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HOUSE BILL NO. 1404

Offered January 13, 2006

A BILL to amend and reenact § 15.2-2108 of the Code of Virginia, relating to the licensing of cable television systems.

Patrons—Griffith, Iaquinto, Kilgore and Welch

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2108 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2108. Licensing, etc., and regulation of cable television systems.

A. The words *As used in this section "cable:*

"Cable television system" as used in this section shall mean means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than twenty subscribers, (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations, (iii) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way, (iv) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, (v) any facilities of any electric utility used solely for operating its electric systems, or (vi) any portion of a system that serves fewer than fifty subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality.

The words "cable "Cable service" as used in this section mean means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Existing service territory" means any area of a locality for which a cable service provider already holds a valid cable television system franchise.

"Existing cable television system" means the franchised cable television system in a locality that serves the largest number of subscribers in that locality.

"PEG" means "public, educational, or governmental access."

All terms used in this section, unless otherwise defined, shall have the same meaning as set forth in Title VI of the Communications Act of 1934, 47 USC § 601 et seq.

B. A locality may grant one or more nonexclusive licenses, certificates, or franchises to authorize the construction or operation of a license or franchise, or issue a certificate of public convenience and necessity to no more than one cable television system, or provision of cable service and impose a fee thereon. However, After a governing body shall have the authority to has awarded an initial franchise, certificate or license for a particular franchise area, it may award additional licenses, franchises or, certificates, of public convenience as it deems appropriate or licenses for an existing service territory consistent with this section, if such governing body finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit, and such other factors as are relevant award after a public hearing.

C. No such governing body shall grant any overlapping licenses, franchises or certificates, of public convenience or franchises for a cable service television system to serve any portion of an existing service territory within its jurisdiction on terms or conditions that, when considered as a whole, are more favorable or less burdensome than those in any the existing cable television system license, certificate, or franchise or certificate of public convenience within such locality. The prohibitions of the foregoing sentence shall not apply when the area in which the overlapping license, franchise or certificate of public convenience is being sought, is not actually being served by any existing cable service provider holding a license, franchise or certificate of public convenience for such area. As used in this subsection, the term "actually being served" means that cable service is actually available to subscribers to such extent that the only act remaining in order to provide cable service is the physical connection to the individual subscriber location as of fifteen days prior to any subsequent application for a franchise for such existing service territory. In particular, terms or conditions in such new grant of a

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59 *license, certificate, or franchise for an existing service territory regarding (i) franchise fees, including*
60 *the definition of gross revenues on which such franchise fees are based, (ii) the geographic territory to*
61 *be served, (iii) the duration of system construction, (iv) the number of PEG channels to be carried, (v)*
62 *PEG financial support and grants that the existing operator pays or has paid for, applied to the new*
63 *entrant on a fair and reasonable basis, (vi) institutional network obligations that the existing operator*
64 *pays or has paid for, applied to the new entrant on a fair and reasonable basis, and (vii) customer*
65 *service standards shall be directly commensurate with those required of the existing cable television*
66 *system for an existing service territory; however, in order to preserve and encourage a level playing*
67 *field in video competition for cable television franchises, if any governing body has granted or should*
68 *grant any certificate or franchise for any portion of an existing service territory on terms or conditions*
69 *that are not directly commensurate with those in the existing cable television system license, certificate,*
70 *or franchise previously granted by the locality for that existing service territory, the governing body*
71 *shall immediately offer the existing certificate holder, licensee, or franchisee the option to amend the*
72 *existing certificate, license, or franchise to substitute the corresponding terms and conditions of the new*
73 *franchise for terms in the existing cable television system franchise and shall implement such franchise*
74 *amendments within 90 days after the existing certificate holder, licensee, or franchisee provides notice*
75 *of its desire to so amend the existing certificate, license, or franchise.*

76 D. *To ensure that no group of potential residential subscribers is denied or delayed access to cable*
77 *service because of the income, race, religion, or ethnic origin of such residents, the governing body, in*
78 *granting a franchise and establishing the geographic service territory consistent with subsection C, and*
79 *in enforcing the terms of a franchise, shall require that each provider of cable service construct its*
80 *system and offer its service in a non-discriminatory manner within a reasonable period of time.*

