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HOUSE BILL NO. 2397

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 56-235.5, 56-265.4:4, 56-484.7:1, 56-484.7:2, and 56-484.7:4 of the Code of Virginia, relating to public utilities; communications services.

 Patron—May

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-235.5, 56-265.4:4, 56-484.7:1, 56-484.7:2, and 56-484.7:4 of the Code of Virginia are amended and reenacted as follows:

§ 56-235.5. Telephone regulatory alternatives.

A. As used in this section, "telephone company" means any public service corporation or public service company which holds a certificate of public convenience and necessity to furnish local exchange telephone service, except that companies which are regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title are not included within this definition.

B. In regulating telephone services of any telephone company, and notwithstanding any provision of law to the contrary, the Commission, after giving notice and an opportunity for hearing, may replace the ratemaking methodology set forth in § 56-235.2 with any alternative form of regulation which: (i) protects the affordability of basic local exchange telephone service, as such service is defined by the Commission; (ii) reasonably ensures the continuation of quality local exchange telephone service; (iii) will not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services; and (iv) is in the public interest. Alternatives may differ among telephone companies and may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation. A hearing under this section shall include the right to present evidence and be heard. Prior to any hearing under this section, the Commission shall provide parties an opportunity to conduct discovery.

C. Any telephone company or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title may apply to the Commission at any time to obtain an alternative form of regulation. The Commission shall approve the application if it finds, after notice to all affected parties and hearing, that the proposal meets the standards for an alternative form of regulation set forth in subsection B.

1. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for an alternative form of regulation shall be entered no more than ninety days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional thirty-day increments not to exceed an additional ninety days in all.

2. If the Commission approves the application with modifications, the telephone company, or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title, may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application, unless it is modified for a telephone company by the Commission pursuant to subsection B.

D. The Commission may, after notice and opportunity for hearing, alter, amend or revoke any alternative form of regulation previously implemented if it finds that (i) the affordability of basic local exchange service, as such service is defined by the Commission, is threatened by the alternative form of regulation; (ii) the quality of local exchange telephone service has deteriorated or will deteriorate to the point that the public interest will not be served by continuation of the alternative form of regulation; (iii) the terms ordered by the Commission in connection with approval of a company's application for alternative form of regulation have been violated; (iv) any class of telephone company customers or other providers of competitive services are being unreasonably prejudiced or disadvantaged by the alternative form of regulation; or (v) the alternative form of regulation is no longer in the public interest.

E. The Commission shall have the authority, after notice to all affected parties and an opportunity for hearing, to determine whether any telephone service of a telephone company is subject to competition and to provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified regulation determined by the Commission to be in the public interest for such competitive services.

F. The Commission may determine telephone services of any telephone company to be competitive when it finds competition or the potential for competition in the market place is or can be an effective

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59 regulator of the price of those services. Such determination may be made by the Commission on a
60 statewide or a more limited geographic basis, such as one or more political subdivisions or one or more
61 telephone exchange areas, *or on the basis of a category of customers, such as business or residential*
62 *customers, or customers exceeding a revenue or service quantity threshold, or some combination thereof.*
63 *The Commission may also determine bundles composed of a combination of competitive and*
64 *noncompetitive services to be competitive if the noncompetitive services are available separately*
65 *pursuant to tariff or otherwise.* In determining whether competition effectively regulates the prices of
66 services, the Commission shall consider: (i) the ease of market entry, (ii) the presence of other providers
67 reasonably meeting the needs of consumers, and (iii) other factors the Commission considers relevant.
68 Notwithstanding any other provisions of this subsection, any telephone services that are the functional
69 equivalent of the services ~~provided~~ *offered individually or as part of a bundle of services* by a county,
70 city or town pursuant to § 56-265.4:4 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title,
71 either directly or pursuant to a public-private partnership, shall be deemed competitive services in the
72 geographic area where the services of the county, city or town are offered for purposes of this article
73 and any alternate regulatory plans approved by the Commission.

74 G. The Commission shall monitor the competitiveness of any telephone service previously found by
75 it to be competitive under any provision of subsection F above and may change that conclusion, if, after
76 notice and an opportunity for hearing, it finds that competition no longer effectively regulates the price
77 of that service.

78 H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C
79 above, or determines that a service is competitive pursuant to subsections E and F above, the
80 Commission shall adopt safeguards to protect consumers and competitive markets. At a minimum these
81 safeguards must ensure that there is no cross subsidization of competitive services by monopoly services.
82 § 56-265.4:4. Certificate to operate as a telephone utility.

83 A. The Commission may grant certificates to competing telephone companies, or any county, city or
84 town that operates an electric distribution system, for interexchange service where it finds that such
85 action is justified by public interest, and is in accordance with such terms, conditions, limitations, and
86 restrictions as may be prescribed by the Commission for competitive telecommunications services. A
87 certificate to provide interexchange services shall not authorize the holder to provide local exchange
88 services. The Commission may grant a certificate to a carrier, or any county, city or town that operates
89 an electric distribution system, to furnish local exchange services as provided in subsection B.

