

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T MISSISSIPPI,**

PLAINTIFF-APPELLANT

v.

NO. 2009-UR-00071

MISSISSIPPI PUBLIC SERVICE COMMISSION,

DEFENDANT-APPELLEE

ON APPEAL FROM THE MISSISSIPPI PUBLIC SERVICE COMMISSION

**BRIEF OF APPELLANT BELLSOUTH
TELECOMMUNICATIONS, INC. D/B/A AT&T MISSISSIPPI**

John C. Henegan, MB No. [REDACTED]
LeAnn W. Nealey, MB No. [REDACTED]
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC
210 East Capitol Street, 17th Floor
Jackson, MS 39201
601.948.5711

Thomas B. Alexander, MB No. [REDACTED]
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Mississippi
Suite 790, Landmark Center
175 E. Capitol Street
Jackson, Mississippi 32901
601.961.1700

James G. Harralson, PHV
General Attorney & Associate
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Southeast
Suite 4329, 675 W. Peachtree Street NW
Atlanta, Georgia 30375
404.927.2890

**ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC. D/B/A
AT&T MISSISSIPPI**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T MISSISSIPPI,**

PLAINTIFF-APPELLANT

v.

NO. 2009-UR-00071

MISSISSIPPI PUBLIC SERVICE COMMISSION,

DEFENDANT-APPELLEE

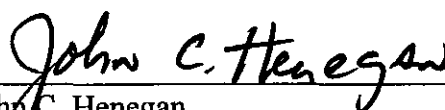
CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this proceeding. These representations are made in order that the Justices of the Supreme Court may evaluate possible disqualification or recusal.

1. BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi
2. John C. Henegan, Esq.
LeAnn W. Nealey, Esq.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC
Counsel for BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi
3. Thomas B. Alexander, Esq.
BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi
4. James G. Harralson, Esq.
BellSouth Telecommunications, Inc. d/b/a AT&T Southeast
5. Mississippi Public Service Commission
6. Honorable Leonard Bentz, Chairman
7. Honorable Lynn Posey, Vice-Chairman
8. Honorable Brandon Presley, Commissioner
9. Brian U. Ray, Executive Secretary
V. Lynn Carlisle, Esq., General Counsel
Mississippi Public Service Commission

10. George M. Fleming, Esq., General Counsel
Chad J. Reynolds, Esq., Senior Attorney
Mississippi Public Utilities Staff

THIS, the 27th day of February, 2009.



John C. Henegan

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF AUTHORITIES	v
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	1
A. THE PROCEEDINGS BEFORE THE COMMISSION.....	2
1. The Evolution of the Commission's Authority to Regulate Local Telephone Rates and the Transition in Rate Models Authorized By the Legislature and Used by the Commission.....	2
2. AT&T Mississippi's Notice for an Inflation-Based Rate Adjustment to Its Regulated Services and the Commission's Data Requests, Hearing and Order	5
SUMMARY OF THE ARGUMENT	7
ARGUMENT AND AUTHORITIES.....	9
1. Standard of Review.....	9
2. The Transition from Rate-of-Return Ratemaking to Alternative Methods of Regulation for Telecommunications Service Offerings	10
3. The Commission Erroneously Misinterpreted and Misapplied Section 77-3-35(4).	15
4. The Commission's Construction and Administration of Section 77-3- 35(4), Being Contrary to the Legislature's Statutorily Mandated Rate Formula and the Commission's Own Prior Constructions of, Is Entitled To No Weight	20
5. The Commission's Construction of Section 77-3-35(4) Ascribes an Unconstitutional Confiscatory Intent to the Legislature.	22
CONCLUSION.....	23
ADDENDUM	

TABLE OF AUTHORITIES

Cases

<i>ABC Mfg. Corp. v. Doyle</i> , 749 So. 2d 43 (Miss. 1999)	9
<i>Adams Fruit Co. v. Barrett</i> , 494 U.S. 638 (1990).....	21
<i>Barbour v. State ex rel. Hood</i> , 974 So. 2d 232 (Miss. 2008).....	9
<i>Barr v. Delta & Pine Land Co.</i> , 199 So. 2d 269 (Miss. 1967)	16
<i>Burris v. South Central Bell Telephone Co.</i> , 540 F. Supp. 905 (S.D. Miss. 1982)	13
<i>Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984).....	9
<i>Drews v. City of Hattiesburg</i> , 905 So. 2d 719 (Miss. App. 2004).....	9
<i>Duquesne Light Co. v. Barasch</i> , 488 U.S. 299 (1989).....	22
<i>Ezell v. BellSouth Telecomm'ns, Inc.</i> , 961 F. Supp. 149 (S.D. Miss. 1997).....	14
<i>Federal Power Comm'n v. Hope Natural Gas Co.</i> , 320 U.S. 591 (1944).....	22
<i>Gill v. Mississippi Dept. of Wildlife Conservation</i> , 574 So.2d 586 (Miss. 1990).....	21
<i>Gully v. Jackson Int'l Co.</i> , 165 Miss. 103, 145 So. 905 (1933).....	16
<i>McCrory v. State</i> , 210 So. 2d 877 (Miss. 1968)	18
<i>Mississippi Ethics Comm'n v. Grisham</i> , 957 So. 2d 997 (Miss. 2007)	21
<i>Mississippi Pub. Serv. Comm'n v. Mississippi Power & Light Co.</i> , 593 So. 2d 997 (Miss. 1991).....	2, 21
<i>Mississippi Pub. Serv. Comm'n v. South Cent. Bell Tel. Co.</i> , 464 So. 2d 1133 (Miss. 1984).....	2, 3, 21
<i>Mississippi Pub. Ser. Comm'n v. Columbus & Greenville Ry.</i> , 573 So. 2d 1343 (Miss. 1990).....	21
<i>One 1992 Toyota 4-Runner, v. State ex rel. Mississippi Dept. of Wildlife Fisheries and Parks</i> , 721 So. 2d 609 (Miss. 1998)	22
<i>South Cent. Bell v. Epps</i> , 509 So. 2d 886 (Miss. 1987).....	14, 18
<i>Southern Bell Tel. & Tel. Co. v. Mississippi Pub. Serv. Comm'n</i> , 113 So. 2d 622 (Miss. 1959).....	3, 10

<i>State ex rel. Pittman v. Mississippi Pub. Serv. Comm'n</i> , 538 So. 2d 387 (Miss. 1989)	6, 21
<i>Telcom Sys., Inc. v. Lauderdale County Bd. of Supervisors</i> , 405 So. 2d 119 (Miss. 1981)	18
<i>White v. Miller</i> , 160 Miss. 734, 130 So. 146 (1931)	16
<i>Yarbrough v. Camphor</i> , 645 So. 2d 867 (Miss. 1994)	18

Other Primary Authorities

Miss. Const. Art. 7, § 186 (1890)	2
Miss. Code § 77-1-1 (2008)	10
Miss. Code § 77-3-1 (2008)	2, 9
Miss. Code § 77-3-2 (2008)	4, 10, 14, 16
Miss. Code § 77-3-3 (2008)	14, 18
Miss. Code. § 77-3-33 (2008)	3
Miss. Code § 77-3-35 (2008)	<i>passim</i>
Miss. Code § 77-3-37 (2008)	2, 10
AT&T Mississippi's General Subscriber Services Tariff	13
AT&T Mississippi's Access Services Tariff	13
Miss. Laws Ch. 304 (1989)	4, 10, 14
Miss. Laws Ch. 304 (1996)	16
Miss. Laws Ch. 313 (2006)	1, 4, 13, 16
Miss. Laws Ch. 315 (1994)	11, 14
Miss. Laws Ch. 338 (1988)	10
Miss. Laws Ch. 372 (1956)	10

Secondary Authorities

G. Bannock, R. E. Baxter, and E. Davis, <i>The Penguin Dictionary of Economics</i> 188 (7 th ed. 2003)	18
---	----

STATEMENT OF ISSUE ON APPEAL

In 2006, the Legislature amended Miss. Code § 77-3-35 (2006) and expressly authorized certain public utilities offering single-line flat rate voice communication service to obtain annual inflation-based rate increases to the retail rates for this service based on the CPI-U Index of the U.S. Department of Labor, an inflation index expressly prescribed by the Legislature and mandated for use under the statute as amended. *See* Miss. Laws Ch. 313, § 1 (2006), *codified at* Miss. Code § 77-3-35(4)(a) (2008); Add. 36-41 & 8.¹ In May 2008, BellSouth Telecommunications, Inc., doing business as AT&T Mississippi, filed a Notice with the Mississippi Public Service Commission seeking approval of an inflation-based rate adjustment for the retail rates of certain categories of its single-line flat rate voice telephone service as allowed by Section 77-3-35(4)(a). The Commission denied the request in its entirety. There is one issue on appeal:

Did the Commission err as a matter of law or act arbitrarily and capriciously and therefore unlawfully when it denied AT&T Mississippi's Notice seeking a statutorily provided inflation-based rate adjustment to the retail rates for this regulated voice telephone service?

STATEMENT OF THE CASE

This is a direct appeal from an Order of the Commission filed in MPSC Docket No. 2008-UN-201. *See* Notice of Appeal (Jan. 14, 2008); I R. 112-14.² The Order erroneously denied AT&T Mississippi's request for an inflation-based rate increase expressly authorized and

¹ Provisions of the Mississippi Code of 1972 and the Session laws most frequently cited herein are included in the Addendum to this Brief. They are cited by reference to the Code or Session Laws, or both, and where they may be located in the Addendum. For example, Section 77-3-35(4)(a), adopted in 2006, will be cited as "Miss. Code § 77-3-35(4)(a); Miss. Laws ch. 313 (2006); Add. 8, 36-41" when appropriate.

² Throughout this Brief, materials in the Record are cited "___ R. ___" and those in the Record Excerpts are cited "R.E. ___". Exhibits admitted at the Commission's hearing are cited "Ex. ___."

mandated by the Legislature in Miss. Code § 77-3-35(4)(a) (2008); Add. 8. Order (Dec. 31, 2008), filed in MPSC Docket No. 2008-UN-201; I R. 99-110; R.E. 3-14.

Regulating the rates of public utilities is a legislative task, and ratemaking is a legislative activity under Mississippi law. Miss. Const. Art. 7, § 186 (1890) (granting to Legislature the duty to pass laws regarding the charges of telephone companies); *see Mississippi Pub. Serv. Comm'n v. South Cent. Bell Tel. Co.*, 464 So. 2d 1133, 1135 (Miss. 1984) (“[R]ate-making function is legislative in character.”). Under the State Constitution, the Legislature is permitted to delegate this task to the Commission. *Id.* The Commission has no power to act except within its jurisdiction granted by the Legislature. *See Mississippi Pub. Serv. Comm'n v. Mississippi Power & Light Co.*, 593 So. 2d 997, 998 (Miss. 1991) (“[A] statutory agency has only legislation granted authority[;] there is no inherent authority.”). As such, the Commission can not act outside its statutory authority, and the Commission can not usurp the authority of the Legislature when the latter chooses to act under the State Constitution and the Public Utilities Code, Miss. Code § 77-3-1 *et seq.* (2008) .

A. THE PROCEEDINGS BEFORE THE COMMISSION

1. The Evolution of the Commission’s Authority to Regulate Local Telephone Rates and the Transition in Rate Models Authorized by the Legislature and Used by the Commission.

Beginning in 1956, Mississippi law required all public utilities seeking to adjust their intra-state telephone rates to seek approval from the Commission before the new rates became effective. *See* Miss. Code § 77-3-37 (2008). At that time, Southern Bell Telephone & Telegraph Company and its successors,³ now doing business as AT&T Mississippi, and other telephone

³ The successor in interest to the Certificate of Public Convenience and Necessity, which allowed Southern Bell Telephone & Telegraph Company to offer intra-state telecommunications service in Mississippi, was South Central Bell Telephone Company. The successor in interest to South Central

companies offering intra-state telephone service, were subject to traditional “rate of return” regulation. *E.g., Southern Bell Tel. & Tel. Co. v. Mississippi Pub. Serv. Comm’n*, 113 So. 2d 622 (Miss. 1959).

Under rate of return regulation, a utility periodically files a rate case for a proposed rate increase with the Commission (or, less often, the PSC “show causes” the utility). The rate case details the investments the utility has made to provide service to customers and its operating expenses, along with the utility’s position about an appropriate rate of return that should be assigned to its capital deployed to provide utility services. The Commission considers the utility’s filing and any other evidence brought forward and calculates a revenue requirement for the utility.⁴ The PSC then sets rates that are designed to produce the revenue requirement. *See* Miss. Code. § 77-3-33(1) (2008).

The regulatory ratemaking regime has since evolved over the years due to advances in telecommunications technology and increased competition in the provision of telecommunications services by regulated and non-regulated business entities.⁵ For example, in 1989, the Legislature authorized the Commission to move from the traditional rate of return ratemaking model and to “consider and adopt a formula type rate of return evaluation rate”

Bell’s rights under this Certificate is BellSouth Telecommunications, Inc., doing business as AT&T Mississippi. In this brief AT&T Mississippi will use the name of the company and/or its business trade name in use for the time period being discussed.

⁴ Broadly speaking, the revenue requirement equals the utility’s total operating expenses for providing service, plus a reasonable return on the base of assets used to provide service. *See Mississippi Pub. Serv. Comm’n v. South Cent. Bell Tel. Co.*, 464 So. 2d 1133, 1136 (Miss. 1984) (“Of course, the rate base is in reality, and as required by law, considered the reasonable value of the company’s property used in rate making procedures. For the benefit of those not involved in such matters, the two primary topics in those procedures are the ‘rate base’ as stated above and the ‘rate of return’ on that rate base. In order to arrive at a total rate increase, it is necessary for the commission to make a determination of both these figures. The fair rate of return is then compared to “net operating income”, with any deficiency being the actual rate increase.”).

