

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 586

An Act to amend and reenact § 15.2-2108.11 of the Code of Virginia, relating to provision of cable television services by certain localities.

[S 280]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2108.11 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2108.11. General operating limitations.

A. A municipality that provides a cable television service shall comply with all terms and provisions of the Cable Communications Policy Act of 1984 (47 U.S.C. § 521 et seq.) and the regulations issued by the Federal Communications Commission under such Act that would be applicable to a similarly situated private provider of cable television services.

B. A municipality may not cross subsidize its cable television services with:

1. Tax dollars;
2. Income from other municipal or utility services;
3. Below-market rate loans from the municipality; or
4. Any other means.

C. A municipality shall not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of cable television services.

D. A municipality shall apply, without discrimination as to itself and to any private provider, the municipality's ordinances, rules, and policies, including those relating to (i) obligation to serve; (ii) access to public rights of way and municipal utility poles and conduits; (iii) permitting; (iv) performance bonding; (v) reporting; and (vi) quality of service.

E. In calculating the rates charged by a municipality for a cable television service:

1. The municipality shall include within its rates an amount equal to all taxes, fees, and other assessments that would be applicable to a similarly situated private provider of the same services, including federal, state, and local taxes; franchise fees; permit fees; pole attachment fees; and any similar fees; and

2. The municipality shall not price any cable television service at a level that is less than the sum of: (i) the actual direct costs of providing the service; (ii) the actual indirect costs of providing the service; and (iii) the amount determined under subdivision E 1.

F. A municipality that provides cable television services shall comply with the provisions of Title 47 of the Code of Federal Regulations regarding rate and service changes.

G. A municipality shall offer to provide or provide cable television services to only those subscriber locations within either (i) the municipality's electric utility service area as it existed on January 1, 2003, or (ii) the area, as of January 1, 2003, in which the municipality was providing local exchange service or Internet service over telecommunications facilities owned by the municipality, provided that a cable television franchise from any jurisdiction other than the municipality authorized herein shall be required for any service outside the municipality's boundaries.

H. A municipality shall keep accurate books and records of the municipality's cable television services. A municipality shall conduct an annual audit of its books and records associated with the municipality's cable television services, such audit to be performed by an independent auditor approved by the Auditor of Public Accounts. Such audit shall include such criteria as the Auditor of Public Accounts deems appropriate and be filed with him, with copies to be submitted to each private provider that holds a franchise to offer service within the municipality. If, after review of such audit, the Commonwealth's Auditor of Public Accounts determines that there are violations of this article, he shall provide public notice of same.

I. *Notwithstanding any other provision of law, the Auditor of Public Accounts shall not disclose those portions of any comprehensive business plan that reveal marketing strategies of a municipal cable television service except as necessary to perform his duties and such information shall be otherwise exempt from public disclosure and not subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*