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## HOUSE BILL NO. 938

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 56-1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-235.5:1, relating to telecommunications services; basic services regulation.

Patron—Kilgore

Referred to Committee on Commerce and Labor

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

**1. That § 56-1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-235.5:1 as follows:**

**§ 56-1. Definitions.**

Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "~~the~~ *The Commission*" shall ~~mean~~ *means* the State Corporation Commission.

The word "~~corporation~~" *Corporation* or "~~company~~" shall ~~include~~ *includes* all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

The words "~~interexchange~~ *Interexchange* telephone service" shall ~~mean~~ *means* telephone service between points in two or more exchanges, which is not classified as local exchange telephone service.

The words "~~local~~ *Local* exchange telephone service" shall ~~mean~~ *means* telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of (i) telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission or (ii) the terms and conditions of service offered by an exempt telephone company pursuant to § 56-235.5:1.

The word "~~person~~" shall ~~include~~ *Person* includes individuals, partnerships and corporations.

The words "~~public~~ *Public* service corporation" or "~~public~~ *public* service company" shall ~~include~~ *includes* gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate.

The word "~~railroad~~" shall ~~include~~ *Railroad* means all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

The words "~~railroad~~ *Railroad* company" shall ~~include~~ *means* any company, trustee or other person owning, leasing or operating a railroad.

The word "~~rate~~" shall ~~be considered to mean~~ *Rate* means "rate charged for any service rendered or to be rendered."

The words "~~rate~~ *Rate*," "charge" and "regulation" shall include joint rates, joint charges and joint regulations, respectively.

The words "~~transportation~~ *Transportation* company" shall include any railroad company, any company transporting express by railroad, and any ship or boat company.

**§ 56-235.5:1. Basic services regulation.****A. As used in this section:**

"Basic services" means one or more unbundled (i) single line, unlimited usage, residential voice local exchange telephone services and (ii) single line, unlimited usage, business voice local exchange telephone services.

"Exempt telephone company" is a telephone company that elects to operate under basic services regulation as provided in subsection B.

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59 "Retail" means relating to the provision of local exchange or interexchange telephone service, or  
60 both, to an end-user.

61 "Telephone company" means any entity that holds a certificate of public convenience and necessity to  
62 furnish local exchange or interexchange telephone service, or both, and that has an effective tariff on  
63 file at the Commission, except that companies that are regulated pursuant to Chapter 16 (§ 56-531 et  
64 seq.) of this title are not included within this definition.

65 B. A form of alternative regulation known as "basic services regulation" is available to any  
66 telephone company in the Commonwealth. A telephone company may opt into basic services regulation  
67 by giving the Commission at least 30 days' written notice of its election. Under basic services  
68 regulation, an exempt telephone company offering local exchange telephone service will file tariffs for  
69 basic services and a universal service plan as set forth in subsections F and G, respectively. These  
70 tariffs shall be filed at least 30 days in advance to become effective on the same date that such election  
71 is effective.

72 C. In addition to its general authority over business entities pursuant to Title 13.1, the Commission  
73 shall have the following enumerated authority over an exempt telephone company:

74 1. To provide for and enforce the right of one public service corporation to cross the works of  
75 another pursuant to §§ 56-16 through 56-21;

76 2. To handle complaints against public service corporations pursuant to § 56-6 to the extent the  
77 complaint relates to authority retained by the Commission in this section;

78 3. To enforce (i) the standards of network service necessary to maintain the public health and safety  
79 by promulgating regulations setting network performance standards equally applicable to all telephone  
80 companies and (ii) emergency 911 technical network and database standards by promulgating  
81 regulations equally applicable to all telephone companies and, in the case of database standards,  
82 equally applicable to all emergency 911 database providers;

83 4. To assess the real and personal property of public service corporations, collect the special  
84 revenue tax, and perform such other enumerated duties pursuant to Chapter 26 (§ 58.1-2600 et seq.) of  
85 Title 58.1;

86 5. To review new and changed tariffs, other than rates, filed by exempt telephone companies to  
87 ensure that the proposed tariff will not unreasonably prejudice any class of exempt telephone company  
88 customers, and to enforce those tariffs. Tariffs, other than rates, on file with the Commission prior to  
89 the telephone company electing to become an exempt telephone company may be adopted by the exempt  
90 telephone company without notice to customers or review by the Commission. The Commission shall  
91 also apply this same standard of nonrate tariff review to all new entrant nonrate tariffs;

