shall incur its own costs to participate in such periodic safety  
125 inspections. The cable company's pro rata share of the electric supplier's cost shall be equal  
126 to the percentage of the total violations related to the cable company's cable attachments  
127 as identified during the safety inspection unless the cable company can clearly demonstrate  
128 that it did not cause the violation.  
129 (m) When a cable company makes cable attachments that do not comply with generally  
130 applicable engineering rules, the electric supplier shall provide written notice of the  
131 noncompliant cable attachments. In the event of a noncompliant cable attachment that  
132 poses an imminent safety risk, the cable company shall immediately bring such cable  
133 attachment into compliance. In all other instances of noncompliant cable attachments, the  
134 cable company shall, within 60 days following the written notice, either contest the notice

135 of noncompliance in writing or bring its cable attachments into compliance. If the work  
136 required to bring the cable attachments into compliance is not reasonably capable of being  
137 completed within the 60 day period, the period for compliance shall be extended as may  
138 be deemed reasonable under the circumstances so long as the cable company promptly  
139 commences and diligently pursues within the 60 day period such actions as are reasonably  
140 necessary to make the cable attachments compliant.

141 (n) No electric supplier shall enter into any contract or arrangement pertaining to a cable  
142 company's cable attachments to or use of electrical facilities or its books and records if any  
143 part of the compensation or other benefits paid or payable for the services of the private  
144 examining or collecting firm conducting the examination is contingent upon or otherwise  
145 related to the amount of tax, interest, fee, rent, charge, court cost, or penalty assessed  
146 against or collected from the cable company. Any such contract or arrangement, if made  
147 or entered into, is void and unenforceable. Any assessment or preliminary assessment of  
148 taxes, penalties, fees, rent, charges, court costs, or interest proposed or asserted by, or based  
149 upon the recommendation of, a private examining or collecting firm compensated under  
150 any such contract or arrangement shall be void and unenforceable.

151 (o) An electric supplier shall provide cable companies no less than 120 days' written notice  
152 prior to removal of cable attachments to electrical facilities or termination of any service  
153 to those facilities which arises out of a breach of a rate, term, or condition of a cable  
154 attachment agreement. If any such breach of rate, term, or condition of cable attachment  
155 is disputed by a cable company, the cable company may bring an action to the commission  
156 as provided in this Code section.

157 (p) All other terms and provisions of any agreement with electric suppliers governing or  
158 affecting a cable company's cable attachments, including any rate, term, or condition  
159 governing audits, inspections, termination, security bond, and insurance requirements, shall  
160 be just, reasonable, and consistent with the provisions of this Code section. An electric  
161 supplier shall not require any cable company having or seeking cable attachments to be  
162 subject to any unilateral changes to any operational procedures, practices, or rules in an  
163 existing agreement or otherwise without first being provided a reasonable opportunity to  
164 review, accept, or dispute the change; and any such operational procedures, practices, or  
165 rules shall not be unduly burdensome.

166 (q)(1)(A) Any electric supplier or cable company that is aggrieved by conduct of  
167 another party that is in violation of any provision of this Code section may file a  
168 complaint with the commission. The commission shall have exclusive jurisdiction over  
169 such actions.

170 (B) The complaint shall state with specificity the conduct complained of and all  
171 information and argument relied on to justify said claim.

- 172 (C) The respondent shall have 30 days from the date the complaint was filed to file a  
 173 response.
- 174 (D) The complainant shall have 20 days from the date of the response to file a reply.
- 175 (E) The burden of proof shall be on the party advocating a deviation from this Code  
 176 section or on the party claiming that the rate, term, or condition complained of is not  
 177 just and reasonable.
- 178 (2) The commission shall resolve any dispute identified in the pleadings consistent with  
 179 the public interest and this Code section, taking into consideration and applying such  
 180 factors and evidence that may be presented by a party, including without limitation the  
 181 rules and regulations applicable to cable attachments under Section 224 of the federal  
 182 Communications Act of 1934, as amended, or the rules and regulations of any state  
 183 certified to regulate cable attachments under Section 224(c) of the federal  
 184 Communications Act of 1934, as amended.
- 185 (3) The commission shall resolve a complaint within 180 days of the commencement of  
 186 the action. The commission may adopt such rules as it deems necessary to implement its  
 187 jurisdiction and authority under this Code section.
- 188 (r) This Code section shall not constitute certification as defined by federal law. If a court  
 189 of competent jurisdiction determines that this Code section is tantamount to certification,  
 190 this Code section shall automatically stand repealed and shall be null and void.
- 191 (s) This Code section shall not apply to any cable attachment regulated by the Federal  
 192 Communications Commission under Section 224 of the federal Communications Act of  
 193 1934, as amended."

194 **SECTION 4.**

195 Said chapter is further amended by revising paragraph (24) of subsection (b) of Code Section  
 196 46-3-201, relating to the powers of electric membership corporations generally, as follows:  
 197 "(24)(A) To fix, regulate, and collect rates, fees, rents, or other charges for electric  
 198 energy and any other facilities, supplies, equipment, or services furnished by the  
 199 electric membership corporation subject to subparagraph (B) of this paragraph.

200 (B) All rates, fees, or other charges for cable companies to have access to poles, ducts,  
 201 conduits, or rights of way pursuant to subparagraph (A) of this paragraph shall be  
 202 consistent with Code Section 46-3-16 except as otherwise provided by subsection (r)  
 203 of said Code section;"

204 **SECTION 5.**

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

207 **SECTION 6.**  
208 All laws and parts of laws in conflict with this Act are repealed.