⁵ Examples of non-regulated business entities providing telephone service today include cable TV companies and cellular companies.

See Miss. Code § 77-3-2(3)(a) (2008); Miss. Laws Ch. 304, § 1 (1989); Add. 1, 15-16. As explained in more detail below, the Commission in response approved in 1990 an incentive formula type rate of return regulation plan for South Central Bell known as the Mississippi Rate Stabilization Plan (“MSRP”). See AT&T Mississippi’s Brief, at pp. 10-11, *infra*. The MSRP essentially created a rate case calculation formula which was performed each six months under the rules set forth in the plan, thus saving litigation expense and providing for a more efficient implementation of rate adjustments.

In 1995, the Commission completely departed from rate of return, or cost-based regulation. It replaced the MSRP with a price-capped method of regulation for South Central Bell. The price-capped model, known as the Price Regulation Evaluation Plan (“PREP”), regulated rates by imposing a pre-determined annual cap on existing rates rather than by calculating cost and an appropriate rate of return. Under this form of rate making (“price cap” or “rate cap” ratemaking), rates can only be adjusted annually up to the capped amount. This new, non-cost based regulation became effective January 1, 1996, and was in force for more than a decade. See AT&T Mississippi’s Brief, at pp. 11-13, *infra*.

In 2006, finding that “competition or other market forces adequately protect the public interest,” the Legislature divested the Commission of its authority to regulate the intra-state telecommunication rates of public utilities like AT&T Mississippi, with two exceptions. Miss. Laws Ch. 313, § 1, at pp. 398-99 (2006); Add. 38-39; see Miss. Code § 77-3-35(4)(a) (2008); Add. 8. The exceptions are (i) switched access service and (ii) single-line flat rate voice communication service. *Id.*

In the last two sentences of Section 77-3-35(4)(a), the provision that accomplished this regulatory change, the Legislature authorized the Commission to continue to regulate the rates,

terms and conditions of these two services. However, for single-line flat rate voice communication service, the Legislature expressly adopted a rate cap formula for potential increases in the “retail rates” for this service that employed the procedure previously followed under PREP, i.e. the use of a predetermined annual cap on rate increases. To this end, the Legislature authorized those public utilities that offer this telecommunications service under tariff to obtain annual inflation-based rate increases not to exceed the CPI-U Index for the prior year. *See* Miss. Code § 77-3-35(4)(a) (1988); Add. 8.

2. AT&T Mississippi’s Notice for an Inflation-Based Rate Adjustment to Its Regulated Services and the Commission’s Data Requests, Hearing and Order.

On May 13, 2008, pursuant to Miss. Code Ann. § 77-3-35 (4)(a), AT&T Mississippi asked the Commission to approve an inflation-based rate adjustment⁶ to the retail rates for its single-line, flat rate voice communication services (that is, the most basic residential and business service available) provided under its General Subscriber Services Tariff. Notice of Filing; I R. 1-16. The Notice, which identified the categories of basic voice service to be affected, asked that the increase become effective June 13, 2008.⁷ *Id.*; I R. 1. AT&T Mississippi anticipated that it would receive approximately \$312,000.00 in annual revenue from its requested rate increase. *See* Notice of Corrected Filing (Sept. 8, 2008); I R. 56-58.

In response, the Commission suspended the effective date of the proposed rate increase and ordered “that a full investigation of the lawfulness” of the Notice be made by the Public

⁶ The proposed rate increase was based on the Consumer Price Index for all Urban Consumers (“CPI-U”) in 2007 as reported by the U. S. Department of Labor, Bureau of Labor Statistics as authorized by Miss. Code § 77-3-35(4) (2008); Add. 8. Neither the Commission nor the Staff challenged the CPI-U calculation as used and applied by AT&T Mississippi in its Notice seeking the proposed increase.

⁷ On September 8, 2008, AT&T Mississippi filed a Notice of Corrected Filing with the Commission for the sole purpose of removing from the pending Notice any reference to revenues that are not within the Commission’s jurisdiction. Notice of Corrected Filing (Sept. 8, 2008); I R. 56-58. *See* Miss. Code § 77-3-35(4)(a) (2008); Add. 8.

Utilities Staff. Suspension Order (June 10, 2008); I R. 17. The Public Utilities Staff then issued a total of five different sets of data requests that sought detailed proprietary cost and pricing information not only about the regulated - but the *unregulated* - telecommunications offerings of AT&T Mississippi. See Ex. 3. Over the objection of AT&T Mississippi, the Commission ordered AT&T Mississippi to produce all such regulated and unregulated pricing information. See Order (Sept. 25, 2008); I R. 60.⁸ After a hearing, see II R. 1-67, the Commission issued an Order, denying the proposed rate increase in its entirety. Order (Dec. 31, 2008); I R. 99-110; R.E. 3-14. Notably, the Commission made no findings that AT&T Mississippi's proposed rate increase did not comply with the Legislature's statutorily mandated CPI-U.

Rather, without providing notice of its intentions, the Commission found that the inflation-based rate increase approved by the State Legislature was "not just, reasonable or in the public interest and is therefore denied." *Id.* at p. 11; I R. 109; R.E. 13. In so finding, the Commission undertook an analysis that it had not applied to AT&T Mississippi's service offerings for nearly two decades. The Commission did an about face and used a "rate-of-return" ratemaking analysis, finding that AT&T Mississippi had failed to submit evidence such as "cost of service study, cost justification data, or any other type of study or data" to support its Notice for approval of its inflation-based rate increase, explaining in a footnote that "the statutory requirement of just and reasonable rates is met when the rates are cost based." *Id.* at p.10 & n. 3, citing *State ex rel. Pittman v. Mississippi Pub. Serv. Comm'n*, 538 So. 2d 387 (Miss. 1989); I R. 108; R.E. 12. Today AT&T Mississippi continues to provide these regulated services to the

⁸ The next day AT&T Mississippi sought an interlocutory appeal to this Court to address the Commission's ruling compelling the production of information about AT&T's unregulated services. See Petition for Extraordinary Writ (Sept. 26, 2008); Ex. 14. While opposing the merits, the Commission agreed that this Court had jurisdiction to address the issue raised by the Petition. See Commission's Response to Petition for Extraordinary Writ 4-5 (Oct. 3, 2008); Ex. 14. After this Court denied the interlocutory appeal, See Order (Oct. 7, 2008); Ex. 14, the Commission set a hearing to determine the lawfulness of the proposed inflation-based rate increase. Order (Oct. 15, 2008); I R. 80-81.

public at the same retail rates that were in effect when the State Legislature adopted its inflation-based rate formula.

SUMMARY OF THE ARGUMENT

Beginning in 1995, the Commission stopped regulating the rates of AT&T Mississippi based on cost. For decades prior, the Commission had calculated the total cost of the company to provide service and had set its rates to recover that cost. But from 1995 until July, 2006, the Commission did not calculate the cost of service; it used a ceiling, or cap, above which rates could not be raised, and AT&T Mississippi operated its business and charged its many regulated rates in accord with that rate cap regulation.

In 2006, the Legislature unanimously concluded that competition or other market forces were a sufficient protection for all services offered by AT&T Mississippi except two. The Legislature authorized the Commission to regulate the rates, terms and conditions of those two services - switched access service and single-line flat rate voice communication service. The Legislature simultaneously provided specific instruction that the retail rates for single-line flat rate basic communications service may only be increased by the change in a well known federal consumer price index. Thus, the Legislature prescribed a price cap regulation method, similar to the method already being used by the Commission, for the sole remaining retail service rate that the Commission had authority to regulate, using an inflation index to calculate the cap.

In accord with the Legislature's prescription, AT&T Mississippi in May, 2008, filed a petition to increase the rates for single-line flat rate voice communication service. No one disputes that the proposed increase is within the inflation cap specified by the statute. After extensive and unwarranted discovery, the PSC denied AT&T Mississippi's request.

The operative statutory language is found in two sentences of the 2006 legislation, which state, in pertinent part:

the commission is only authorized to regulate the rates, terms and conditions of switched access service and single-line flat rate voice communication service ... [and] retail rates for such single-line flat rate voice communication service ... may only be increased during the calendar year by an amount that does not exceed the rates for such service on January 1 of the previous year, plus [inflation as measured by the CPI-U].

Miss. Code § 77-3-35(4)(a) (2008); Add. 8.

In denying the company's request, the Commission announced that it interpreted these two sentences to mean that it can approve an increase in rates on single-line flat rate voice service only if it finds that the increase is "just and reasonable," but that in any event the increase may not exceed the inflation cap. Order 6 (Dec. 31, 2008); I R. 104; R.E. 8. The Order provides that a "just and reasonable" rate is one that is "cost-based". *Id.* 10 & n.3; I R. 108; R.E. 12.

The Commission's reading ignores the only reasonable interpretation of the statute. It also ignores the law governing cost-based ratemaking. The statute, which the Legislature enacted with full knowledge of the non-cost based regulation of the company's rates since 1995, simply adopts for single-line flat rate voice service the same type of regulation (i.e., price cap based, not cost based) that the Commission had employed for most retail services between 1995 and 2006.

The Legislature did not amend Section 77-3-35(4)(a) to herald a return to cost-based regulation. Had it intended to do so, the Legislature would not have prescribed an inflation-based price cap because such a cap would create rates that are less than cost-based in circumstances where cost increases exceed the rate of inflation. Where cost is the basis for rate regulation, ordering less than cost-based rates deprives a public utility of its constitutional right to just compensation for the taking of its property, a result the Legislature has clearly and properly eschewed by its enactment of an inflation-based rate formula. Yet this is precisely the arbitrary

reading the Commission has adopted. With respect, for these and the other reasons explained below, this Court should direct the Commission to enforce the statute as adopted by the Legislature, which has, clearly and plainly, freed most services from rate regulation altogether, while maintaining inflation-based price cap regulation for the retail rates of single-line flat rate voice service offered by the company.

ARGUMENT AND AUTHORITIES

1. Standard of Review

The standard of appellate review is well known. The Commission's Order involves the interpretation of the Public Utilities Code, as amended, Miss. Code § 77-3-1 *et seq.* (2008), as applied to AT&T Mississippi's Notice filed with the Commission. Under Mississippi law, "an administrative agency is [generally] accorded deference, but when the agency has misapprehended a *controlling legal principle*, no deference is due, and [appellate] review is *de novo*." *ABC Mfg. Corp. v. Doyle*, 749 So. 2d 43, 45 (Miss. 1999) (emphasis added); *Drews v. City of Hattiesburg*, 905 So. 2d 719, 722 (Miss. Ct. App. 2004) ("[A]n administrative decision entailing a question of law is reviewed *de novo*."). As shown below, the Commission erroneously misinterpreted and misapplied Miss. Code § 77-3-35(4)(a) (2008), regarding a matter about which the statute is neither ambiguous nor silent,⁹ viz., the application of the statutorily mandated CPI-U Index to AT&T Mississippi's Notice for an inflation-based rate increase. Accordingly, this Court's review on appeal is *de novo*.

⁹ Since Section 77-3-35(4)(a) is neither ambiguous nor silent on the issue raised by this appeal, the Commission's construction of the statute is not entitled to any deference whatsoever. See *Barbour v. State ex rel. Hood*, 974 So. 2d 232, 240 (Miss. 2008), citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 865-66 (1984).

2. The Transition from Rate-of-Return Ratemaking to Alternative Methods of Regulation for Telecommunications Service Offerings

When the Public Utilities Act of 1956 was adopted, Miss. Laws Ch. 372 (1956), *see* Miss. Code § 77-1-1 *et seq.* (2008), the intra-state rates of public utilities, including those of local telephone companies, were subject to rate-of-return ratemaking. *E.g., Southern Bell Tel. & Tel. Co. v. Mississippi Pub. Serv. Comm'n*, 113 So. 2d 622 (Miss. 1959). Mississippi law required all utilities seeking to adjust their rates to seek permission and approval from the Commission. *See* Miss. Code § 77-3-37 (2008). In the words of the Commission:

Under traditional rate base/rate of return regulation a rate case occurs and the utility's rates are set prospectively. If the utility is happy with its earnings it obviously does not file a new rate case, but waits on the MPSC to order one. In a traditional rate base/rate of return rate case, the utility's revenues and expenses are examined, the rate base is adjusted and a rate of return is arrived at with the utilities' revenue requirement being calculated therefrom. The new rates are then designed to collect the total revenue requirement prospectively until the next rate case. This is a time consuming and expensive process and the rate payers are the ones who ultimately pay all of these expenses.

Final Order 9 (Nov.1, 1995), *filed in* MPSC Docket No. 95-UA-313; Ex. 13, at p. 9.

In 1988, the Legislature expressly recognized that “the provision of telecommunications services to the public” was taking place in a “changing environment where competition and innovation are becoming more commonplace” Miss. Code § 77-3-35(2)(a) (2008); Miss. Laws Ch. 338, § 1 (1988); Add. 6-7, 12. A year later, the Legislature expressly declared that it is “the policy of the State of Mississippi”, among other goals, “[t]o encourage the continued study and research for new and innovative rate-making procedures . . . and where possible reduce the costs of the rate-making process.” Miss. Code § 77-3-2(1)(h) (2008); Miss. Laws Ch. 304, § 1 (1989); Add. 1, 16. To this end the Legislature expressly authorized the Commission to “consider and adopt . . . a formula type rate of return evaluation rate with periodic revenue adjustments” Miss. Code § 77-3-2(3)(a), (b); Miss. Laws Ch. 304, § 1 (1989); Add. 1-2, 16.

