

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 788

An Act to amend and reenact § 56-235.5 of the Code of Virginia, relating to telephone regulatory alternatives.

[H 1885]

Approved April 8, 2009

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 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. *For purposes of this section, the Commission shall consider all wireless communications providers that offer voice communications services to be facilities-based competitors owning wireline network facilities and reasonably meeting the needs of consumers, regardless of whether such wireless providers own wireline network facilities. In its determination, the Commission shall not exclude as a competitor any affiliate of the telephone company.* 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 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.

I. If the Commission determines pursuant to subsections E and F that 75 percent or more of residential households or businesses in a telephone company's incumbent territory are in areas that have been determined by the Commission to be competitive for a telephone service, the Commission shall expand, for that telephone service throughout the company's incumbent territory, its competitive determination and apply the same regulatory treatment already adopted by the Commission for that telephone service in competitive areas, including any safeguards under subsection H.

J. If a telephone company provides 90 percent or more of its residential and business lines access to fiber optic or copper-based broadband service, as defined by the Federal Communications Commission, within an exchange area, the Commission shall expand, for basic and associated telephone services in that exchange area, its competitive determination and apply the same regulatory treatment already adopted by the Commission for those services in competitive areas, including any safeguards under subsection H.