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HOUSE BILL NO. 1412

Offered January 11, 2008

A *BILL to amend and reenact §§ 56-1 and 56-345.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 13 of Title 56 a section numbered 56-345.2, relating to railroad corporations.*

Patron—Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-1 and 56-345.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 13 of Title 56 a section numbered 56-345.2 as follows:

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person or group of persons specified.

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

"Commission" means the State Corporation Commission.

"Corporation" or "company" 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.

"Entity" includes an estate or trust, any state, the United States and any foreign government, and any domestic or foreign stock corporation, nonstock corporation, limited liability company, partnership or business trust.

"Foreign" means, with respect to an entity, an entity that is incorporated or formed under the laws of a foreign government, and, with respect to an individual, an individual who is not a citizen of the United States.

"Interexchange telephone service" means telephone service between points in two or more exchanges 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.

"Local exchange telephone service" 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.

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations an individual or entity.

"Public service corporation" or "public service company" 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

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59 service corporation or public service company and subject to the authority of the Commission with
60 respect only to its provision of the services it is authorized to provide pursuant to such certificate.

61 "Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other
62 motive power, except when otherwise specifically designated.

63 "Railroad company" includes any company, trustee or other person owning, leasing or operating a
64 railroad.

65 "Rate" means rate charged for any service rendered or to be rendered.

66 "Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

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

69 "Virginia limited liability company" means (i) any limited liability company organized under Chapter
70 12 (§ 13.1-1000 et seq.) of Title 13.1, (ii) any entity that has become a limited liability company
71 pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or pursuant to conversion or
72 domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii) any foreign limited liability
73 company that is organized or is domesticated by filing articles of organization that meet the
74 requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability
75 company immediately prior to the filing of the articles of organization; (b) the date on which and the
76 jurisdiction in which the foreign limited liability company was first formed, organized, created or
77 otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal
78 place of business or central administration of the foreign limited liability company, or any equivalent
79 thereto under applicable law, immediately prior to the filing of the articles of organization. With respect
80 to an organization or domestication pursuant to clause (iii), the terms and conditions of a domestication
81 shall be approved in the manner provided for by the document, instrument, agreement or other writing,
82 as the case may be, governing the internal affairs of the foreign limited liability company in the conduct
83 of its business or by applicable law other than the law of the Commonwealth, as appropriate, and the
84 provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3
85 shall apply to any limited liability company so domesticated or organized.

86 "Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time,
87 two-way voice communications that originate or terminate from the user's location using Internet
88 protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This
89 definition includes any such service that permits users generally to receive calls that originate on the
90 public switched telephone network and to terminate calls to the public switched telephone network.

91 § 56-345.1. Notice; consolidation, merger, abandonments, or discontinuances.

92 A. Any railroad company operating in the Commonwealth that submits an application to the federal
93 government for consolidation, merger, abandonment, or discontinuance shall, contemporaneously with
94 such application, notify the Commission and the Governor of such action.

95 B. *No foreign person or group of persons, including any affiliate of such person or group, shall*
96 *acquire or attempt to acquire, acting individually or in concert with any other person or group through*
97 *any contract, arrangement, understanding or relationship, control of any railroad that is a public*
98 *service corporation, or of any person controlling a railroad that is a public service corporation, unless*
99 *such foreign person or group has previously filed with the Commission and has sent the railroad an*
100 *application for approval of the acquisition of control of the railroad and the Commission has issued an*
101 *order approving the application.*

102 C. *As used in this section, "control," including the terms "controlling," "controlled by," and "under*
103 *common control with," means direct or indirect possession of the power to direct or cause the direction*
104 *of the management and policies of a person, through (i) the ownership of voting securities, (ii) by*
105 *contract other than a commercial contract for goods or nonmanagement services, (iii) nomination,*
106 *directly or indirectly, of such number of nominees to the board of directors of such person as would*
107 *constitute a majority of such board of directors of such person, or (iv) otherwise. Control shall be*
108 *presumed to exist if any person or group, including any affiliate of such person or group, directly or*
109 *indirectly owns (including any rights to acquire), controls, holds with the power to vote, or holds*
110 *proxies representing collectively 25 percent or more of the voting securities of any other person. This*
111 *presumption may be rebutted by a showing that control does not exist. After giving all interested*
112 *persons notice and opportunity to be heard and making specific findings to support its determination,*
113 *the Commission may determine that control exists, notwithstanding the absence of a presumption to that*
114 *effect.*

115 § 56-345.2. Approval by Commission.

116 The Commission shall approve the application required by subsection B of § 56-345.1 if, after giving
117 notice and an opportunity to be heard, it determines that:

118 1. *After the change in control, the railroad that is the subject of the application can reasonably be*
119 *expected to discharge its public service responsibilities. In making that determination, the Commission*
120 *shall consider among other relevant information (i) the competence, experience, reliability, and integrity*

121 of the persons who would control the operation of the railroad, (ii) their commitment to make capital
122 expenditures and to take other action necessary for the railroad to continue to meet its safety and
123 service responsibilities, and (iii) their commitment to maintaining the financial strength of the railroad
124 at a level that is appropriate for a public service company; and
125 2. The change of control would not be inconsistent with the public interest served by the railroad
126 that is the subject of the application.