Accordingly, South Central Bell filed a petition with the Commission in 1989 asking to change its current “rate of return” regulation to an alternative form of regulation known as “incentive regulation” and submitting a rate stabilization plan for Commission review. I R. 42. The Commission granted South Central Bell’s petition and approved what is known as the Mississippi Rate Stabilization Plan (“MRSP”). *Id.* MRSP shifted the Commission’s method of regulation from a traditional rate of return or “cost-based” methodology to an “earnings-based incentive regulation” plan. See Ex. 13, at pp. 8-10.

Under MRSP, rather than going through an expensive, time-consuming rate case, South Central Bell made semi-annual filings with the Commission, which it reviewed, and the Commission then made adjustments to South Central Bell’s rates. Exhibit 13, at 8-10. MRSP provided greater stability in local rates and a fifty-fifty sharing between South Central Bell and its customers through rate reductions should the company earn above the Commission-authorized level of earnings. See I R. 42.

In 1994, the Legislature authorized the Commission to use “alternative methods of regulation” to establish intra-state telecommunications rates. Miss. Code § 77-3-35(3)(a) (2008); *see* Miss. Laws Ch. 315, § 1 (1994); Add. 7, 25. In so doing, the Legislature defined “the phrase ‘alternative methods of regulation’ [as] the regulation of utility rates and charges by methods **other than** the rate base or rate of return method of regulation set forth in other provisions of” Article 77 of the Public Utilities Code. Miss. Code § 77-3-35(3)(b) (2008); Add. 8; *see* Miss. Laws Ch. 315, § 1 (1994); Add. 25 (emphasis added).

Shortly thereafter, the Commission opened Docket No. 95-UA-313 to determine whether its regulation of South Central Bell should be changed from the incentive-based method used in MSRP to a price-capped method of regulation. The Commission ultimately approved the Price

Regulation Evaluation Plan (“PREP”), which became effective January 1, 1996. See Order (Nov. 1, 1995), *filed in* Miss. PSC Docket No. 95-UA-313; Ex. 13. Instead of calculating costs (*i.e.*, a revenue requirement), PREP used a pre-determined annual price ceiling or cap (e.g. 20 percent) that applied to most of South Central Bell’s Retail Service Offerings; PREP required South Central Bell to keep its prices below the annual cap. South Central Bell was not required to price its services on a yearly basis at the peak of the cap allowed under PREP. Rather, PREP, as approved by the Commission, gave South Central Bell the flexibility to consider the effects of competition upon South Central Bell’s marketing plans, and PREP allowed South Central Bell to forego seeking price increases that the cap contained in PREP otherwise permitted.

Notably, when approving South Central Bell’s use of PREP, the Commission specifically overruled the suggestion made by two parties to that proceeding that the Commission must first “undertake a traditional rate case to establish the initial rates under price regulation.” Order 13 (Nov. 1, 1995), *filed in* Miss. PSC No. 95-UA-313; Ex. 13, at p. 13. In explaining its reasons, the Commission noted that PREP was an “‘alternative[] method[] of regulation’ under [Miss. Code § 77-3-35(3)(a), (b)] . . . ‘other than’ rate base/rate of return regulation,” and that therefore “no rate case is required.” *Id.* 14.

The Commission further reasoned that while PREP must “establish fair, just and reasonable rates,” if this term in the context of Section 77-3-35(3) were construed to require a rate-of-return rate analysis, it “would negate the definition of ‘alternative methods of regulation’ [under Section 77-3-35(3)(a), (b)] and the [Commission]’s ability to adopt them.” *Id.* 15. The Commission stated that it would not adopt a construction of the statute that will “render [Section 77-3-35(3)] a nullity.” *Id.*

PREP originally had a 6-year term. The Commission later renewed PREP for another 6-year term through December 31, 2007. See Order (Oct. 31, 2001), *filed in* Miss. PSC Docket No. 95-UA-313; Ex. 13.

In 2006, without any opposing votes, the Legislature re-enacted Section 77-3-35, including those portions of subpart (3)(a), (b) that the Commission had construed in its November 1, 1995 Order adopting PREP for South Central Bell. See Miss. Laws Ch. 313 (2006); Add. 36-41. The Legislature also made significant statutory changes to the Commission's authority to regulate the rates of certain telecommunications public utilities, divesting the Commission of jurisdiction over the rates of all such service offerings, except for two types of service. See Miss. Laws Ch. 313 (2006); Miss. Code § 77-3-35(4)(a) (2008); Add. 38-39, 8. Following these statutory changes, the Commission simply allowed PREP to sunset on December 31, 2007. The retail rates for AT&T Mississippi's regulated voice service offerings remained the same; those retail rates have been carried forward and are in effect under AT&T Mississippi's General Subscriber Services Tariff on file with the Commission.

As of July 1, 2006, the Commission is only authorized to regulate the rates, terms, and conditions of switched access service and single-line flat rate voice communication service, which is the only remaining regulated retail service.¹⁰ Miss. Code § 77-3-35(4)(a) (2008); Add.

¹⁰ Single-line flat rate service is the most basic residential and business telephone service available under tariff, including no additional services such as caller identification, call forwarding, etc. AT&T Mississippi's General Subscriber Services Tariff, which contains the rates, terms, and conditions for its single-line flat rate voice communication service, is available for review at www.psc.state.ms.us. Switched access service is a wholesale service that AT&T Mississippi sells to other carriers and is not at issue here; its prices are currently at parity with the FCC interstate rates for such services. AT&T Mississippi's Access Services Tariff, which contains the rates, terms, and conditions for its switched access services, is also available for review at www.psc.state.ms.us.

These Tariffs have the force and effect of law, and their provisions "supersede all other requirements of law." *Burris v. South Cent. Bell Tel. Co.*, 540 F. Supp. 905, 908 (S.D. Miss. 1982). Moreover, the Mississippi Supreme Court has stated that the Tariff supplies the terms of the contractual

8. With respect to rate increases for the retail rates of AT&T Mississippi's single-line, flat rate voice communication service, the Legislature expressly established an administratively simple, cost-efficient, cap-based "rate" or formula¹¹ - the CPI-U Index of the U.S. Department of Labor Bureau of Labor Statistics, similar to the price cap methodology employed under PREP - for how any such rate increase will occur. *Id.* Thus, the Legislature adopted a rate method or formula that places an annual inflation-based cap on any proposed rate increase for the retail rates of AT&T Mississippi's regulated voice services offered under Commission-approved tariff.

In doing so, the Legislature gave the Commission the statutory duty of ensuring that any such proposed rate adjustment is no more than the rate of inflation for the prior year that the retail rate has been in effect. Significantly, unlike the authority that the Legislature gave the Commission in 1989 authorizing it to adopt a "formula type rate of return evaluation rate with periodic revenue adjustments," *see* Miss. Code § 77-3-2(3)(b) (2008); Miss. Laws Ch. 304, § 1 (1989); Add. 2, 16, or the authority that it gave the Commission in 1994 to adopt alternative methods of regulation other than the rate base or rate of return method, Miss. Code § 77-3-35(3)(b) (2008); Add. 8; *see* Miss. Laws Ch. 315, § 1 (1994); Add. 25, the Legislature itself decided what rate or formula that a public utility must use when requesting an inflation-based rate increase for the retail rates for its regulated services, and the Legislature expressly directed that the retail rates "may only" be increased by an amount not to exceed the CPI-U index. Thus, the Legislature did not authorize the Commission (a) to adopt other inflation-based rate

relationship between BellSouth and its subscribers. *South Cent. Bell v. Epps*, 509 So. 2d 886, 891 (Miss. 1987) (citing *Burris* with approval)." *Ezell v. BellSouth Telecomm'ns, Inc.*, 961 F. Supp. 149, 152 (S.D. Miss. 1997).

¹¹ The State Legislature has defined the term "rate" to "mean[] and include[] every compensation, charge, fare, toll, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service . . . described in this section, offered by it to the public . . ." Miss. Code § 77-3-3(e) (2008).

formulas; (b) to modify the CPI-U Index rate formula chosen by the Legislature; or (c) to adopt alternative methods of regulation for determining when an inflation-based rate increase for the retail rates at issue was proper; or (d) to return to a cost-based or rate of return regulatory regime. The process expressly established by the Legislature authorizes the Commission to review any such proposed tariff filing by AT&T Mississippi to increase the rate for “single-line flat rate voice communication service” and to ensure that the proposed filing is limited to the annual increase in the CPI-U index for the prior year.

Significantly, in its 2006 amendments to Section 77-3-35, the Legislature made no changes in Section 77-3-35(4)(a) that support the suggestion that the Legislature has now gone backwards and placed proposed inflation-based adjustments to the retail rates for AT&T Mississippi’s regulated voice services under rate of return ratemaking as the Commission is now attempting to do. In choosing the CPI-U Index as the mandatory bench mark, the Legislature has determined that the use of this Index for any such proposed rate adjustments to retail rates is in the public interest, and has authorized the Commission to protect those customers who purchase these retail services by ensuring that the retail rates for these regulated services do not increase more than the annual CPI-U Index. In the light of the dramatic changes in technology and increased competition experienced in this industry since 1989, if the Legislature had intended for the Commission to review AT&T Mississippi’s costs or revenues when approving this proposed increase it would have expressly given the Commission this authority. The Legislature did not do so.

3. The Commission Erroneously Misinterpreted and Misapplied Section 77-3-35(4)(a).

As already shown, the Legislature declared in 1989 that it is the policy of the State “[t]o encourage the continued study and research for new and innovative ratemaking procedures . . .

and where possible reduce the costs of the rate-making process.” See Miss. Code § 77-3-2(1)(h) (2008); Add. 1. The Legislature and the Commission have followed that path in regulating the telecommunications service offerings of AT&T Mississippi and its predecessors and in the transition to new rate models such as MRSP and PREP that have resulted in reduced rates for consumers due to a variety of factors including reducing the time and costs associated with the rate-making process.

For whatever reason, the Commission lost sight of this expressly declared policy when in the instant case it asked for extensive discovery of AT&T Mississippi’s unregulated and regulated service offerings and conducted a full-blown evidentiary hearing to review an inflation-based rate formula expressly mandated by the Legislature. Without the statutory authority to do so, the Commission then erroneously chose to use a time-consuming, expensive mode of rate-making based on costs - a model that the Commission had not applied to AT&T Mississippi’s rates in more than 10 years - and denied the inflation-based price increase to which AT&T Mississippi was entitled.

The Commission has misapprehended a controlling legal principle. When re-enacting Section 77-3-35(3), as it did in 1996 and again in 2006¹², the Legislature is presumed to have known of the Commission’s prior actions and adopted its prior construction placed on Section 73-3-35(3). E.g., *Barr v. Delta & Pine Land Co.*, 199 So. 2d 269, 271 (Miss. 1967); *Gully v. Jackson Int’l Co.*, 165 Miss. 103, 145 So. 905, 907 (1933); *White v. Miller*, 160 Miss. 734, 133 So. 146, 149 (1931) (“All departments of the state government concerned therewith have been governed in their acts by that [State Auditor’s] construction. In re-enacting the statutes the Legislature is presumed to have known of, and adopted, such construction.”). Thus, the Commission does not have *carte blanche* to act arbitrarily and to adopt one construction for

¹² See Miss. Laws Ch. 304, § 1 (1996); Miss. Laws Ch. 313, § 1 (2006); Add. 33-34, 38.

Section 77-3-35 as it did in its November 1, 1995 Order when it found that “alternate methods” excluded rate-of-return ratemaking (or otherwise “alternative methods” of rate regulation would become a statutory nullity) and then, as it did in its December 31, 2008 Order, to do a 180-degree turn and ignore its prior construction of that same statute, a construction that as a result of its re-enactment in 1996 and 2006 that has been engrafted into the statute.

The arbitrary and capricious nature of the Commission’s Order now under review becomes plain in the light of this regulatory activity and the Legislature’s series of re-enactments of Section 77-3-35. Indeed, as shown above, for more than 10 years immediately preceding the Legislature’s divesting the Commission of its jurisdiction in July of 2006 over the rates of all telecommunications service offerings of AT&T Mississippi, except for switched access service and single-line flat rate voice communication service, Miss. Code § 77-3-35(4)(a) (2008); Add. 8, the Commission did not regulate the rates of any of AT&T Mississippi’s service offerings on the basis of costs. Rather the Commission used a pre-determined annual price ceiling or cap of 20 percent for most service offerings of AT&T Mississippi.

It is against this backdrop that the pertinent portions of Section 77-3-35(4)(a) - its last two sentences – must be read. They provide:

Therefore, the commission is only authorized to regulate the rates, terms and conditions of switched access service and single-line flat rate voice communication service within a traditional local calling area, with access to 911, with touch tone dialing and with access to long distance, so long as such single-line flat rate service is not combined with any other service, feature or product. The retail rates for such single-line flat rate voice communication service beginning January 1, 2007, and every succeeding January 1, may only be increased during the calendar year by an amount that does not exceed the rates for such service on January 1 of the previous year, plus the increase in the Consumer Price Index for all Urban Consumers as reported by the United States Department of Labor, Bureau of Labor Statistics.

Miss. Code § 77-3-35(4)(a) (2008) (emphasis added); Add. 8. Because the two sentences address the same subject matter, they must be read *in pari materia*. *E.g., Yarbrough v. Camphor*, 645 So. 2d 867, 871 (Miss. 1994). Another fundamental rule of statutory construction is that when two sentences encompass the same subject matter, one being general and the other specific, the latter will control. *See McCrory v. State*, 210 So. 2d 877, 877-78 (Miss. 1968).

