



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 8, 2024

The Honorable Lynn Spruill  
Mayor, City of Starkville  
110 W. Main Street  
Starkville, Mississippi 39759

Re: The Mississippi Broadband Enabling Act

Dear Mayor Spruill:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, an electric cooperative has an electric service area inside the city limits of Starkville and has recently established the additional service of broadband internet inside that electric service area through a subsidiary company (a “broadband affiliate” as defined in Mississippi Code Annotated Section 77-17-3(a)).

### **Questions Presented**

Is an electric cooperative using a broadband affiliate for the provision of high-speed broadband services exempt from a municipality’s franchise and permitting requirements?

### **Brief Response**

Mississippi law does not require additional payment or a separate franchise agreement between a municipality and an electric cooperative or its broadband affiliate for broadband services to municipal residents. The two percent franchise fee in Section 77-3-17 for utilities does not apply to broadband services provided by electric cooperatives or their broadband affiliates.

### **Applicable Law and Discussion**

As an initial matter, this office can opine on prospective questions of state law only. Miss. Code Ann. § 7-5-25. This office cannot by official opinion interpret contracts, franchise agreements, or local ordinances, nor can we opine on any federal law or regulation applicable to your situation.

The Honorable Lynn Spruill

November 8, 2024

Page 2

Municipalities have the authority to grant franchises to electric cooperatives pursuant to Section 21-27-5, which provides:

The governing authorities of municipalities shall have the power to grant to any person, corporation, or association, on such terms and conditions as the governing authorities may prescribe, the use of the streets, alleys and other public grounds for the purpose of laying, constructing, repairing and maintaining gas, water, sewer, or steam pipes, or conduits for electric light, telegraph and telephone lines, and pipe lines for the purpose of transporting crude oil, crude petroleum, kerosene, gasoline, and other commodities transportable by pipe line. However, such franchise, right-of-way or privilege of any character whatsoever shall not be granted for a longer period than twenty-five years, and such privilege shall not be exclusive.

Section 77-3-17 requires a public utility company that holds a certificate of public convenience and necessity to pay a franchise fee to the municipality. This section further provides: “Any co-operative which shall operate within any area of a municipality shall likewise pay such municipality two percent (2%) of the co-operative’s gross revenue from sales to residential and commercial customers within said municipality.” *Id.* As used in Mississippi Code Annotated, Chapter 77 (Regulation of Public Utilities), broadband services are excluded from the definition of “public utility.” Miss. Code Ann. § 77-3-3(d)(iii) (“[N]othing in this chapter shall be construed to apply to . . . broadband services[.]”). Thus, while much of what an electric cooperative provides to its customers are public utilities, any broadband services provided by an electric cooperative are not considered public utilities.

With respect to broadband services, pursuant to the Mississippi Broadband Enabling Act, electric cooperatives are “authorized to establish, acquire, and wholly or partially own one or more broadband affiliates” and “may allow its broadband affiliate(s) or an unaffiliated broadband operator to own, lease, construct, maintain and operate a broadband system on the electric cooperative’s electric delivery system and to provide broadband services to the public utilizing the electric cooperative’s broadband system or other parts of its electric delivery system.” Miss. Code Ann. § 77-17-5(1), (2). There is no statutorily mandated fee for an electric cooperative or its broadband affiliates to provide broadband services on the cooperative’s electric delivery system under the Mississippi Broadband Enabling Act

Pursuant to the above-cited authority, it is the opinion of this office that because broadband services are not considered public utilities under Chapter 77, the two percent franchise fee in Section 77-3-17 does not apply to broadband services provided by electric cooperatives or their broadband affiliates pursuant to the Mississippi Broadband Enabling Act. Further, there is no requirement under the Mississippi Broadband Enabling Act that an electric cooperative or its broadband affiliates must pay an additional fee to the municipality for providing broadband services on the cooperative’s electric delivery system.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Beebe Garrard*

Beebe Garrard  
Special Assistant Attorney General

OFFICIAL OPINION