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SENATE BILL NO. 571

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 11, 2008)

(Patron Prior to Substitute—Senator Saslaw)

A *BILL to amend and reenact § 56-235.5 of the Code of Virginia, relating to telephone regulatory alternatives.*

Be it enacted by the General Assembly of Virginia:

1. That § 56-235.5 of the Code of Virginia is amended and reenacted as follows:

§ 56-235.5. Telephone regulatory alternatives.

A. As used in this section, "telephone:

"Detariff" means to offer telephone services to customers under contractual terms and conditions other than those contained in tariffs filed with the Commission.

"Lifeline service" means that part of the Virginia Universal Service Plan under which eligible low-income customers receive discounted residential dialtone telephone service.

"Telephone company" means any public service corporation or public service company which holds a certificate of public convenience and necessity to furnish local exchange telephone service, except that companies which are regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title are not included within this definition.

B. In regulating telephone services of any telephone company, and notwithstanding any provision of law to the contrary, the Commission, after giving notice and an opportunity for hearing, may replace the ratemaking methodology set forth in § 56-235.2 with any alternative form of regulation which: (i) protects the affordability of basic local exchange telephone service, as such service is defined by the Commission; (ii) reasonably ensures the continuation of quality local exchange telephone service; (iii) will not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services; and (iv) is in the public interest. Alternatives may differ among telephone companies and may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation. A hearing under this section shall include the right to present evidence and be heard. Prior to any hearing under this section, the Commission shall provide parties an opportunity to conduct discovery.

C. Any telephone company or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title may apply to the Commission at any time to obtain an alternative form of regulation. The Commission shall approve the application if it finds, after notice to all affected parties and hearing, that the proposal meets the standards for an alternative form of regulation set forth in subsection B.

1. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for an alternative form of regulation shall be entered no more than 90 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

2. If the Commission approves the application with modifications, the telephone company, or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title, may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application, unless it is modified for a telephone company by the Commission pursuant to subsection B.

D. The Commission may, after notice and opportunity for hearing, alter, amend or revoke any alternative form of regulation previously implemented if it finds that (i) the affordability of basic local exchange service, as such service is defined by the Commission, is threatened by the alternative form of regulation; (ii) the quality of local exchange telephone service has deteriorated or will deteriorate to the point that the public interest will not be served by continuation of the alternative form of regulation; (iii) the terms ordered by the Commission in connection with approval of a company's application for alternative form of regulation have been violated; (iv) any class of telephone company customers or other providers of competitive services are being unreasonably prejudiced or disadvantaged by the alternative form of regulation; or (v) the alternative form of regulation is no longer in the public interest.

E. The Commission shall have the authority, after notice to all affected parties and an opportunity for hearing, to determine whether any telephone service of a telephone company is subject to competition and to provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified regulation determined by the Commission to be in the public interest for such competitive services.

F. The Commission may determine telephone services of any telephone company to be competitive

when it finds competition or the potential for competition in the market place is or can be an effective regulator of the price of those services. Such determination may be made by the Commission on a statewide or a more limited geographic basis, such as one or more political subdivisions or one or more telephone exchange areas, or on the basis of a category of customers, such as business or residential customers, or customers exceeding a revenue or service quantity threshold, or some combination thereof. The Commission may also determine bundles composed of a combination of competitive and noncompetitive services to be competitive if the noncompetitive services are available separately pursuant to tariff or otherwise. In determining whether competition effectively regulates the prices of services, the Commission shall consider: (i) the ease of market entry, (ii) the presence of other providers reasonably meeting the needs of consumers, and (iii) other factors the Commission considers relevant. Notwithstanding any other provisions of this subsection, any telephone services that are the functional equivalent of the services offered individually or as part of a bundle of services by a county, city or town pursuant to § 56-265.4:4 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title, either directly or pursuant to a public-private partnership, shall be deemed competitive services in the geographic area where the services of the county, city or town are offered for purposes of this article and any alternate regulatory plans approved by the Commission.

G. The Commission shall monitor the competitiveness of any telephone service previously found by it to be competitive under any provision of subsection F above and may change that conclusion, if, after notice and an opportunity for hearing, it finds that competition no longer effectively regulates the price of that service.

H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C above, or determines that a service is competitive pursuant to subsections E and F above, the Commission shall adopt safeguards apply the cross-subsidy test described in clause (v) of subdivision B 3 of § 56-265.4:4 and the rules promulgated thereunder as a safeguard to protect consumers and competitive markets. At a minimum these safeguards must ensure that there is no cross subsidization of competitive services by monopoly services.

H. 1. Notwithstanding any other provision of law, as of July 1, 2008, any and all telephone services, other than lifeline and E-911 services, offered by a telephone company are declared competitive for purposes of this title and are no longer subject to any alternative form of regulation adopted pursuant to this section. Lifeline and E-911 services may be found by the Commission to be competitive pursuant to subsections E and F.

2. Notwithstanding any other provision of law, the Commission shall have no jurisdiction over the prices charged for competitive telephone services except as set forth in this subsection. The monthly recurring charges for residential dialtone telephone service, including measured, message, and flat rate residential dialtone telephone services, shall not be increased more than \$1.00 per 12-month period per line for the 60 months following July 1, 2008. The monthly recurring charges for business dialtone telephone service, including measured, message, and flat rate business dialtone telephone services, shall not be increased more than \$3.00 per 12-month period per line for the 60 months following July 1, 2008. The Commission may, after notice and an opportunity for a hearing, modify or waive these limitations on increases in these monthly recurring charges during the 60-month period.

3. The Commission shall establish rules that will permit any telephone company to detariff its telephone services offered to residential and business customers. These rules shall be effective no later than January 1, 2010.

4. Until such time as a telephone company detariffs its telephone services, it may offer promotional rates, terms, or conditions and individual customer pricing for its telephone services in accordance with the Commission's rules for competitive local exchange carriers promulgated pursuant to §§ 12.1-13 and 56-265.4:4.

5. The Commission shall ensure that the competitive services offered by all telephone companies are subject to the same rules and regulations. The Commission shall not issue or enforce any rule, regulation, or order that is inconsistent with this section.

6. A telephone company offering competitive telephone services under this section shall not be subject to Chapters 3 (§ 56-55 et seq.) and 4 (§ 56-76 et seq.).

7. In order to monitor the competitiveness of the telephone services declared competitive, the Commission shall prepare a report for the General Assembly examining whether competition or the potential for competition in the marketplace is or can be an effective regulator of the price of mass market residential and business dialtone services, including usage. This report shall be delivered to the General Assembly no later than December 1, 2011.

8. Nothing in this subsection shall be construed to change the Commission's authority to regulate wholesale services, including access charges or other intercarrier compensation, or to order revenue neutral price increases in excess of the limitations on price increases set forth in subdivision 2.