First, the use of the phrase “retail rates” in the second sentence quoted above from Section 77-3-35(4)(a) is obviously different from and more restrictive than the term “rates” used in the first sentence. The use of “retail rates” shows that the Legislature is addressing those services offered pursuant to Commission-approved tariff and not a rate request for a new service offering. This is so because AT&T Mississippi can only provide “retail rates” pursuant to a Commission-approved tariff that has already established the lawful rates to be charged for those services. *Telcom Sys., Inc. v. Lauderdale County Bd. of Supervisors*, 405 So. 2d 119, 121 (Miss. 1981) (As a public utility, South Central Bell is subject to state regulation and only permitted to charge rates fixed and determined by the Commission); *South Cent. Bell v. Epps*, 509 So. 2d 886, 891 (Miss. 1987) (Once approved by the Commission, the tariff is part of the service contract between the telephone company and the consumer.). In the remainder of the second sentence, the Legislature has selected a well-known formula, which under the Public Utilities Code is a “rate,” *see* Miss. Code § 77-3-3(e) (2008); Add. 4, that a telecommunications public utility is entitled to use if it simply seeks an inflation-based adjustment for those “retail rates” already approved by the Commission.

Inflation is the “persistent increase[] in the general level of prices” and is “a recurring but only intermittent phenomenon.” G. Bannock, R. E. Baxter, and E. Davis, *The Penguin Dictionary of Economics* 188 (7th ed. 2003). The Legislature’s chosen inflation-based formula,

the CPI-U Index as applied to the prior year's "retail rate" for the service offering in question, is thus based on price - not costs. Further, a public utility's decision to seek such an increase for its current retail rates is wholly optional. Competitive market factors may cause a public utility, whether its retail rates are regulated or not, to forgo an inflation-based price increase in any given year.¹³

The statutorily mandated formula's primary component, the CPI-U Index, is well known, readily obtainable, and simple to apply. The results are easy to verify. An inflation-based price increase can be applied for and administered in a cost-efficient, expeditious manner. It is similar to the price-based cap increases previously used under PREP. It is plainly an "alternative method[] of regulation," which the Commission is authorized to adopt under Section 77-3-35(3)(a)-(b), only in this instant the Legislature rather than the Commission has adopted and mandated its use. In sum, its adoption by the Legislature for such price increases is wholly consonant with the letter and spirit of the Public Utilities Code as it applies to the ratemaking process of those telecommunications offerings that continue to be regulated by the Commission.

In contrast, the Commission's interpretation and administration of the statutorily mandated CPI-U formula that resulted in its December 31 Order not only frustrates but utterly defeats what the Legislature plainly envisioned under Section 77-3-35(4)(a). The Commission denied the proposed rate increase on the grounds that (a) AT&T Mississippi did not properly explain why it sought increases for some - but not all - of its regulated voice services; and (b) it did not provide "cost studies" showing that it was entitled to an inflation-based rate increase. Order (Dec. 31, 2008); I R. 99-110; R.E. 3-14.

¹³ As was the case here, since AT&T Mississippi could have, but elected not to, file a Notice of Intent with the Commission in 2007 based upon the CPI-U Index in 2006. AT&T has only made one such tariff filing and that was the tariff filing it made in May, 2008 at issue in the instant case.

The Commission's actions under Section 77-3-35(4)(a) are wholly contrary to its construction of Section 77-3-35(3) when it stated in 1995 that "alternative methods of regulation" as used in the statute are those rate methods that use a method other than the rate of return method of regulation; otherwise the phrase "alternative methods of regulation" becomes a nullity.¹⁴ The statutorily mandated CPI-U formula, being based on price rather than costs, is clearly an "alternative method of rate regulation" that the Commission itself had the authority to adopt under Section 77-3-35(3) if it had chosen to do so. Under the 2006 amendments to Section 77-3-35, the Legislature has chosen the CPI-U Index rate as the exclusive inflation-based rate formula that is available to AT&T Mississippi and is to be applied to its current "retail rates" for the regulated service offerings at issue.

4. The Commission's Construction and Administration of Section 77-3-35(4)(a), Being Contrary to the Legislature's Statutorily Mandated Rate Formula and the Commission's Own Prior Constructions of, Is Entitled To No Weight.

Notably, in enacting Section 77-3-35(4)(a), the Legislature did not grant the Commission the authority to alter or modify the statutorily mandated CPI-U formula, to adopt other inflation-based formulas, to assess a rate increase based on the CPI-U index against another rate method altogether, or to impose a rate of return or cost-based method. Yet the Commission's construction of and its actions under Section 77-3-35(4)(a) have impermissibly converted a price-based capped rate or formula into a cost-based rate method. The irony is that the Commission has made the Legislature's mandated CPI-U formula a nullity. The Commission's actions in calling for cost studies to justify an inflation-based price increase based on the CPI-U Index have gutted all the economies that the Legislature intended to achieve when it enacted Section 77-3-35(4)(a) and chose the CPI-U formula as an alternative rate or formula.

¹⁴ Subparts (a) and (b) of Section 77-3-35(3) are *in pari materia* as they too address the same subject matter.

In its December 31, 2008 Order, the Commission retrenched and reversed its prior construction of Section 77-3-35. The Commission now takes a wholly isolated view of its “authority” over the rates, terms and conditions of the regulated services governed by Section 77-3-35(4)(a). In reading Section 77-3-35(4)(a) in a vacuum, the Commission has presumed that it has unbridled discretion to adopt previously unannounced standards for when it may approve a proposed inflation-based rate increase for tariff-approved “retail rates” under Section 77-3-35(4)(a) -- and further presumed that those standards can be wholly inconsistent with the rate method found in the statute. Yet the Legislature has given the Commission no such authority.¹⁵ Accordingly, the Commission’s interpretation and implementation of Section 77-3-35 has “no material force where [its actions are] contrary to the statutory language.” *Mississippi Ethics Comm’n v. Grisham*, 957 So. 2d 997, 1002 (Miss. 2007), following *Gill v. Mississippi Dep’t of Wildlife Conservation*, 574 So. 2d 586, 593 (Miss. 1990); see *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649-50 (1990) (agency’s interpretation of statute not entitled to *Chevron* deference where legislature has not delegated agency the authority to implement the statute other than as prescribed by the statute).

¹⁵ As already noted, the Commission has no power to act except within the jurisdiction granted by statute. See *Mississippi Pub. Serv. Comm’n v. Mississippi Power & Light Co.*, 593 So. 2d 997, 999 (Miss. 1991) (“[A] statutory agency has only legislation granted authority, there is no inherent authority.”). As such, the Commission can not act outside its delegated authority. *Mississippi Pub. Serv. Comm’n v. Columbus & Greenville Ry.*, 573 So. 2d 1343, 1346 (Miss. 1990); *Mississippi Pub. Serv. Comm’n v. South Cent. Bell Tel. Co.*, 464 So. 2d 1133, 1134 (Miss. 1985). In *Mississippi Public Service Commission v. Mississippi Power & Light Co.*, 593 So. 2d 997, 998 (Miss. 1991), this Court struck down several administrative rules of the Commission based on the legal principle prohibiting an agency’s exercise of powers not legislatively granted. The Court noted the need to avoid and minimize a state agency’s “unchecked power.” 593 So. 2d at 1000. Any power exercised by an administrative agency “must be found within the four corners of the statute under which the agency operates.” *State ex rel. Pittman v. Mississippi Pub. Serv. Comm’n*, 538 So. 2d 367, 373 (Miss. 1989). To this end, unless the authority in question is expressly granted or necessarily implied, the administrative agency’s decision is void. *Id.* Section 77-3-35(4)(a) contains no language to suggest that the Commission has the authority to override the application of the CPI-U formula selected by the Legislature or to make the formula a nullity, which is precisely what the Commission’s Order does.

5. The Commission's Construction of Section 77-3-35(4)(a)
Ascribes an Unconstitutional Confiscatory Intent to the Legislature.

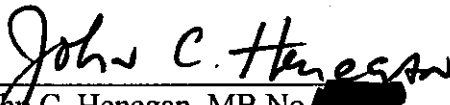
The Commission's reading of Section 77-3-35 is also arbitrary and capricious because it ascribes an unconstitutional confiscatory intent to the Legislature. The Commission says that the statute allows it to base proposed rate increases on cost but that the Legislature has prevented it from awarding increases any greater than the inflation index will permit. Order 9-11 (Dec. 31, 2008); I R. 107-09; R.E. 11-13. Under well settled principles of utility regulation, when the Commission is setting rates based on costs, it must provide the utility with the opportunity to earn a fair return on its rate base. *See Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-05 (1944). The failure to do so is confiscation of the public utility's property and violates the Due Process clauses of the Fifth and Fourteenth Amendments of the United States Constitution. *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-08, 310, 315 (1989) ("Consequently, a State's decision to arbitrarily switch back and forth between methodologies in a way which required investors to bear the risk of bad investments at some times while denying them the benefit of good investments at others would raise serious constitutional questions."). The Commission's reading, which says it can award only partial cost recovery, thus ascribes to the Legislature the intent to accomplish an unconstitutional result. Such a reading is clearly arbitrary and capricious and should not be upheld. *See One 1992 Toyota 4-Runner v. State ex rel. Mississippi Dep't. of Wildlife Fisheries & Parks*, 721 So. 2d 609, 617 (Miss. 1998) ("This Court has repeatedly held that when it is confronted with a statute a literal construction of which would render it unconstitutional, the Court must adopt a construction that will save the statute, when reasonably possible.").

CONCLUSION

With respect, the Commission's interpretation of Section § 77-3-35(4)(a) and its findings in the December 31 Order are under any standard of review legally erroneous because they are contrary to the express inflation-based rate or formula adopted by the Legislature, inconsistent with prior interpretations of the Commission regarding the same subject matter, and contrary to the expressly declared telecommunications policy of the State as found in its Public Utilities laws. This Court should vacate the December 31, 2008 Order of the Commission with instructions that the Commission apply the statutorily mandated CPI-U formula found in Section § 77-3-35(4)(a).

This, the 27th day of February, 2009.

BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T MISSISSIPPI


John C. Henegan, MB No. [REDACTED]
LeAnn W. Nealey, MB No. [REDACTED]
Butler, Snow, O'Mara,
Stevens & Cannada, PLLC

Thomas B. Alexander, MB No. [REDACTED]
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Mississippi

James G. Harralson, PHV.
General Attorney & Associate
General Counsel
BellSouth Telecommunications, Inc.
d/b/a AT&T Southeast

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T MISSISSIPPI,**

PLAINTIFF-APPELLANT

v.

NO. 2009-UR-00071

MISSISSIPPI PUBLIC SERVICE COMMISSION,

DEFENDANT-APPELLEE

ON APPEAL FROM THE MISSISSIPPI PUBLIC SERVICE COMMISSION

**ADDENDUM TO BRIEF OF APPELLANT
BELLSOUTH TELECOMMUNICATIONS, INC., D/B/A AT&T MISSISSIPPI**

Tab

1. Miss. Code § 77-3-2 (2008) (001-002)
2. Miss. Code § 77-3-3 (2008) (003-005)
3. Miss. Code § 77-3-35 (2008) (006-010)
4. Miss. Laws Ch. 338 (1988) (011-013)
5. Miss. Laws Ch. 304 (1989) (014-017)
6. Miss. Laws Ch. 48 (Ex. Sess. 1990) (018-021)
7. Miss. Laws Ch. 315 (1994) (022-025)
8. Miss. Laws Ch. 348 (1995) (026-029)
9. Miss. Laws Ch. 304 (1996) (030-034)
10. Miss. Laws Ch. 313 (2006) (035-041)

CWest's Annotated Mississippi Code Currentness

Title 77. Public Utilities and Carriers

■ Chapter 3. Regulation of Public Utilities

■ Article 1. Certificates of Public Convenience and Necessity; Rates; Service

→ § 77-3-2. Policy; authority; duties; legislative intent

(1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

- (a) To provide fair regulation of public utilities in the interest of the public;
- (b) To promote the inherent advantage of regulated public utilities;
- (c) To promote adequate, reliable and economical service to all citizens and residents of the state;
- (d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (e) To encourage and promote harmony between public utilities, their users and the environment;
- (f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;
- (g) To cooperate with other states and the federal government in promoting and coordinating interstate and intra-state public utility service and reliability;
- (h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities, and where possible reduce the costs of the rate-making process.

(2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities in accordance with the provisions of this title.

(3)(a) The commission shall, in addition to its other powers and duties, be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to:

- (i) Periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits;

(ii) Review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; and

(iii) Use such other provisions which may be permitted by this chapter.

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

(c) In administering any such formula type rate of return evaluation rate, the following procedures shall be observed by the commission:

(i) Each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data specified in the formula rate adopted by the commission, and such data shall be verified by the commission; and

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%) of the annual revenues of the utility.

(d) The requirements of paragraphs (a), (b) and (c) of this subsection and other applicable provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, which are observed by the commission in administering such rate, are hereby declared to be procedural but are not required to be included in the rate itself.

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided, however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

CREDIT(S)

Laws 1983, Ch. 467, § 3; Laws 1989, Ch. 304, § 1; Laws 1990, 1st Ex. Sess., Ch. 48, § 1, eff. from and after passage (approved June 30, 1990).