81 E. *The governing body may regulate such systems, including the establishment of fees and rates, the*
82 *assignment of channels for public use, the operation of such channels assigned for public use, and the*
83 *placement of restrictions or conditions on the scope of the business activities engaged in by such*
84 *systems with regard to the sale, lease, rental or repair of television receivers or repair of video cassette*
85 *and disc recorders and players, or provide for such regulation and operation by such agents as the*
86 *governing body may direct. The owner or operator of any cable television system shall not be required*
87 *to pay the cost of interconnecting such cable television systems between or within localities.*

88 F. *The grant of authority by this section to localities to regulate cable television systems, including*
89 *regulations that displace or limit competition by or among persons owning or operating such systems,*
90 *has been and continues to be based on the policy of the Commonwealth to provide for the adequate,*
91 *economical, and efficient delivery of such systems to the consuming public, and to protect the public*
92 *from excessive prices and unfair competition; and to prevent the owners and operators of such systems*
93 *from obtaining an unfair competitive advantage by reason of the license, franchise or certificate of*
94 *convenience over businesses that sell, lease, rent or repair television receivers or repair video cassette*
95 *and disc recorders and players. No locality may regulate cable television systems by regulations*
96 *inconsistent with either laws of the Commonwealth or federal law relating to cable television operations.*

97 G. *Localities may by ordinance exercise all the regulatory powers over cable television systems*
98 *granted by the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385,*
99 *1992) Federal Communications Act of 1934, as amended. These regulatory powers shall include the*
100 *authority (i) to enforce customer service standards in accordance with the Act, (ii) to enforce more*
101 *stringent standards as agreed upon by the cable television system operator through the terms of the*
102 *franchise, and (iii) to regulate the rates for basic cable service in accordance with the Act.*

103 H. *To the extent that a franchised cable television operator has been authorized to use the public*
104 *rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such cable television*
105 *operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such*
106 *rights-of-way, by the locality or the Commonwealth Transportation Board. The Commonwealth*
107 *Transportation Board may charge, on a nondiscriminatory basis, fees to recover the approximate actual*
108 *cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections*
109 *to ensure compliance with the conditions of the permit, as such fees shall be established by regulations*
110 *adopted under the Administrative Process Act. A locality may charge, on a nondiscriminatory basis, fees*
111 *to recover the approximate actual cost incurred for the issuance of a permit to perform work within the*
112 *rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees*
113 *existed on February 1, 1997, or as subsequently modified by ordinance. The limitation as to fees*
114 *charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit*
115 *occupancy agreements between a franchise cable television operator and a locality or its authority or*
116 *commission, which permits such operator to use the public poles or conduits.*

117 I. *When a locality receives a new application for a license, certificate, or franchise for the provision*
118 *of cable service, the locality shall have 120 days to review the application and negotiate a franchise*
119 *agreement that is consistent with the requirements of this section, or deny the application. The applicant*
120 *and the locality may mutually agree to extend the 120-day period specified herein. If at the end of the*

121 120-day period the applicant and the locality have reached agreement on a negotiated franchise, then
122 the locality shall bring the franchise for vote before its governing body as quickly as permitted by its
123 normal notice requirements. If the locality denies an application, or fails to act within the 120-day
124 period or any mutually agreed extension thereof, then the unsuccessful applicant may petition the circuit
125 court for the locality for appropriate declaratory and injunctive relief. If the locality has not denied the
126 application, but the locality and an applicant that already has the right to occupy the public rights of
127 way within the locality fail to conclude a final franchise agreement within the 120-day period or any
128 mutually agreed extension thereof, then such applicant shall have the right to request the immediate
129 grant of a franchise that incorporates the terms of the existing cable television system franchise in the
130 locality consistent with subsection C. If such applicant and the locality have not agreed upon the exact
131 language of such a new franchise agreement within 30 days after the end of the unsuccessful 120-day
132 negotiation period or any mutually agreed extension thereof, then the applicant shall be deemed to have
133 been awarded a franchise by the locality incorporating the terms of the existing cable franchise in the
134 locality consistent with subsection C and may commence to provide cable service and operate a cable
135 television system within the locality, but either the applicant, the locality, or an existing cable television
136 system franchisee shall be entitled to petition the circuit court for the locality for the entry of an order
137 of the court determining the exact terms of the applicant's new franchise. The foregoing provisions shall
138 not apply to renewals of existing franchises.