

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 691

*An Act to amend and reenact §§ 56-1 and 58.1-3813.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-1.3, 56-484.12:1, and 56-484.12:2, relating to the regulation of Voice-over-Internet protocol service; access to E-911 service.*

[H 1198]

Approved April 5, 2006

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

**1. That §§ 56-1 and 58.1-3813.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-1.3, 56-484.12:1, and 56-484.12:2, 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 *unless the context requires a different meaning*:

*"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.*

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~~ that is not classified as local exchange telephone service. *"Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.*

The words "Virginia limited liability company" shall mean (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (ii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. The terms and conditions of a domestication of a foreign limited liability company as a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of this Commonwealth, as appropriate. The provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company domesticated or organized in accordance with this process.

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 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. *"Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.*

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" includes 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 includes 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 includes any railroad company, any company transporting express by railroad, and any ship or boat company.

"Virginia limited liability company" means (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1 or (ii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. The terms and conditions of a domestication of a foreign limited liability company as a limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate. The provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company domesticated or organized in accordance with this process.

"Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time, two-way voice communications; (ii) requires a broadband connection from the user's location; (iii) requires Internet protocol-compatible customer premises equipment (CPE); and (iv) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

#### § 56-1.3. Regulation of Voice-over-Internet protocol service.

Notwithstanding any provision of law, except §§ 56-484.12:1 and 58.1-3813.1, to the contrary:

1. "Telecommunications service" and "telephone service" shall not include the provision of Voice-over-Internet protocol service for purposes of regulation by the Commission.

2. The Commission shall not have jurisdiction with respect to the regulation of Voice-over-Internet protocol service, including but not limited to the imposition of regulatory fees, certification requirements, and the filing or approval of tariffs.

3. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service, as may be determined by the Commission.

#### § 56-484.12:1. Notice to subscribers of lack of access to E-911.

Each provider of Voice-over-Internet protocol service in the Commonwealth shall provide to its subscribers in the Commonwealth any notice that the provider is required to give to its subscribers by the Federal Communications Commission concerning a subscriber's lack of access to E-911 services. This requirement is met when a provider of Voice-over-Internet protocol service in the Commonwealth provides any such notice as required by the Federal Communications Commission.

#### § 56-484.12:2. Plan for access to E-911.

If the Federal Communications Commission requires all providers of Voice-over-Internet protocol service to prepare and file with it a plan setting forth how the provider proposes to develop and implement the capability for users of Voice-over-Internet protocol service to have enhanced 9-1-1 service, then any provider of Voice-over-Internet protocol service in the Commonwealth shall submit a copy of such plan to the Commission and the Board within 90 days of filing the plan with the Federal Communications Commission.

#### § 58.1-3813.1. Local tax for enhanced 911 service; definitions.

A. As used in this section and § 58.1-3813.2, unless context requires a different meaning:

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Board" means the Wireless E-911 Services Board established pursuant to § 56-484.13.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"Local exchange carrier" means any public service company, *provider of Voice-over-Internet protocol service*, or county, city or town granted a certificate to provide local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a twenty-four-hour basis to receive and process 911 calls.

*"Voice-over-Internet protocol service" has the same meaning ascribed to the term in § 56-1.*

B. Any county, city or town which has, singly or by joint agreement, established or will establish an enhanced 911 service may impose a special tax on the consumers of the telephone service or services provided by any corporation subject to the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, *and on consumers of Voice-over-Internet protocol service*, not to exceed a monthly fee of three dollars. However, no such tax shall be imposed on federal, state and local government agencies or on consumers of CMRS, as such term is defined in § 56-484.12. Such tax shall be subject to the notification and jurisdictional provisions of § 58.1-3812.

C. The governing body of any county, city or town may exempt from payment of the tax any subscriber to individual telephone service *or Voice-over-Internet protocol service* who resides in a nursing home or similar adult care facility.

D. Prior to imposing such tax, the governing body of any city, town or county shall find that an enhanced 911 service, as defined in subsection A, has been or will be installed in its respective locality and that the telephone company has central office equipment which will permit such system to be established.

E. For the purpose of compensating a telephone utility for accounting for and remitting the tax levied by this section, such telephone utility shall be allowed three percent of the amount of tax due and accounted for in the form of a deduction in submitting the return and paying the amount due by it.

F. Any such taxes imposed by this section shall be accounted for in a separate special revenue fund or accounted for using a cost center and revenue accounting system acceptable to the Auditor of Public Accounts. The locality shall report revenues, expenditures, and balances of the E-911 special revenue fund or cost center in accordance with the specifications set forth in § 15.2-2510. Amounts collected from the tax shall be used solely to pay for reasonable, direct recurring and nonrecurring capital costs, and operating expenses incurred by a public safety answering point in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware and software required to receive and process emergency telephone calls through an E-911 system, including salaries and fringe benefits of dispatchers and direct call-takers of an E-911 system and costs incurred in training dispatchers and direct call-takers in receiving and dispatching emergency telephone calls, and the salary and fringe benefits of the public safety answering point director or coordinator so long as such person has no other duties other than the responsibility for the public safety answering point.

G. Localities shall ensure that the audit contract with their independent certified public accountant includes audit procedures, in accordance with the specifications set forth in § 15.2-2511, of the separate special revenue fund or cost center required to be established for receiving and accounting for amounts collected under the tax authorized by this section. The specifications shall require an annual audit, beginning July 1, 2000, of such fund or cost center so as to ensure that the amounts collected from such tax are expended solely to pay wireline PSAP cost as defined in this article. The independent certified public accountants shall report any findings to the Auditor of Public Accounts by November 30 following the fiscal year end. The Auditor of Public Accounts shall summarize findings from all localities and report those findings annually to the Governor, the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission by February 1 of the next year.

*H. No provider of Voice-over-Internet protocol service subject to this section shall be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.*