West's Annotated Mississippi Code Currentness

Title 77. Public Utilities and Carriers

Chapter 3. Regulation of Public Utilities

Article 1. Certificates of Public Convenience and Necessity; Rates; Service

→ § 77-3-3. Definitions

As used in this chapter:

- (a) The term "corporation" includes a private or public corporation, a municipality, an association, a joint-stock association or a business trust.
- (b) The term "person" includes a natural person, a partnership of two (2) or more persons having a joint or common interest, a cooperative, nonprofit, limited dividend or mutual association, a corporation, or any other legal entity.
- (c) The term "municipality" includes any incorporated city, town or village.
- (d) The term "public utility" includes persons and corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for:
 - (i) The generation, manufacture, transmission or distribution of electricity to or for the public for compensation;
 - (ii) The transmission, sale, sale for resale, or distribution of natural, artificial, or mixed natural and artificial gas to the public for compensation by means of transportation, transmission, or distribution facilities and equipment located within this state; however, the term shall not include the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, or the distribution or sale of liquefied petroleum gas or the sale to the ultimate consumer of natural gas for use as a motor vehicle fuel;
 - (iii) The transmission, conveyance or reception of any message over wire, or by radio, or otherwise, of writing, signs, signals, pictures and sounds of all kinds by or for the public, where such service is offered to the public for compensation, and the furnishing, or the furnishing and maintenance, of equipment or facilities to the public, for compensation, for use as a private communications system or part thereof; however, no person or corporation not otherwise a public utility within the meaning of this chapter shall be deemed such solely because of engaging in this state in the furnishing, for private use as last aforementioned, and moreover, nothing in this chapter shall be construed to apply to television stations, radio stations, community television antenna services or broadband services; and
 - (iv) The transmission, distribution, sale or resale of water to the public for compensation, or the collection, transmission, treatment or disposal of sewage, or otherwise operating a sewage disposal service, to or for the public for compensation.

The term "public utility" shall not include any person not otherwise a public utility, who furnishes the services or commodity described in this paragraph only to himself, his employees or tenants as an incident of such employee service or tenancy, if such services are not sold or resold to such tenants or employees on a metered or consumption

basis other than the submetering authorized under Section 77-3-97.

A public utility's business other than of the character defined in subparagraphs (i) through (iv) of this paragraph is not subject to the provisions of this chapter.

(e) The term "rate" means and includes every compensation, charge, fare, toll, rental and classification, or the formula or method by which such may be determined, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity described in this section, offered by it to the public, and any rules, regulations, practices or contracts relating to any such compensation, charge, fare, toll, rental or classification; however, the term "rate" shall not include charges for electrical current furnished, delivered or sold by one public utility to another for resale.

(f) The word "commission" shall refer to the Public Service Commission of the State of Mississippi, as now existing, unless otherwise indicated.

(g) The term "affiliated interest" or "affiliate" includes:

(i) Any person or corporation owning or holding, directly or indirectly, twenty-five percent (25%) or more of the voting securities of a public utility;

(ii) Any person or corporation in any chain of successive ownership of twenty-five percent (25%) or more of the voting securities of a public utility;

(iii) Any corporation of which fifteen percent (15%) or more of the voting securities is owned or controlled, directly or indirectly, by a public utility;

(iv) Any corporation twenty-five percent (25%) or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, twenty-five percent (25%) or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of twenty-five percent (25%) of such securities;

(v) Any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of fifteen percent (15%) or more of voting securities of a public utility; or

(vi) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under a common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the discretion of the management and policies of another, whether such power is established through ownership of voting securities or by any other direct or indirect means.

However, the term "affiliated interest" or "affiliate" shall not include a joint agency organized pursuant to Section 77-5-701 et seq. nor a member municipality thereof.

(h) The term "facilities" includes all the plant and equipment of a public utility, used or useful in furnishing public utility service, including all real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished or supplied for, by or in connection with its public utility business.

(i) The term “cost of service” includes operating expenses, taxes, depreciation, net revenue and operating revenue requirement at a claimed rate of return from public utility operations.

(j) The term “lead-lag study” includes an analysis to determine the amount of capital which investors in a public utility, the rates of which are subject to regulation under the provisions of this chapter, must provide to meet the day-to-day operating costs of the public utility prior to the time such costs are recovered from customers, and the measurement of (i) the lag in collecting from the customer the cost of providing service, and (ii) the lag in paying the cost of providing service by the public utility.

(k) The term “broadband services” means any service that consists of or includes a high-speed access capability to transmit at a rate that is not less than two hundred (200) kilobits per second either in the upstream or downstream direction and either:

(i) Is used to provide access to the Internet, or

(ii) Provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service.

Nothing contained in this paragraph shall apply to retail services that are tariffed by the commission.

CREDIT(S)

Laws 1956, Ch. 372, § 1; Laws 1968, Ch. 502, § 1; Laws 1983, Ch. 467, § 4; Laws 1988, Ch. 310, § 1; Laws 1990, Ch. 530, § 41; Laws 1993, Ch. 304, § 1, eff. July 1, 1993. Amended by Laws 2002, Ch. 513, § 2, eff. July 1, 2002; Laws 2005, Ch. 305, § 1, eff. from and after passage (approved February 24, 2005).

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1942, § 7716-01.

CWest's Annotated Mississippi Code Currentness

Title 77. Public Utilities and Carriers

[¶] Chapter 3. Regulation of Public Utilities [¶] Article 1. Certificates of Public Convenience and Necessity; Rates; Service → **§ 77-3-35. Schedule of rates; regulation; contracts; restrictions on certain telecommunications regulation**

(1) Subject to the provisions of subsections (2) and (4) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, as to the rates which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing such rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d)(i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2)(a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition

and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

The commission retains the authority to issue orders to implement its rules, regulations and the provisions of this chapter, including the authority to grant and modify, impose conditions upon, or revoke a certificate.

(b) The commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3)(a) The commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection, the phrase “alternative methods of regulation” means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

(4)(a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d)(iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the Legislature has determined that, in the provision of all services other than switched access service and single-line flat rate voice communication service, competition or other market forces adequately protect the public interest. Therefore, the commission is only authorized to regulate the rates, terms and conditions of switched access service and single-line flat rate voice communication service within a traditional local calling area, with access to 911, with touch tone dialing and with access to long distance, so long as such single-line flat rate service is not combined with any other service, feature or product. The retail rates for such single-line flat rate voice communication service beginning January 1, 2007, and every succeeding January 1 may only be increased during the calendar year by an amount that does not exceed the rates for such service on January 1 of the previous year, plus the increase in the Consumer Price Index for all Urban Consumers as reported by the United States Department of Labor, Bureau of Labor Statistics.

(b) For those public utilities of the type defined in Section 77-3-3(d)(iii) that have been granted a suspension by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the commission, at the request of such public utility, shall enter an order, after notice and opportunity for hearing, determining that such public utility's provision of service will be subject to the same level of regulation as provided in paragraph (a) of this subsection, but only after the commission determines that such public utility has satisfied one (1) of the following conditions:

- (i) Has executed interconnection agreements which have been approved by the commission to the extent required under law with two (2) or more local exchange carriers unaffiliated with such public utility;
- (ii) Offers for resale at wholesale rates, pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public utility's retail telecommunications services provided to subscribers who are not telecommunications carriers;
- (iii) At least two (2) competitive telecommunications providers unaffiliated with such requesting public utility are offering service to such public utility's subscribers; or
- (iv) Has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.

A waiver of suspension under paragraph (a) of this subsection shall be effective upon written notification to the commission. The initial rate utilized by such public utility shall be the rate for such service in effect at the time of such waiver under this section. The commission, upon request of the public utility, may return such public utility to return to a form of regulation permitted under Section 77-3-35.

(c)(i) An incumbent local exchange carrier shall provide, upon reasonable request, primary single-line flat rate voice communication service to the premises of a permanent residence or business within its franchised service territory, if the costs, including, but not limited to, the costs of facilities, rights-of-way and equipment, of providing such service to the requesting party do not exceed Five Thousand Dollars (\$5,000.00). This requirement shall not apply where there is an alternative provider of service to the premises of the residence or business customer, or where the incumbent local exchange carrier has been prohibited from providing service to the premises.

(ii) If the costs exceeds Five Thousand Dollars (\$5,000.00), as provided in and subject to subparagraph (i) of this paragraph (c), an incumbent local exchange carrier may not deny service on the basis of costs so long as sufficient funds to provide that services are available from contributions to aid in construction or the Mississippi portion of the applicable federal universal service fund program as administered by the commission.

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier to provide unbundled access to network elements to the extent required under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to arbitrate and enforce interconnection agreements pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections.

(e) The commission shall retain exclusive original jurisdiction over customer complaints for those services that continue to be regulated. For services no longer regulated, the commission shall have exclusive original jurisdiction to interpret and enforce the terms and conditions of customer service agreements for telecommunications services, but it shall not alter, set aside or refuse to enforce the rates, terms and conditions thereof, either directly or indirectly. No other party shall be allowed to participate in any such complaint proceeding, except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall only be required to file financial or service quality information that such public utilities are required to file with the Federal Communications Commission so long as such financial information includes data specific to Mississippi. As to all other data and information, the requirements of Section 77-3-79 continue to apply. If any such public utility is not required to file such financial information with the Federal Communications Commission, the requirements of Section 77-3-79 continue to apply. The public utility regulatory tax established in Section 77-3-87 shall be based on the financial information contained in such federal financial reports filed by such public utilities. The calculation of such tax for such public utilities shall continue to be based upon the gross revenues from the intrastate operations of such public utility in the same manner as such tax was calculated before July 1, 2006. Nothing herein shall change the obligation of such public utilities described in Section 77-3-3(d)(iii) to pay the public utilities regulatory tax established in Section 77-3-87. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g)(i) In order to transition to the changes effectuated by paragraph (a) of this subsection, the rates, terms and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to the effective date of this section shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to the effective date of this section. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and conditions governing such products or services shall remain in effect until a written customer service agreement becomes effective as described in subparagraph (ii) of this paragraph (g).

(ii) Except as provided in subparagraph (i) of this paragraph (g), the service provider shall offer existing and new customers a written customer service agreement, which in the case of new customers shall be delivered no later than thirty (30) days after the initiation of service. The customer service agreement shall include a provision advising the customer that he has thirty (30) days from receipt in which to elect:

1. To terminate service with the service provider by contacting such service provider within the thirty-day time period, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement shall relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and shall be in effect until termination through pay off; or

2. To use the services of the service provider or to otherwise continue the account with the service provider after the thirty-day time period has elapsed, either of which shall constitute the customer's assent to all the rates, terms and conditions of the written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(iii) If any service provider desires to modify in any respect any rates, terms or conditions of a customer service agreement, it shall provide at least thirty (30) days' prior written notice of the modification and the proposed effective date to the customer. The customer service agreement shall include a provision advising the customer that he has the option:

1. To terminate service with the service provider by contacting such service provider prior to the effective date, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as then in effect; or

2. To use the services of the service provider or to otherwise continue the account with the service provider on or after the effective date, either of which shall constitute the customer's assent to the modified written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

CREDIT(S)

Laws 1956, Ch. 372, § 9; Laws 1988, Ch. 338, § 1; Laws 1994, Ch. 315, § 1; Laws 1995, Ch. 348, § 1; Laws 1996, Ch. 304, § 1, eff. from and after passage (approved March 7, 1996). Amended by Laws 2006, Ch. 313, § 1, eff. July 1, 2006.

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1942, § 7716-09.

Mississippi Laws 1988 Legislative Session

Book I

Pages 1-352



DICK MOLPUS
Secretary of State

**CHAPTER NO. 338
HOUSE BILL NUMBER 1221**

AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, RELATING TO THE REGULATION OF RATES OF PUBLIC UTILITIES TO PROVIDE FOR THE MANNER OF REGULATING AND DEREGULATING THE RATES AND CHARGES OF TELECOMMUNICATIONS UTILITIES FOR SERVICES AND FACILITIES THAT ARE SUBJECT TO SIGNIFICANT COMPETITION; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35. (1) Subject to the provisions of subsection (2) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, the rates of which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities of the same type as herein covered, engaged in rendering interstate service to and from points and places in the state, shall file with the commission tariffs of rates and charges of such and rates and charges affecting service to or from points and places in the state. Also, utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, that utilities may contract with a manufacturer who is not a utility for furnishing the services or commodities described in subparagraphs (1), (2) and (3) of paragraph (d) of Section 77-3-3 for use in manufacturing, without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service.

(b) Notwithstanding any provisions of this chapter or any other statute, the commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest

requires that the
be subject to regu

(c) In makin
shall not be sub
individually or co

(i) Whethe
the utility's custo
factors;

(ii) Wheth
service or facility
exercise of jurisd

(iii) Wheth
from competing
services or equip

(iv) Wheth
ination and exte
facility in questio

(v) The av
or

(vi) Any

In making th
period of time
shall not theree
hearing, the co
section, when t
and charges fo
interest.

SECTION 2.

Approved: Apr

**AN ACT TO A
THE REQUIR
RIFF'S WRIT
PURPOSES.**

Be it enacted

SECTION 1

77-9-505. (1)
or partially v
commission a
officer; provid
or may rescin
shall at all tir

(2) A railro
(1) of this se

requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations;
or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

SECTION 2. This act shall take effect and be in force from and after July 1, 1988.

Approved: April 15, 1988

CHAPTER NO. 339 SENATE BILL NUMBER 2139

AN ACT TO AMEND SECTION 77-9-505, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT FOR RAILROAD POLICE OFFICERS TO OBTAIN A SHERIFF'S WRITTEN APPROVAL TO EXERCISE POWERS; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-9-505, Mississippi Code of 1972, is amended as follows:

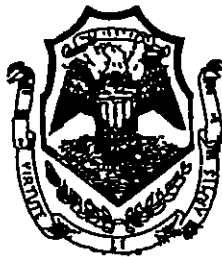
77-9-505. (1) Upon request by the chief police officer of any railroad located wholly or partially within this state, the Commissioner of Public Safety may appoint and commission as a railroad police officer any qualified person named by such chief police officer; provided, however, that the Commissioner of Public Safety may refuse to appoint or may rescind the appointment of anyone. Any such railroad police officer so appointed shall at all times be answerable and responsible to the Commissioner of Public Safety.

