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SENATE BILL NO. 383

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 16, 2004)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact §§ 56-1 and 56-234 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-1 and 56-234 of the Code of Virginia are 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~~ "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* 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.

§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.

It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. It shall be their duty to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the

60 provisions of § 56-232.1, nothing contained herein or in § 56-481.1 or § 56-235.5:1 shall apply to (i)
61 schedules of rates for any telecommunications service provided to the public by virtue of any contract
62 with, (ii) for any service provided under or relating to a contract for telecommunications services with,
63 or (iii) contracts for service rendered by any telephone company to, the state government or any agency
64 thereof, or by any other public utility to any municipal corporation or to the state or federal government.
65 The provisions hereof shall not apply to or in any way affect any proceeding pending in the State
66 Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any
67 jurisdiction not now vested in it with respect to any such proceeding.

68 § 56-235.5:1. *Basic services regulation.*

69 A. *As used in this section:*

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

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

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

77 "Telephone company" means any entity that holds a certificate of public convenience and necessity to
78 furnish local exchange or interexchange telephone service, or both, and that has an effective tariff on
79 file at the Commission, except that companies that are regulated pursuant to Chapter 19 (§ 56-531 et
80 seq.) of this title are not included within this definition.

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

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

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

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

94 3. To enforce (i) the standards of network service necessary to maintain the public health and safety
95 by promulgating regulations setting network performance standards equally applicable to all telephone
96 companies and (ii) emergency 911 technical network standards by promulgating regulations equally
97 applicable to all telephone companies;

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

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

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

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

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

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

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

115 8. To enforce the Underground Utility Damage Prevention Act pursuant to Chapter 10.3
116 (§ 56-265.14 et seq.) of this title;

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

119 10. To enforce its lawful orders pursuant to §§ 12.1-13 through 12.1-15, 12.1-33, 12.1-34, and
120 56-483;

121 11. To retain all authority to require a telephone company opting into basic services regulation to

furnish basic services to any person, firm, or corporation along its lines desiring basic services pursuant to § 56-234;

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

13. To promulgate and enforce rules prohibiting an exempt telephone company from subsidizing any of its retail nonbasic services, whether offered separately or as a part of a bundle or package of services, with revenue from its retail basic service;

14. To discharge its responsibilities under §§ 56-484.1 and 56-484.2; and

15. To enforce rules promulgated by the Commission pursuant to the Pay Telephone Registration Act, Chapter 16.3 (§ 56-508.15 et seq.) of this title.

D. Notwithstanding any other provision of law, basic services regulation exempts all retail telephone services, including their rates, types and manner of offering, and service quality, from the jurisdiction of the Commission except to the extent specifically provided in subsection C. In addition and further notwithstanding any other provision of law, the Commission shall have no jurisdiction under Title 56 over the affiliate transactions, equity and debt financing, transfers, or other public utility operations and transactions of an exempt telephone company except to the extent specifically permitted in subsection C.

E. An exempt telephone company shall file and maintain on file with the Commission tariffs for its basic services that contain service descriptions and the terms and conditions, including rates, under which the services are offered to the public. An exempt telephone company shall also file and maintain on file with the Commission tariffs for the network components of its enhanced 911 services that (i) contain terms and conditions, including rates, under which the services are offered to the public, and (ii) contain any unbundled network components of enhanced 911 service required by any Commission rule equally applicable to providers of enhanced 911 services. An exempt telephone company shall (a) file and maintain on file with the Commission tariffs for extended local calling rates implemented pursuant to § 56-484.2 and (b) not increase that initially tariffed charge. An exempt telephone company may, at its option, continue to file tariffs for any or all of its nonbasic telephone services. Any nonbasic services tariffs filed shall contain service descriptions and the terms and conditions, including rates, under which the services are offered to the public. An exempt telephone company filing tariffs for nonbasic services must offer these tariffed telephone services where available throughout its service territory at that tariffed rate. However, an exempt telephone company may offer nonbasic services under special promotions and optional customer agreements that contain terms and conditions, including rates, that vary from any tariffed terms and conditions.

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 where available 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.