90 B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other
91 interested parties and following an opportunity for hearing, the Commission may grant certificates to any
92 telephone company, or any county, city or town that operates an electric distribution system, proposing
93 to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a
94 certificate under this subsection, the Commission may require that the applicant show that it possesses
95 sufficient technical, financial, and managerial resources. Before granting any such certificate, the
96 Commission shall: (i) consider whether such action reasonably protects the affordability of basic local
97 exchange telephone service, as such service is defined by the Commission, and reasonably assures the
98 continuation of quality local exchange telephone service; and (ii) find that such action will not
99 unreasonably prejudice or disadvantage any class of telephone company customers or telephone service
100 providers, including the new entrant and any incumbent local exchange telephone company, and is in the
101 public interest. ~~All~~ *Except as provided in subsection A of § 15.2-2160, all* local exchange certificates
102 granted by the Commission after July 1, 2002, shall be to provide service in any territory in the
103 Commonwealth unless the applicant specifically requests a different certificated service territory. The
104 Commission shall amend the certificated service territory of each local exchange carrier that was
105 previously certificated to provide service in only part of the Commonwealth to permit such carrier's
106 provision of local exchange service throughout the Commonwealth beginning on September 1, 2002,
107 unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to
108 retain its existing certificated service territory. A local exchange carrier shall only be considered an
109 incumbent in any certificated service territory in which it was considered an incumbent prior to July 1,
110 2002.

111 2. A Commission order, including appropriate findings of fact and conclusions of law, denying or
112 approving, with or without modification, an application for certification of a new entrant shall be entered
113 no more than 180 days from the filing of the application, except that the Commission, upon notice to all
114 parties in interest, may extend that period in additional thirty-day increments not to exceed an additional
115 ninety days in all.

116 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all
117 classes of customers throughout all geographic areas of the Commonwealth by a variety of service
118 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so
119 as to encourage competition based on service, quality, and price differences between alternative
120 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the

markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 4 of this subsection.

4. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. *Each certificated county, city, or town shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) of this subdivision have been met.* The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area. *In addition to the jurisdiction granted to circuit courts pursuant to § 56-479.2, the State Corporation Commission shall have concurrent jurisdiction to enforce the provisions of § 15.2-2160 against any city, county, or town that obtains a certificate pursuant to this section.*

5. The Commission shall promulgate rules necessary to implement this ~~subsection~~ section.

C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city or town that has obtained a certificate pursuant to this section.

§ 56-484.7:1. Offering of communications services.

A. A county, city, town, electric commission or board, industrial development authority, or economic development authority may offer qualifying communications services, or enter into public-private partnerships to offer such qualifying communications services, in accordance with the provisions of this article. For purposes of this article, a "qualifying communications service" is a communications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application. The county, city, town, electric commission or board, industrial development authority, or economic development authority shall demonstrate in its petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition. No such services shall be offered unless, prior to offering such services: (i) the county, city, town, electric commission or board, industrial development authority or economic development authority petitions the Commission to approve the offering of such qualifying communications services within a specified geographic area and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the petition or fails to approve or disapprove the petition within sixty days after notice. The sixty-day period may be extended by Commission order for a period not to exceed an additional sixty days. The petition shall be deemed approved if the Commission fails to act within sixty days after notice or any extended period ordered by the Commission.

B. *Each county, city, town, electric commission or board, industrial development authority, or economic development authority that provides communications services pursuant to this article shall provide nondiscriminatory access to for-profit providers of communications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the county, city, town, electric commission or board, industrial development authority, or economic development authority unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.*

C. *The prices charged and the revenue received by a county, city, town, electric commission or board, industrial development authority, or economic development authority for providing communications services shall not be cross-subsidized by other revenues of the county, city, town, electric commission or board, industrial development authority, or economic development authority or affiliated entities, except as permitted by the Commission if the Commission deems it to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price*

182 *for the same service charged by the incumbent provider in the area.*

183 *D. No county, city, town, electric commission or board, industrial development authority, or*
184 *economic development authority providing such qualifying communications services shall acquire by*
185 *eminent domain the facilities or other property of any communications service provider to offer cable,*
186 *telephone, data transmission or other information or online programming services.*

187 *E. The Commission shall promulgate rules necessary to implement this section.*

188 § 56-484.7:2. Approval.

189 The Commission shall find that it is in the public interest to approve the offering of qualifying
190 communications services as defined in § 56-484.7:1 unless it shall be demonstrated to the Commission
191 and found that, within the geographic area specified in the petition: (i) the qualifying communications
192 service specified in the petition as provided for in § 56-484.7:1 is readily and generally available from
193 three or more nonaffiliated companies in a manner that is functionally ~~and economically~~ equivalent for
194 consumers; (ii) the petition is not in compliance with the requirements of § 56-484.7:1; or (iii) the
195 offering of the proposed qualifying communications services will not benefit consumers.

196 § 56-484.7:4. Revocation of Commission approval.

197 The Commission may revoke its approval of a petition under § 56-484.7:1 no earlier than five years
198 after such approval if it finds (i) that the factors described in § 56-484.7:2 on which the approval was
199 based no longer exist or are no longer being satisfied, or (ii) that the petitioner has not made satisfactory
200 progress toward making generally available the qualifying communications services specified in the
201 petition. If the Commission finds that such approval should be revoked, it shall determine a date by
202 which the county, city, town, electric commission or board, or authority shall cease to offer such
203 qualifying communications services. In determining such date the Commission shall allow a reasonable
204 time for the entity to offer its equipment, infrastructure and other assets related to such qualifying
205 communications services for sale at fair market value, which shall be deemed to be no less than the
206 amount of the ~~cost, including~~ indebtedness, for such equipment, infrastructure and other assets related to
207 such qualifying communications services. The provisions of this section shall not apply to the use of
208 telecommunications equipment and services for intragovernmental purposes as specified in § 15.2-1500.