(2) A railroad police officer appointed and commissioned as provided in subsection (1) of this section shall, before entering upon his duties as such officer, take the oath

LAWS
of the
STATE OF MISSISSIPPI

Appropriations
General Legislation and
Resolutions

PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY, JANUARY 3, 1989 AND
ENDING ON MONDAY, APRIL 10, 1989



(Local and Private Laws are published
in a separate volume.)

Numerical list of House and Senate Bills, indexes, and
data on laws which amend or repeal existing laws
appear in back of this volume.

Published by Authority
1989

(6) The board shall keep such data as shall be necessary for the actuarial valuation of the contingent assets and liabilities of the plan and for checking the experience of the plan.

(7) The board shall determine from time to time the rate of regular interest for use in all calculations, with the rate of five percent (5%) per annum applicable unless changed by the board.

(8) Subject to the limitations hereof, the board from time to time shall establish rules and regulations for the administration of the plan and for the transaction of business.

(9) The board shall keep a record of all its proceedings under this article which shall be open to public inspection, except for individual member records. The system shall not disclose the name, address or contents of any individual member records without the prior written consent of the individual to whom the record pertains.

(10) The Executive Secretary of the Public Employees' Retirement System of Mississippi shall serve as the executive secretary of the plan.

SECTION 12. The right of a person to an annuity, a retirement allowance or benefit, or to the return of contributions, or to any optional benefit or any other right accrued or accruing to any person under the provisions of the Supplemental Legislative Retirement Plan, and the moneys in the plan created by this article, are exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as specifically otherwise provided in this article.

SECTION 13. Sections 3 through 12 shall be codified as a new article in Chapter 11, Title 25, of the Mississippi Code of 1972.

SECTION 14. This act shall take effect and be in force from and after July 1, 1989.

Approved: February 24, 1989

CHAPTER NO. 304 HOUSE BILL NUMBER 885

AN ACT TO CLARIFY THE INTENT OF CERTAIN PROVISIONS OF THE PUBLIC UTILITIES ACT; TO AMEND SECTION 77-3-2, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ADOPT CERTAIN FORMULA RATE PROGRAMS; TO AMEND SECTION 77-3-41, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE REFERENCE TO SECTION 77-3-39 IS TO PROVIDE FOR HEARINGS IN CERTAIN CASES; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-2, Mississippi Code of 1972, is amended as follows:

77-3-2. (1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

- (a) To provide fair regulation of public utilities in the interest of the public;
- (b) To promote the inherent advantage of regulated public utilities;

(c) To
dents of the

(d) To
out unjust
competitive
energy resou

(e) To
environmen

(f) To
nated basis
health and

(g) To
coordinatin

(h) To
making pro
ties and wh
shall be au
type rate of
periodically
actual book
audits and
egories whi
include rat
and result i
visions whi
uation rate
periodic rev
whether a l
be required
the utility i
that each p
porating th
shall be ve
77-3-39(1),
and the act
tive change
(\$200,000.0

It is furt
ing with th

(2) To th
Commissio

SECTION

77-3-41.
requiremen
47, finds th
unreasonable
anywise in
order, the j
furnishing
thereupon

(c) To promote adequate, reliable and economical service to all citizens and residents of the state;

(d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(e) To encourage and promote harmony between public utilities, their users and the environment;

(f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;

(g) To cooperate with other states and the federal government in promoting and coordinating interstate and intrastate public utility service and reliability;

(h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities and where possible reduce the costs of the rate-making process. The commission shall be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to: (i) periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits; (ii) review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; (iii) and use such other provisions which may be permitted by this chapter. When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(10); provided, however, that each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data specified in the formula rate adopted by the commission, and such data shall be verified by the commission; a hearing shall be required as provided in Section 77-3-39(1), Mississippi Code of 1972, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%) of the annual revenues of the utility.

It is further the intention of the Legislature to validate any formula type rate complying with the provisions hereof which has heretofore been adopted by the commission.

(2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities, in accordance with the provisions of this title.

SECTION 2. Section 77-3-41, Mississippi Code of 1972, is amended as follows:

77-3-41. Whenever the commission, after hearing had pursuant to the hearing requirement set forth in Section 77-3-39(1) and the procedure set forth in Section 77-3-47, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, materially excessive or insufficient or unreasonably discriminatory, or in anywise in violation of any provision of law, the commission shall determine, and fix by order, the just and reasonable rates which will yield a fair rate of return to the utility for furnishing service, which rates will thereafter be observed and in force. Said rates shall thereupon become the legal rates to be charged and paid until changed.

The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency, to permit any public utility to alter, amend or suspend temporarily any existing rates, schedules and orders relating to or affecting any public utility or part of any public utility in this state except as provided in Section 77-3-42.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved: February 24, 1989

CHAPTER NO. 305 SENATE BILL NUMBER 2805

AN ACT TO AMEND SECTION 47-5-108, MISSISSIPPI CODE OF 1972, TO AUTHORIZE SELF-SUSTAINING FOOD FACILITIES AT RANKIN AND GREENE COUNTY CORRECTIONAL FACILITIES; FUNDS FROM SUCH FACILITIES TO REMAIN IN SEPARATE ACCOUNTS; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 47-5-108, Mississippi Code of 1972, is amended as follows:

47-5-108. The Mississippi Department of Corrections is hereby authorized to provide self-sustaining facilities for the preparation and serving of food for employees and visitors of the Mississippi State Penitentiary, the Rankin County Correctional Facility, and the Greene County Correctional Facility. The commissioner shall promulgate policies and procedures for the operation of such facilities. In addition, the funds derived from these operations shall remain in separate accounts, hereafter known as the "Employee Cafeteria Funds." The profits, if any, shall be distributed at the direction of the Commissioner of Corrections.

SECTION 2. This act shall take effect and be in force from and after July 1, 1989.

Approved: February 24, 1989

CHAPTER NO. 306 SENATE BILL NUMBER 2807

AN ACT TO AMEND SECTION 47-7-27, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE REVOCATION OF PAROLE IF FELONY IS COMMITTED; TO AUTHORIZE PAROLE BOARD AND HEARING OFFICERS TO ADMINISTER OATHS AND SUMMON WITNESSES; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 47-7-27, Mississippi Code of 1972, is amended as follows:

47-7-27. The board is hereby authorized at any time, in its discretion, and upon a showing of probable violation of parole, to issue a warrant for the return of any paroled offender to the custody of the Mississippi Department of Corrections. Such warrant shall authorize all persons named therein to return such paroled offender to actual custody of the department of corrections from which he was paroled. Pending hearing, as hereinafter provided, upon any charge of parole violation, the offender shall remain incarcerated in any other place of detention designated by the department.

Any field supervisor may arrest a parolee without a warrant or may deputize any other person with power of arrest to do so by giving him a written statement setting forth

that the par
his parole. f
the official i
other place c
detention of

The field :
a similar sta
notify the b
report showi
offender for
issuance of s

The law n
sons and re
impaired by
a felony wh
immediately
ment order t

At the ne
of any offen
taken into c
ing or in per
time in its d
In the event
sentence ori
grant the off
offender sha
offender was
he was sente

The chair
hearing offic
summon and
the truth of

SECTION

Approved: F

AN ACT
TAIN AN E
EXPENDE
FOR CERT
RIZE THE
ING CONT
TO CREAT
SUCH FUN
REQUIRE

Be it enact

SECTION
a bank acco
held in a sin

VOLUME II
LAWS
of the
STATE OF MISSISSIPPI

Appropriations

General Legislation and

Resolutions

PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY, JANUARY 2, 1990, AND
ENDING ON SATURDAY, APRIL 14, 1990
AND AT AN EXTRAORDINARY SESSION COMMENCING
ON MONDAY, JUNE 18, 1990, AND
ENDING ON SATURDAY, JUNE 30, 1990



(Local and Private Laws are published
in a separate volume.)

Numerical lists of House and Senate Bills, indexes, and
data on laws which amend or repeal existing laws
appear in back of this volume.

Published by Authority
1990

apter	Bill Type	Bill No.
5	HB	1738
926	HB	1740
927	HB	1741
8	HB	1745
9	SB	3246
0	SB	3264
931	SB	3275
932	SB	3288
3	SB	3293
4	HB	1421
5	HB	1648
936	HB	1672
937	HB	1703
8	HB	1704
9	HB	1705
940	HB	1706
941	HB	1707
2	HB	1715
3	HB	1747
4	SB	2491
945	SB	3091
946	SB	3111
7	SB	3247
8	SB	3251
9	SB	3255
950	SB	3258
951	SB	3261
2	SB	3262
3	SB	3263
4	SB	3270
955	SB	3277
956	SB	3279
7	SB	3280
8	SB	3290
959	SB	3292
960	SB	3296
961	SB	3297
2	SB	3289
3	HB	1522

LAWS
of
1990
EXTRAORDINARY SESSION
STATE OF MISSISSIPPI

SECTION 2. This act shall take effect and be in force from and after July 1, 1990.

Approved: June 30, 1990

CHAPTER NO. 48 HOUSE BILL NUMBER 25

AN ACT TO AMEND SECTION 77-3-2, MISSISSIPPI CODE OF 1972, TO CLARIFY THE MANNER IN WHICH FORMULA TYPE RATE OF RETURN EVALUATION RATES MAY BE ADOPTED AND REGULATED BY THE PUBLIC SERVICE COMMISSION; TO CLARIFY THE RETROACTIVE EFFECT OF THIS SECTION; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-2, Mississippi Code of 1972, is amended as follows:

77-3-2. (1) The Legislature finds and determines that the rates, services and operations of public utilities as defined in this title are affected with the public interest and that the availability of an adequate and reliable service by such public utilities to the people, economy and government of the State of Mississippi is a matter of public policy. The Legislature hereby declares to be the policy of the State of Mississippi:

- (a) To provide fair regulation of public utilities in the interest of the public;
 - (b) To promote the inherent advantage of regulated public utilities;
 - (c) To promote adequate, reliable and economical service to all citizens and residents of the state;
 - (d) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
 - (e) To encourage and promote harmony between public utilities, their users and the environment;
 - (f) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of service needed for the protection of public health and safety and for the promotion of the general welfare;
 - (g) To cooperate with other states and the federal government in promoting and coordinating interstate and intrastate public utility service and reliability;
 - (h) To encourage the continued study and research for new and innovative rate-making procedures which will protect the state, the public, the ratepayers and the utilities, and where possible reduce the costs of the rate-making process.
- (2) To these ends, therefore, authority shall be vested in the Mississippi Public Service Commission to regulate public utilities in accordance with the provisions of this title.
- (3) (a) The commission shall, in addition to its other powers and duties, be authorized and empowered, in its discretion, to consider and adopt a formula type rate of return evaluation rate which may include provision for the commission to:

(i) Periodically review and adjust, if required, the utility's level of revenues based upon the actual books and records of the utility which are periodically the subject of independent audits and regulatory audits;

(ii) Review the utility's performance in certain areas or categories which may be used by the commission in the manner selected by it which may include rate incentives or penalties so long as such are found to be fair and reasonable and result in a level of revenue which is fair and reasonable; and

(iii) Use such other provisions which may be permitted by this chapter.

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

(c) In administering any such formula type rate of return evaluation rate, the following procedures shall be observed by the commission:

(i) Each periodic evaluation shall be supported with a sworn filing by the utility incorporating the data specified in the formula rate adopted by the commission, and such data shall be verified by the commission; and

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%) of the annual revenues of the utility.

(d) The requirements of paragraphs (a), (b) and (c) of this subsection and other applicable provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, which are observed by the commission in administering such rate, are hereby declared to be procedural but are not required to be included in the rate itself.

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided, however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: June 30, 1990

CHAPTER NO. 49 HOUSE BILL NUMBER 28

AN ACT TO DESIGNATE THE HERMAN ALFORD MEMORIAL HIGHWAY; AND FOR RELATED PURPOSES.

VOLUME I
LAWS
of the
STATE OF MISSISSIPPI

Appropriations
General Legislation and
Resolutions

PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY, JANUARY 4, 1994, AND
ENDING ON SUNDAY, APRIL 3, 1994.



(Local and Private Laws are published
in a separate volume.)

Numerical lists of House and Senate Bills, indexes, and
data on laws which amend or repeal existing laws
appear in back of this volume.

Published by Authority.
1994

(vi) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(vii) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(viii) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder; however, the memorandum or other material may otherwise be released by the commissioner with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(e) This subsection shall become operative with the filing of the December 31, 1994, annual statement.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 10, 1994

CHAPTER NO. 315 SENATE BILL NUMBER 2514

AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI OF 1972, TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ADOPT ALTERNATIVE METHODS OF REGULATION OF THE RATES AND CHARGES OF TELECOMMUNICATION UTILITIES; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State Of Mississippi:

SECTION 1. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35. (1) Subject to the provisions of subsection (2) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, the rates of which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section and no person or corporation shall receive or accept any service from any such public utility for a compensation greater

or less than prescribed in such schedules.

Utilities of the same type as herein covered, engaged in rendering interstate service to and from points and places in the state, shall file with the commission tariffs of rates and charges of such and rates and charges affecting service to or from points and places in the state. Also, utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, that utilities may contract with a manufacturer who is not a utility for furnishing the services or commodities described in subparagraphs (1), (2) and (3) of paragraph (d) of Section 77-3-3 for use in manufacturing, without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service.