92 6. To promulgate rules, as they may be necessary and that are equally applicable to new entrants:

93 a. Requiring customer notice of tariff rate changes or withdrawal of tariffed service offering;

94 b. Concerning disconnection of residential customers for nonpayment of local exchange service, late  
95 payment fees, and deposits for customers, including the payment of interest on customer deposits; and

96 c. Prohibiting exempt telephone companies from pricing bundles of services that contain basic  
97 services below the applicable price for that basic service;

98 7. To administer the Telecommunications Relay Service, including the assessment of telephone  
99 companies, pursuant to Article 5 (§ 56-484.4 et seq.) of Chapter 15 of this title;

100 8. To enforce the Underground Utility Damage Prevention Act pursuant to Chapter 10.3  
101 (§ 56-265.14 et seq.) of this title;

102 9. To discharge the responsibilities of state commissions under the federal Telecommunications Act  
103 of 1996 (P.L.104-104) pursuant to § 56-265.4:4;

104 10. To enforce its lawful orders pursuant to §§ 12.1-13 through 12.1-15, 12.1-33, 12.1-34, and  
105 56-483;

106 11. To require an exempt telephone company to furnish basic services to any person, firm, or  
107 corporation along its lines desiring basic services pursuant to § 56-234; and

108 12. To enforce, including the promulgation of appropriate rules, the competitive safeguards as found  
109 in subdivisions B 5, B 6, and B 7 of § 56-265.4:4 and the offering by localities of qualifying  
110 telecommunications services pursuant to Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title.

111 D. Notwithstanding any other provision of law, basic services regulation exempts all retail telephone  
112 services, including their rates, types and manner of offering, and service quality, from the jurisdiction of  
113 the Commission except to the extent specifically provided in subsection C. In addition and further  
114 notwithstanding any other provision of law, the Commission shall have no jurisdiction over the affiliate  
115 transactions, equity and debt financing, or other public utility operations and transactions of an exempt  
116 telephone company except to the extent specifically permitted in subsection C.

117 E. An exempt telephone company shall file and maintain on file with the Commission tariffs for its  
118 basic services that contain service descriptions and the terms and conditions, including rates, under  
119 which the services are offered to the public. An exempt telephone company shall also file and maintain  
120 on file with the Commission tariffs for the network components of its enhanced 911 services that contain

terms and conditions, including rates, under which the services are offered to the public. An exempt telephone company may, at its option, continue to file tariffs for any or all of its nonbasic telephone services. Any such tariffs filed shall contain service descriptions and the terms and conditions, other than rates, under which the services are offered to the public and may contain rates; however, an exempt telephone company may offer non-basic services under special promotions and optional customer agreements that contain terms and conditions that vary from any tariffed terms and conditions. An exempt telephone company filing tariffs for nonbasic services that contain rates may offer these tariffed telephone services at rates lower than or equal to the tariffed rate.

F. An exempt telephone company offering local exchange telephone service shall tariff its monthly rates for each basic service. The exempt telephone company must provide its basic services at this monthly tariffed rate throughout its service territory, except during any transition period described in this subsection. An exempt telephone company may not increase its rates for each basic service by more than 10 percent per year during the transition from its tariffed rates in effect immediately prior to electing to become an exempt telephone company to its statewide, tariffed rates. The initial statewide rates for an exempt telephone company may not exceed the highest tariffed rate in effect in its service territory for the corresponding basic service prior to opting into basic services regulation and that statewide rate shall remain in effect for a minimum of one year from its initial effective date. Any subsequent increases in the statewide rate may not exceed 10 percent and may not be effective until a minimum of 12 months has passed since any previous increase.

G. An exempt telephone company offering local exchange telephone service that previously offered a universal service plan for a dial-tone line with a basic usage package at a discounted rate for certain low-income residential customers shall continue to offer a plan under tariff. Any such exempt telephone company that did not previously offer a universal service plan shall present a tariffed plan for approval by the Commission. In order to qualify for the universal service plan, a customer shall be certified as qualifying by the appropriate state agency designated by the Secretary of Health and Human Resources based on need factors approved by the Commission. Such certification shall be renewed annually.