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## HOUSE BILL NO. 1021

Offered January 9, 2002

Prefiled January 9, 2002

*A BILL to amend and reenact §§ 15.2-1500, 56-484.7:1 and 56-484.7:2 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 56-484.7:4 and to repeal § 56-484.7:3, relating to local telecommunications services.*

Patrons—Marshall, D.W., May, Abbitt, Carrico, Councill, Dudley, Hogan, Hurt, Johnson, Landes, Louderback, Nutter, Saxman and Stump; Senators: Hawkins and Ruff

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-1500, 56-484.7:1 and 56-484.7:2 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 56-484.7:4 as follows:**

§ 15.2-1500. Organization of local government.

A. Every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.

B. Notwithstanding any other provision of law, general or special, no locality shall establish any department, office, board, commission, agency or other governmental division or entity which has authority to offer telecommunications equipment, infrastructure, other than pole or tower attachments including antennas or conduit occupancy, or services, other than intragovernmental radio dispatch or paging systems shared by adjoining localities, for sale or lease to any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities, so long as any charges for such telecommunications equipment, infrastructure and services do not exceed the cost to the providing locality of providing such equipment, infrastructure or services. However, any town which is located adjacent to Exit 17 on Interstate 81 and which offered telecommunications services to the public on January 1, 1998, is hereby authorized to continue to offer such telecommunications services, but shall not acquire by eminent domain the facilities or other property of any telephone company or cable operator. Any locality may sell any telecommunications infrastructure, including related equipment, which such locality had constructed prior to September 1, 1998, and such locality may receive from the purchaser or purchasers, as full or partial consideration for the sale of such infrastructure, communications services to be used solely for internal use of the locality. Any locality which sells such infrastructure, including related equipment, may, at its option, exclude the incumbent local exchange carrier from the bid or other sale process.

C. Notwithstanding the provisions of subsection B, a locality, electric commission or board, industrial development authority, or economic development authority, ~~may lease dark fiber pursuant to § 56-484.7:1. For purposes of this section, "dark fiber" means fiber optic cable which is not lighted by lasers or other electronic equipment. The price for such lease may include reasonable provisions for the recovery of the cost of the network and installation of additional fiber and related facilities to complete the lessor's network but shall not be related to the revenue or profit of the lessee. The lessor may recover costs of constructing such leased network and any extensions or improvements thereto; however, such lessor may not profit from the leasing of such facilities. The lease may require the lessee to make additional investments in the lessee's facilities based on such factors as the number of customers, market share, the lessee's revenue or the lessee's profit. Any such extension or improvements constructed by a lessee shall remain the property of the lessee; however, the lessee may be required to provide dedicated use to the lessor for the lessor's own internal purposes for the life of the fiber. The locality, electric commission or board, industrial development authority, or economic development authority, shall not be involved in the promotion or marketing of the lessee as the provider of the services. in certain underserved areas, may offer qualifying telecommunications services, or enter into public-private partnerships to offer such qualifying telecommunications services, in accordance with the provisions of Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56.~~

§ 56-484.7:1. Certain localities, electric commissions or boards, industrial development authorities, or economic development authorities may offer qualifying telecommunications services.

Notwithstanding the provisions of § 15.2-1500, a county, city, town, electric commission or board,

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58 industrial development authority, or economic development authority may lease on nondiscriminatory  
59 terms, for a term not to exceed ten years, dark fiber, as that term is defined in subsection C of  
60 § 15.2-1500, to one or more certificated local exchange telephone companies and to not-for-profit  
61 educational schools and institutions, hospitals, health clinics and medical facilities for use in serving  
62 their not-for-profit purposes. Any such lease must specify the qualifying telecommunications service to  
63 be offered by the lessee and the geographic area in which that service will be offered. *offer qualifying*  
64 *telecommunications services, or enter into public-private partnerships to offer such qualifying*  
65 *telecommunications services, in accordance with the provisions of this article.* For purposes of this  
66 section, a "qualifying telecommunications service" is a telecommunications service, which shall include  
67 but is not limited to, high-speed data service and Internet access service, of general application to be  
68 offered by the lessee, which is not otherwise generally and competitively available in the geographic  
69 area in which the service will be offered by an entity other than an entity leasing from the county, city,  
70 town, electric commission or board, industrial development authority, or economic development  
71 authority. ~~Such lessee shall not be prohibited from offering authorized telecommunications services in~~  
72 ~~addition to the qualifying telecommunications service over the leased facilities.~~ No such lease shall be  
73 ~~effective services may be offered unless, prior to entering into such lease offering such services:~~ (i) the  
74 ~~proposed lessee county, city, town, electric commission or board, industrial development authority, or~~  
75 ~~economic development authority petitions the State Corporation Commission to approve such lease of~~  
76 ~~the dark fiber the offering of such services~~ and (ii) the Commission, after notice and an opportunity for  
77 hearing in the affected area, issues a written order approving the ~~lease petition~~ or fails to approve or  
78 disapprove the ~~lease petition~~ within sixty days after notice. The sixty-day period may be extended by  
79 Commission order for a period not to exceed an additional sixty days. The ~~lease petition~~ shall be  
80 deemed approved if the Commission fails to act within sixty days after notice or any extended period  
81 ordered by the Commission.

82 § 56-484.7:2. Factors for approval.

83 The State Corporation Commission shall find that it is in the public interest to approve the lease of  
84 ~~dark fiber offering of qualifying telecommunications services~~ as specified in § 56-484.7:1 unless it shall  
85 be demonstrated to the Commission and found that, within the geographic area to be served by the  
86 lease: (i) the ~~lease proposed services~~ will not promote the provision of competitive communications  
87 service within the geographic area; (ii) the ~~lease proposed services~~ will not enhance economic  
88 development; (iii) the qualifying telecommunications service specified in its ~~lease the petition~~ as  
89 provided for in § 56-484.7:1 is readily and generally available from three or more nonaffiliated  
90 certificated local exchange companies; ~~not including any lessee;~~ (iv) the ~~lease petition~~ is not in  
91 compliance with the requirements of § 56-484.7:1; or (v) the ~~lease proposed services~~ will not benefit  
92 consumers. The factor stated in clause (iii) shall not apply to leases of dark fiber filed for approval  
93 within five years of the Commission's approval of the first lease of dark fiber by that county, city, town,  
94 electric commission or board, industrial development authority, or economic development authority.

95 § 56-484.7:4. Revocation of Commission approval.

96 Upon a finding by the Commission that the factors for approval specified in § 56-484:2 are no  
97 longer being satisfied, the county, city, town, electric commission or board, industrial development  
98 authority, or economic development authority shall, within a reasonable period of time as determined by  
99 the Commission, sell its telecommunications infrastructure and related equipment and cease to offer  
100 such services. The provisions of this section shall not apply to the use of telecommunications equipment  
101 and services for intragovernmental purposes as specified in § 15.2-1500.

102 2. That § 56-484.7:3 of the Code of Virginia is repealed.