(b) Notwithstanding any provisions of this chapter or any other statute, the commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and cor-

porations; or

(vi)
public interest.

In making the period of time during which shall not thereafter be subject to regulation for hearing, the commission, in this section, when rates and charges are subject to public interest.

(3)(a) Notwithstanding the contrary, the commission, in the exercise of its expertise, may establish rates for such utility for such a

(b) For regulation" means the rate base or this article.

SECTION 2

Approved: Marc

AN ACT TO D
ELECTRIC UT
GENERATOR A
OF 30 DAYS, S
SUCH PURCHA
ING ITS RATE
THE PUBLIC
BEFORE IT IN
LATED PURPO

Be it enacted

SECTION
meaning:

(a) "U
Code of 1972, i
this state.

(b) "C

(c) "F
utility.

(d) "T
ergy at wholesa
section. Non-u

porations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3)(a) Notwithstanding any other provisions of this article or any other statute to the contrary, the commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection (3), the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 10, 1994

CHAPTER NO. 316 SENATE BILL NUMBER 2596

AN ACT TO DEFINE CERTAIN TERMS; TO PROVIDE THAT WHENEVER AN ELECTRIC UTILITY PURCHASES AT WHOLESALE FROM A NON-UTILITY GENERATOR ALL OR A PORTION OF ITS ELECTRIC CAPACITY FOR A PERIOD OF 90 DAYS, SUCH UTILITY SHALL BE ENTITLED TO INCLUDE THE COST OF SUCH PURCHASE AS AN EXPENSE ITEM FOR THE PURPOSE OF CALCULATING ITS RATES; TO REQUIRE THE UTILITY TO REPORT SUCH PURCHASE TO THE PUBLIC UTILITY STAFF AND THE PUBLIC SERVICE COMMISSION BEFORE IT INCLUDES THE COST IN ITS RATE CALCULATION; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. The following terms when used in this act shall have the following meaning:

(a) "Utility" means an entity as defined in Section 77-3-3(d)(i), Mississippi Code of 1972, and whose rates for retail electric service are subject to regulation in this state.

(b) "Commission" means the Mississippi Public Service Commission.

(c) "Return" means before-tax return on common equity capital of the utility.

(d) "Non-utility generator" means an entity selling electric capacity or energy at wholesale and which is not itself a utility as defined in paragraph (a) of this section. Non-utility generator shall not include any entity that is making the sale to

VOLUME I
LAWS
of the
STATE OF MISSISSIPPI

Appropriations
General Legislation and
Resolutions

PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY JANUARY 3, 1995, AND
ENDING ON TUESDAY, APRIL 11, 1995.



(Local and Private Laws are published
in a separate volume.)

Numerical lists of House and Senate Bills, indexes, and
data on laws which amend or repeal existing laws
appear in back of this volume.

Published by Authority
1995

CHAPTER NO. 348 HOUSE BILL NUMBER 623

AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI PUBLIC SERVICE COMMISSION TO APPROVE CERTAIN CONTRACTS THAT UTILITIES MAKE WITH CERTAIN CUSTOMERS FOR FURNISHING ELECTRICITY OR GAS; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35. (1) Subject to the provisions of subsection (2) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, the rates of which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities of the same type as herein covered, engaged in rendering interstate service to and from points and places in the state, shall file with the commission tariffs of rates and charges of such and rates and charges affecting service to or from points and places in the state. Also, utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d)(i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article.

Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service.

(b) Notwithstanding any provisions of this chapter or any other statute, the commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3)
the con
regulat
rates fo
public
service

ulation
rate ba
cle.

SI

Appro

AN AC
1972,
REQU
EXCE
FEES
THE
AMEN
AUT
DEST
CLE V
ES.

B

S

2'

state
grants
in pro
regist
highw
secur
forms
by th
time
hours
wise,
state,
If any
highw
such
sion
enter
resen
licens
all ve

(3) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, the commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection (3), the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 14, 1995

CHAPTER NO. 349 HOUSE BILL NUMBER 720

AN ACT TO AMEND SECTIONS 27-19-79 AND 27-19-81, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE STATE TAX COMMISSION MAY WAIVE THE REQUIREMENT THAT OWNERS OF VEHICLES HAVING A GROSS WEIGHT IN EXCESS OF 26,000 POUNDS OBTAIN SPECIAL PERMITS OR PAY CERTAIN FEES AND PENALTIES WHENEVER SUCH VEHICLES ARE OPERATED UPON THE HIGHWAYS IN THIS STATE IN RESPONSE TO AN EMERGENCY; TO AMEND SECTION 27-19-69, MISSISSIPPI CODE OF 1972, TO RESTRICT THE AUTHORITY TO ISSUE A REPLACEMENT PRIVILEGE LICENSE FOR A DESTROYED VEHICLE TO CARRIERS OF PROPERTY WITH A GROSS VEHICLE WEIGHT OF 16,000 POUNDS OR GREATER; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 27-19-79, Mississippi Code of 1972, is amended as follows:

27-19-79. (1) Any nonresident owner or operator of any vehicle operated in this state with a gross weight in excess of twenty-six thousand (26,000) pounds is hereby granted the option of registering his vehicle and paying the annual privilege taxes herein provided. Before any owner or operator of a vehicle operated, who has not elected to register his vehicle and pay the annual privilege tax, shall operate such vehicle upon the highways of the State of Mississippi, except as otherwise provided herein, he shall secure a temporary permit for the privilege of so doing, which permit shall be issued on forms prepared, approved and supplied by the commission. Such permit shall be issued by the commission and shall be valid for a period of seventy-two (72) hours from the time of issue. In no instance shall the permit be valid for more than seventy-two (72) hours. Such permits shall be obtained or secured by application made by mail, or otherwise, to the commission before operating such vehicle upon the public highways of this state, and upon payment of the requisite amount of tax, or fee, as hereinafter provided. If any person should enter the State of Mississippi, or operate a vehicle upon the public highways thereof, without having first secured such permit from the commission, then such person shall be allowed to obtain such permit from a representative of the commission at one (1) of the inspection stations provided for in Section 27-5-73, if such person is entering into the state upon a highway where an inspection station is located and a representative of the commission is available for such permit to be obtained. The privilege license fee for the permit provided for herein shall be Twenty-five Dollars (\$25.00) for all vehicles.

VOLUME I
LAWS
of the
STATE OF MISSISSIPPI

Appropriations
General Legislation and
Resolutions

**PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY, JANUARY 2, 1996, AND
ENDING ON SUNDAY, APRIL 19, 1996.**



(Local and Private Laws are published
in a separate volume.)

Numerical lists of House and Senate Bills, indexes, and
data on laws which amend or repeal existing laws
appear in back of Volume II.

Published by Authority

SECTION 8. The Attorney General of the State of Mississippi is directed to submit Section 2 of this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 9. Sections 1, 3, 4, 5, 6, 7 and 8 of this act shall take effect and be in force from and after its passage; Section 2 of this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

Approved: March 4, 1996

CHAPTER NO. 303 SENATE BILL NUMBER 2768

AN ACT TO AMEND SECTION 63-3-501, MISSISSIPPI CODE OF 1972, TO ESTABLISH SPEED LIMITS ON THE HIGHWAYS OF THIS STATE; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 63-3-501, Mississippi Code of 1972, is amended as follows:

63-3-501.

No person shall operate a *** vehicle *** on the highways of the state at a speed greater than sixty-five (65) miles per hour.

The Mississippi Transportation Commission may, in its discretion, by order duly entered on its minutes, increase the speed restrictions on any portion of the Interstate Highway System *** provided such speed restrictions are not increased to more than seventy (70) miles per hour ***. The commission may likewise increase the speed limit to seventy (70) miles per hour *** on controlled access highways with four (4) or more lanes.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: February 29, 1996

CHAPTER NO. 304 HOUSE BILL NUMBER 1130

AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO CONSIDER AND ADOPT ALTERNATIVE METHODS OF REGULATION FOR UTILITIES PROVIDING ELECTRICITY OR NATURAL GAS; TO AUTHORIZE THE PUBLIC SERVICE COMMISSION TO ISSUE COMPETING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELEPHONE SERVICE IN THE SAME GEOGRAPHICAL AREA; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35.
reasonable ru
the rates of w
with the comu
nate, schedul
forced, or to b
ty shall keep
rules and reg

No such
anywise, cha
vice rendere
than that pre
in the manne
cept any serv
scribed in su

Utilities
vice to and f
rates and ch
places in the
eratives, mu
mission, file

The con
lowing:

(a)
nishing the
in manufact

(b)
tomer that
(2,500) mil
described in

(c)
tomer that
(8,500,000)
ties describ

Th
conditions
Such regul
approved b

(2) (a)
vice in Mis
quires that
and policie
and contro
vironment
due regar
tions servi
commissio
nience and

77-3-35. (1) Subject to the provisions of subsection (2) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, the rates of which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

Utilities of the same type as herein covered, engaged in rendering interstate service to and from points and places in the state, shall file with the commission tariffs of rates and charges of such and rates and charges affecting service to or from points and places in the state. Also, utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d)(i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographi-

cal area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

The commission retains the authority to issue orders to implement its rules, regulations and the provisions of this chapter, including the authority to grant and modify, impose conditions upon, or revoke a certificate.

(b) Notwithstanding any provisions of this chapter or any other statute, the commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, the commission is authorized to consider and adopt alternative methods of

regulation
establish r
able to the
for such se

(b
regulation'
rate base o
cle.

SECT

Approved:

AN ACT TO
THAT THE
31 FOLLOW

Be it en

SECTI

83-17-4
the date of:

(2) Ea
the manner
application
cense shall
er or until t
vided in thi

SECTI

Approved: i

AN ACT TO
311, MISSISS
GASOLINE
WITH THE
CODE OF 11
ARMED FOI
MISSION; T
FOR CRED.
DIESEL FU
CODE OF 11
TRIAL NAPI
ON CERTAI
CLARIFY TI
FURNACE,

regulation proposed by a utility of the type defined in Section 77-3-3(d)(i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection * * *, the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved: March 7, 1996

CHAPTER NO. 305 HOUSE BILL NUMBER 352

AN ACT TO AMEND SECTION 83-17-419, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE LICENSE ISSUED TO AN INSURANCE ADJUSTER SHALL EXPIRE ON MAY 31 FOLLOWING THE DATE OF ISSUE; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 83-17-419, Mississippi Code of 1972, is amended as follows:

83-17-419. (1) Each license issued to an adjuster shall expire on May 31 following the date of issue, unless prior thereto it is revoked or suspended by the commissioner.

(2) Each adjuster shall file an application for renewal of license on the form and in the manner prescribed by the commissioner for such purpose. Upon the filing of such application for renewal of license and the payment of the required fees, the current license shall continue to be in force until the renewal license is issued by the commissioner or until the commissioner has refused for cause to issue such renewal license, as provided in this article, and has given notice of such refusal in writing to the adjuster.

SECTION 2. This act shall take effect and be in force from and after July 1, 1996.

Approved: March 8, 1996

CHAPTER NO. 306 HOUSE BILL NUMBER 367

AN ACT TO AMEND SECTIONS 27-55-13, 27-55-313, 27-57-13, 27-57-317, 27-59-13 AND 27-59-311, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DUE DATE FOR FILING CERTAIN GASOLINE AND MOTOR FUEL, OIL AND LIQUEFIED COMPRESSED GAS REPORTS WITH THE STATE TAX COMMISSION; TO AMEND SECTION 27-55-19, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT EXEMPTIONS FOR SALES OF GASOLINE TO THE ARMED FORCES MAY BE DEDUCTED WITHOUT THE PRIOR APPROVAL OF THE COMMISSION; TO AMEND SECTION 27-55-313, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CREDIT FOR HIGHWAY TAXES PAID WHEN DYED DIESEL FUEL AND CLEAR DIESEL FUEL ARE ACCIDENTLY MIXED; TO AMEND SECTION 27-57-305, MISSISSIPPI CODE OF 1972, TO DELETE REFERENCES TO COMMERCIAL SOLVENTS AND INDUSTRIAL NAPHTHAS, AVIATION OIL DEALERS AND DUAL USERS IN THE TAX IMPOSED ON CERTAIN OILS; TO AMEND SECTION 27-57-327, MISSISSIPPI CODE OF 1972, TO CLARIFY THE EXEMPTION FOR OIL USED FOR GENERATING HEAT IN A FIREBOX OR FURNACE, AND TO EXEMPT ALL SUCH USE; TO AMEND SECTION 27-57-329, MISSISSIPPI

VOLUME I
LAWS
of the
STATE OF MISSISSIPPI

Appropriations
General Legislation and
Resolutions

PASSED AT A REGULAR SESSION OF THE
MISSISSIPPI LEGISLATURE
HELD IN THE CITY OF JACKSON COMMENCING
ON TUESDAY, JANUARY 3, 2006
ENDING WEDNESDAY, APRIL 5, 2006



(Local and Private Laws are published
in a separate volume.)

Numerical lists of House and Senate Bills, indexes, and data on laws
which amend or repeal existing laws appear in back of Volume II.

