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HOUSE BILL NO. 1329

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on March 3, 2008)

(Patron Prior to Substitute—Delegate Peace)

A BILL to amend and reenact §§ 2.2-1150.1 and 2.2-1151 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-1150.2, relating to the use of communication towers owned by the Commonwealth for the deployment of wireless broadband service in unserved areas.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1150.1 and 2.2-1151 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-1150.2 as follows:

§ 2.2-1150.1. Lease or conveyance of any interest in State Police communication tower.

In-kind goods or services received from lease agreements or conveyances of any interest in Department of State Police communication towers ~~or sites~~ received pursuant to §§ 2.2-1150.2 and 2.2-1151, above the costs of the transaction, shall be retained by the department pursuant to § 2.2-1150 and used in the operation, acquisition, maintenance, construction or replacement of communication towers, ~~sites~~, and systems of the department. The provisions of § 2.2-1156 as they apply to lease agreements or conveyances of any interest shall not apply to any transaction undertaken pursuant to this section.

§ 2.2-1150.2. Use of communication towers for deployment of wireless broadband services in unserved areas of the Commonwealth.

A. As used in this section:

"Qualified provider" means a provider of wireless broadband service that has obtained all governmental approvals required for the provision of wireless broadband service in the unserved area in which it seeks to provide such service.

"Unserved area" means any area within the Commonwealth that is demonstrated not to have access to terrestrial broadband or radio frequency Internet service.

"Wireless broadband service" means an Internet connection service capable of transmitting information at a rate that is not less than 256 kilobits per second in at least one direction using a wireless link between a fixed location and the Internet service provider's facility. It does not include wireless fidelity technology used in conjunction with dedicated subscriber line service or cable service to connect devices within a facility to the Internet via a broadband connection.

B. Notwithstanding any provision of § 2.2-1156 to the contrary, any state department, agency, or institution having responsibility for a state-owned communication tower in an unserved area, subject to guidelines adopted by the Department, shall lease or convey a license or other interest in the communication tower to a qualified provider in order to permit the use of the communication tower by the qualified provider in its deployment of wireless broadband service within the unserved area or portion thereof. This requirement is subject to the qualified provider presenting to the Department:

1. A spectrum and certified structural analysis of the tower that demonstrates that:

a. The new service will not interfere with current equipment;

b. No structural element is beyond 85 percent capacity based on current and previously documented future loads; and

c. The tower meets the industry standards set forth by ANSI/TIA/EIA 222-F; and

2. Proof that the tower satisfies all applicable local government requirements.

C. The Department shall adopt guidelines for (i) determining whether a provider of wireless broadband service is qualified to provide such service and (ii) requesting a state department, agency, or institution to enter into a lease or other conveyance of an interest in a communication tower or site pursuant to this section.

D. The lease or other conveyance shall be for such consideration as the Director of the Department deems appropriate, which consideration shall be commensurate with the consideration paid for use of comparable space on similar towers. The lease or other conveyance may include shared use of the facilities by other political subdivisions or persons providing the same or similar services, and by departments, agencies, or institutions of the Commonwealth.

E. The provisions of § 2.2-1156 as they apply to lease agreements or conveyances of any interest shall not apply to any transaction undertaken pursuant to this section.

F. No transaction authorized by this section shall be made without the prior approval of the Director of the Department and the approval of the Attorney General as to the form of any conveyancing instrument prior to execution.

60 § 2.2-1151. Conveyance of easements and appurtenances thereto to cable television companies, utility
61 companies, public service companies, political subdivisions by state departments, agencies or institutions;
62 communication towers.

63 A. Any state department, agency or institution, through its executive head or governing board may
64 convey to public utility companies, public service corporations or companies, political subdivisions or
65 cable television companies, right-of-way easements over property owned by the Commonwealth and held
66 in its possession and any wires, pipes, conduits, fittings, supports and appurtenances thereto for the
67 transmission of electricity, telephone, cable television, water, gas, steam, or sewage placed on, over or
68 under the property for such consideration as the executive head or governing board of the agency deems
69 proper, when such conveyance is deemed to be in the public interest.

70 B. Any state department, agency or institution having responsibility for a state-owned office building,
71 through its executive head or governing board, may lease space to a credit union in the building for the
72 purpose of providing credit union services that are readily accessible to state employees. The lease shall
73 be for a term of not more than five years, with annual renewals or new leases permitted thereafter. The
74 department, agency or institution responsible for the building may forego all rent or charge less than the
75 fair market value.

76 C. When it is deemed to be in the public interest, and subject to guidelines adopted by the
77 Department, property owned by the Commonwealth may be sold or leased or other interests or rights
78 therein granted or conveyed to political subdivisions or persons providing communication or information
79 services for the purpose of erecting, operating, using or maintaining communication towers, antennas, or
80 other radio distribution devices. If any tower proposed to be erected on property owned by the
81 Commonwealth is to be used solely by private persons providing communication or information services,
82 and there is no immediate use planned or anticipated by any department, agency or institution of the
83 Commonwealth or political subdivision, the guidelines shall provide a means to obtain comments from
84 the local governing body where the property is located. The conveyances shall be for such consideration
85 as the Director of the Department deems appropriate, and may include shared use of the facilities by
86 other political subdivisions or persons providing the same or similar services, and by departments,
87 agencies, or institutions of the Commonwealth.

88 D. No transaction authorized by this section shall be made without the prior written recommendation
89 of the Department to the Governor, the written approval of the Governor of the transaction itself, and
90 the approval of the Attorney General as to the form of the instruments prior to execution.

91 E. *This section shall not (i) apply to any lease or conveyance of a license or other interest in a*
92 *communication tower for use in the deployment of wireless broadband service within an unserved area*
93 *of the Commonwealth made pursuant to § 2.2-1150.2 or (ii) be construed to alter the control or*
94 *ownership of towers currently maintained by other agencies of the Commonwealth.*