Published by Authority
2006

CHAPTER NO. 313
HOUSE BILL 1252

AN ACT TO AMEND SECTION 77-3-35, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE PUBLIC SERVICE COMMISSION MAY ONLY REGULATE THE RATES, TERMS AND CONDITIONS OF CERTAIN SWITCHED ACCESS SERVICES AND SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICES; TO PROVIDE THAT AN INCUMBENT LOCAL EXCHANGE CARRIER SHALL PROVIDE PRIMARY SINGLE-LINE FLAT RATE VOICE COMMUNICATION SERVICE TO THE PREMISES OF A PERMANENT RESIDENCE OR BUSINESS WITHIN ITS FRANCHISED SERVICE TERRITORY, IF THE COST TO THE REQUESTING PARTY DOES NOT EXCEED A CERTAIN AMOUNT; TO PROVIDE THAT THE COMMISSION SHALL RETAIN EXCLUSIVE ORIGINAL JURISDICTION OVER CUSTOMER COMPLAINTS FOR THOSE SERVICES THAT CONTINUE TO BE REGULATED; TO PROVIDE THAT CERTAIN TELECOMMUNICATION UTILITIES SHALL ONLY BE REQUIRED TO FILE FINANCIAL OR SERVICE QUALITY INFORMATION THAT IS REQUIRED TO BE FILED WITH THE FEDERAL COMMUNICATIONS COMMISSION; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

SECTION 1. Section 77-3-35, Mississippi Code of 1972, is amended as follows:

77-3-35. (1) Subject to the provisions of subsections (2) and (4) of this section, under such reasonable rules and regulations as the commission may prescribe, every public utility, as to the rates * * * which are subject to regulation under the provisions of this article, shall file with the commission, within such time and in such form as the commission may designate, schedules showing such rates and charges established by it and collected and enforced, or to be collected or enforced within the jurisdiction of the commission. The utility shall keep copies of such schedules open to public inspection under such reasonable rules and regulations as the commission may prescribe.

No such public utility shall directly or indirectly, by any device whatsoever, or in anywise, charge, demand, collect or receive from any person or corporation for any service rendered or to be rendered by such public utility a greater or less compensation than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this section, and no person or corporation shall receive or accept any service from any such public utility for a compensation greater or less than prescribed in such schedules.

* * * Utilities selling commodities or rendering any service to cooperatives, municipalities or other nonprofit organizations, shall, at the order of the commission, file schedules of such rates and charges for information purposes only.

The commission may provide, by rules and regulations to be adopted by it, the following:

(a) That utilities may contract with a manufacturer that is not a utility for furnishing the services or commodities described in Section 77-3-3(d)(i), (ii) and (iii) for use in manufacturing;

(b) That utilities described in Section 77-3-3(d)(i) also may contract with a customer that has a minimum yearly electric consumption of two thousand five hundred (2,500) megawatt hours per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(i); and

(c) That utilities described in Section 77-3-3(d)(ii) also may contract with a customer that has a minimum yearly consumption of eight million five hundred thousand (8,500,000) cubic feet of gas per year or greater for furnishing the services or commodities described in Section 77-3-3(d)(ii).

These contracts may be entered into without reference to the rates or other conditions which may be established or fixed pursuant to other provisions of this article. Such regulations shall provide that before becoming effective any such contract shall be approved by the commission.

(2) (a) The Legislature recognizes that the maintenance of universal telephone service in Mississippi is a continuing goal of the commission and that the public interest requires that the commission be authorized and encouraged to formulate and adopt rules and policies that will permit the commission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to the public in a changing environment where competition and innovation are becoming more commonplace, giving due regard to the interests of consumers, the public, the providers of telecommunications services and the continued availability of good telecommunications service. The commission is authorized to issue more than one competing certificate of public convenience and necessity to provide local exchange telephone service in the same geographical area; provided, that the issuing of any such additional certificates shall not otherwise affect any certificate of public convenience and necessity heretofore issued to any provider of such services.

The commission shall adopt all rules and regulations necessary for implementing this subsection (2)(a).

The commission retains the authority to issue orders to implement its rules, regulations and the provisions of this chapter, including the authority to grant and modify, impose conditions upon, or revoke a certificate.

(b) * * * The commission may, on its own motion or at the request of any interested party, enter an order, after notice and opportunity for hearing, determining and directing that, in the provision of a service or facility by a utility of the type defined in Section 77-3-3(d)(iii), competition or other market forces adequately protect the public interest, or that a service or facility offered by the utility is discretionary, and that the public interest requires that the utility's rates and charges for such service or facility shall not thereafter be subject to regulation by the commission.

(c) In making its determination whether the rates and charges for a service or facility shall not be subject to regulation by the commission, the commission may consider individually or collectively:

(i) Whether the exercise of commission jurisdiction produces tangible benefits to the utility's customers that exceed those available by reliance on market forces or other factors;

(ii) Whether technological changes, competitive forces, discretionary nature of the service or facility, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the Mississippi commission unnecessary or wasteful;

(iii) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or equipment;

(iv) Whether the existence of competition tends to prevent abuses, unjust discrimination and extortion in the charges of telecommunications utilities for the service or facility in question;

(v) The availability of the service or facility from other persons and corporations; or

(vi) Any other factors that the commission considers relevant to the public interest.

In making the determination as above set forth, the commission may specify the period of time during which the utility's rates and charges for the service or facility shall not thereafter be subject to regulation. Likewise, after notice and opportunity for hearing, the commission may revoke a determination and direction made under this section, when the commission finds that commission regulation of the utility's rates and charges for the service or facility in question is necessary to protect the public interest.

(3) (a) * * * The commission is authorized to consider and adopt alternative methods of regulation proposed by a utility of the type defined in Section 77-3-3(d)(i), (ii) or (iii) to establish rates for the services furnished by such utility that are fair, just and reasonable to the public and that provide fair, just and reasonable compensation to the utility for such services.

(b) For purposes of this subsection, the phrase "alternative methods of regulation" means the regulation of utility rates and charges by methods other than the rate base or rate of return method of regulation set forth in other provisions of this article.

(4) (a) Notwithstanding any other provisions of this article or any other statute to the contrary, and consistent with the provisions herein, for those public utilities of the type defined in Section 77-3-3(d)(iii) that are subject to the competitive requirements set forth in 47 USCS Section 251 or those public utilities that have waived a suspension granted by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the Legislature has determined that, in the provision of all services other than switched access service and single-line flat rate voice communication service, competition or other market forces adequately protect the public interest. Therefore, the commission is only authorized to regulate the rates, terms and conditions of switched access service and single-line flat rate voice communication service within a traditional local calling area, with access to 911, with touch tone dialing and with access to long distance, so long as such single-line flat rate service is not combined with any other service, feature or product. The retail rates for such single-line flat rate voice communication service beginning January 1, 2007, and every succeeding January 1 may only be increased during the calendar year by an amount that does not exceed the

rates fo
Consur
Departu

have be
Section
the requ
hearing,
same le
commis
ditions:

by the c
carriers

251(c)(
subscrib

ated wit
scribers:

use in tv

A
upon wr
ity shall
tion. Th
to return

request,
permane
includin
viding s
(\$5,000.
service
local ex

in and su
rier may
services
of the ap
sion.

bent loc

rates for such service on January 1 of the previous year, plus the increase in the Consumer Price Index for all Urban Consumers as reported by the United States Department of Labor, Bureau of Labor Statistics.

(b) For those public utilities of the type defined in Section 77-3-3(d)(iii) that have been granted a suspension by the commission of the requirements of 47 USCS Section 251(b) and (c) as authorized by 47 USCS Section 251(f)(2), the commission, at the request of such public utility, shall enter an order, after notice and opportunity for hearing, determining that such public utility's provision of service will be subject to the same level of regulation as provided in paragraph (a) of this subsection, but only after the commission determines that such public utility has satisfied one (1) of the following conditions:

(i) Has executed interconnection agreements which have been approved by the commission to the extent required under law with two (2) or more local exchange carriers unaffiliated with such public utility;

(ii) Offers for resale at wholesale rates, pursuant to 47 USCS Section 251(c)(4)(A) and (B), such public utility's retail telecommunications services provided to subscribers who are not telecommunications carriers;

(iii) At least two (2) competitive telecommunications providers unaffiliated with such requesting public utility are offering service to such public utility's subscribers; or

(iv) Has experienced a material reduction in access lines or minutes of use in two (2) consecutive years.

A waiver of suspension under paragraph (a) of this subsection shall be effective upon written notification to the commission. The initial rate utilized by such public utility shall be the rate for such service in effect at the time of such waiver under this section. The commission, upon request of the public utility, may return such public utility to return to a form of regulation permitted under Section 77-3-35.

(c) (i) An incumbent local exchange carrier shall provide, upon reasonable request, primary single-line flat rate voice communication service to the premises of a permanent residence or business within its franchised service territory, if the costs, including, but not limited to, the costs of facilities, rights-of-way and equipment, of providing such service to the requesting party do not exceed Five Thousand Dollars (\$5,000.00). This requirement shall not apply where there is an alternative provider of service to the premises of the residence or business customer, or where the incumbent local exchange carrier has been prohibited from providing service to the premises.

(ii) If the costs exceeds Five Thousand Dollars (\$5,000.00), as provided in and subject to subparagraph (i) of this paragraph (c), an incumbent local exchange carrier may not deny service on the basis of costs so long as sufficient funds to provide that services are available from contributions to aid in construction or the Mississippi portion of the applicable federal universal service fund program as administered by the commission.

(d) Nothing in this chapter shall be construed to affect the duties of an incumbent local exchange carrier to provide unbundled access to network elements to the

extent required under 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections, or the commission's authority to arbitrate and enforce interconnection agreements pursuant to 47 USCS Sections 251 and 252 and the Federal Communications Commission's regulations implementing these sections.

(e) The commission shall retain exclusive original jurisdiction over customer complaints for those services that continue to be regulated. For services no longer regulated, the commission shall have exclusive original jurisdiction to interpret and enforce the terms and conditions of customer service agreements for telecommunications services, but it shall not alter, set aside or refuse to enforce the rates, terms and conditions thereof, either directly or indirectly. No other party shall be allowed to participate in any such complaint proceeding, except for the customer, legal counsel or other representative of the customer, or the public utility involved.

(f) A public utility of the type defined in Section 77-3-3(d)(iii) which is regulated under the provisions of paragraph (a) of this subsection shall only be required to file financial or service quality information that such public utilities are required to file with the Federal Communications Commission so long as such financial information includes data specific to Mississippi. As to all other data and information, the requirements of Section 77-3-79 continue to apply. If any such public utility is not required to file such financial information with the Federal Communications Commission, the requirements of Section 77-3-79 continue to apply. The public utility regulatory tax established in Section 77-3-87 shall be based on the financial information contained in such federal financial reports filed by such public utilities. The calculation of such tax for such public utilities shall continue to be based upon the gross revenues from the intrastate operations of such public utility in the same manner as such tax was calculated before July 1, 2006. Nothing herein shall change the obligation of such public utilities described in Section 77-3-3(d)(iii) to pay the public utilities regulatory tax established in Section 77-3-87. In addition, such public utility shall only be required to adhere to billing for retail telecommunications services in compliance with the federal truth in billing regulations prescribed by the Federal Communications Commission.

(g) (i) In order to transition to the changes effectuated by paragraph (a) of this subsection, the rates, terms and conditions for products and services no longer subject to regulation by the commission which were in effect with a specific term immediately prior to the effective date of this section shall remain in effect for the duration of the specific term as to customers who subscribed to such products or services prior to the effective date of this section. If no term applied to such products or services at the time such customer subscribed to such products or services, then the rates, terms and conditions governing such products or services shall remain in effect until a written customer service agreement becomes effective as described in subparagraph (ii) of this paragraph (g).

(ii) Except as provided in subparagraph (i) of this paragraph (g), the service provider shall offer existing and new customers a written customer service agreement, which in the case of new customers shall be delivered no later than thirty (30) days after the initiation of service. The customer service agreement shall include a provision advising the customer that he has thirty (30) days from receipt in which to elect:

1. To terminate service with the service provider by contacting such service provider within the thirty-day time period, in which case the customer shall have

the right
condition
tomer, w
date of
existing
or

ue the a
either of
of the w
deemed
class del

terms or
days' pri
tomer.]
that he t

service r
to pay o
as then i

ue the a
shall co
ment. T
after del

describe
necessit

SE

Approv

AN ACT
WORD
AMENI
INSUR/
NOT RI

Be

the right to pay off the account in the same manner and under the same rates, terms and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement shall relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and shall be in effect until termination through pay off; or

2. To use the services of the service provider or to otherwise continue the account with the service provider after the thirty-day time period has elapsed, either of which shall constitute the customer's assent to all the rates, terms and conditions of the written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(iii) If any service provider desires to modify in any respect any rates, terms or conditions of a customer service agreement, it shall provide at least thirty (30) days' prior written notice of the modification and the proposed effective date to the customer. The customer service agreement shall include a provision advising the customer that he has the option:

1. To terminate service with the service provider by contacting such service provider prior to the effective date, in which case the customer shall have the right to pay off the account in the same manner and under the same rates, terms and conditions as then in effect; or

2. To use the services of the service provider or to otherwise continue the account with the service provider on or after the effective date, either of which shall constitute the customer's assent to the modified written customer service agreement. The customer service agreement shall be deemed received three (3) business days after deposit in the United States mail, first-class delivery.

(h) Nothing herein shall change the obligation of those public utilities described in Section 77-3-3(d)(iii) to obtain a certificate of public convenience and necessity pursuant to this chapter.

SECTION 2. This act shall take effect and be in force from and after July 1, 2006.

Approved: February 23, 2006

CHAPTER NO. 314 SENATE BILL 2382

AN ACT TO AMEND SECTION 83-17-5, MISSISSIPPI CODE OF 1972, TO DELETE THE WORD "CONTINUOUS" IN REGARD TO INSURANCE AGENT CERTIFICATES; TO AMEND SECTION 83-17-75, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT AN INSURANCE PRODUCER WHO IS NOT ACTING AS AN AGENT OF AN INSURER IS NOT REQUIRED TO BECOME APPOINTED; AND FOR RELATED PURPOSES,

Be it enacted by the Legislature of the State of Mississippi: