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**HOUSE BILL NO. 106**

Offered January 8, 2014

Prefiled December 15, 2013

A *BILL to amend and reenact §§ 56-57 and 56-88.1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 56 a chapter numbered 2.1, consisting of sections numbered 56-54.2 through 56-54.8, relating to the regulation of local exchange telephone companies; competitive telephone companies.*

Patron—Byron

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-57 and 56-88.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 56 a chapter numbered 2.1, consisting of sections numbered 56-54.2 through 56-54.8, as follows:**

**CHAPTER 2.1.****COMPETITIVE TELEPHONE COMPANIES.****§ 56-54.2. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Competitive local exchange telephone company" means (i) a competing telephone company that was granted a certificate on or after January 1, 1996, pursuant to § 56-265.4:4 or (ii) an incumbent local exchange telephone company providing service outside of its incumbent territory.*

*"Competitive telephone company" means (i) an incumbent local exchange telephone company whose residential dialtone lines (a) were deemed competitive by the Commission throughout its incumbent service territory prior to January 1, 2014, or (b) are declared competitive by the Commission throughout its incumbent service territory on or after January 1, 2014, in a proceeding pursuant to § 56-235.5 or (ii) a competitive local exchange telephone company.*

*"Incumbent local exchange telephone company" means a public service corporation that was providing local exchange telephone service prior to January 1, 1996, or a successor entity to such a public service corporation.*

*"Incumbent territory" means the area in which an incumbent local exchange telephone company was providing local exchange telephone service prior to July 1, 2002, except as its incumbent certificate may have been amended by the Commission after that date pursuant to subdivision B 1 of § 56-265.4:4.*

**§ 56-54.3. Election to be regulated as a competitive telephone company.**

*Any telephone company meeting the definition of a competitive telephone company may elect to be regulated as a competitive telephone company pursuant to the provisions of this chapter by providing written notice to the Commission of such election. The election shall be effective 30 days after receipt of the notice by the Commission unless (i) the Commission notifies the electing telephone company within that 30-day period that the telephone company does not meet the definition of a competitive telephone company and (ii) the Commission then commences a proceeding to challenge the election. In such a proceeding, interested parties shall be provided notice and an opportunity for a hearing. The Commission shall issue a final decision on any such proceeding challenging the election within 60 days of the electing telephone company's receipt of the Commission's notification of the commencement of the proceeding to challenge the election. A telephone company's election to be regulated as a competitive telephone company shall be deemed approved if the Commission fails to act within this 60-day period. A new entrant may elect to be regulated under this chapter when it applies for certification pursuant to § 56-265.4:4. Such an election will be effective upon its certification as a competitive local exchange carrier.*

**§ 56-54.4. Commission authority over competitive telephone companies.**

*Notwithstanding any other provision of law, the Commission shall not have any jurisdiction and authority, including jurisdiction and authority over any obligation of a competitive telephone company to seek approval from the Commission, to regulate, supervise, or promulgate rules relating to the retail services, rates, and terms of service of a competitive telephone company, except as specifically enumerated in this chapter. The Commission shall have discretion as to the extent to which it will exercise the authority granted to it in this chapter. Nothing in this chapter shall be deemed to limit the current jurisdiction and authority of the Commission over wholesale telephone services and issues, including the payment of switched network access rates or other intercarrier compensation, interconnection, porting, and numbering.*

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59 **§ 56-54.5. Powers of the Commission.**

60 A. The Commission may ensure competitive telephone companies provide reasonably adequate retail  
61 voice service, including rendering timely and accurate bills for service, by receiving customer  
62 complaints and requiring the competitive telephone company to reasonably address bona fide complaints  
63 as promptly as is reasonably possible under the circumstances.

64 B. The Commission shall continue to have jurisdiction and authority to ensure the reasonably  
65 adequate provision by competitive telephone companies of the telecommunications portions of emergency  
66 911 services provided to PSAPs, as that term is defined in § 56-484.12. The Commission shall have no  
67 jurisdiction over Internet Protocol-enabled emergency 911 services.

68 C. The Commission shall continue to have jurisdiction and authority over Lifeline telephone service  
69 such as the Virginia Universal Service Plan, but shall not impose obligations on competitive telephone  
70 companies over and above that imposed by the default Lifeline plan imposed by the Federal  
71 Communications Commission.

72 D. The Commission shall continue to have jurisdiction and authority to accept retail tariffs filed by  
73 competitive telephone companies. Nothing in this chapter shall be construed to require a competitive  
74 telephone company to file retail tariffs.

75 E. Existing extended local service calling plans ordered by the Commission that are applicable to  
76 competitive telephone companies shall remain in effect, but shall not be expanded by the Commission.  
77 The Commission shall continue to have jurisdiction and authority to enforce these extended local service  
78 calling plans, but shall not create any new plans.

79 F. The Commission shall continue to have jurisdiction and authority to grant, amend, reissue, and  
80 cancel certificates of public convenience and necessity of competitive telephone companies.

81 G. The Commission shall continue to have authority to promulgate rules, including the revision and  
82 repeal of current rules, as necessary to implement the specific authority granted in this chapter.

83 **§ 56-54.6. Duties of a competitive telephone company.**

84 A. A competitive telephone company in its incumbent territory shall have the duty to extend or  
85 expand its facilities to furnish retail voice service and facilities when the person, firm, or corporation  
86 does not have service available from one or more alternative providers of wireline or terrestrial wireless  
87 communications services at prevailing market rates.

88 B. A competitive telephone company shall continue to have the powers and duties provided in the  
89 first sentence of subdivision A 2 of § 56-234.

90 C. For the purposes of subsections A and B, the Commission shall have the authority upon request  
91 of an individual, corporation, or other entity, or a competitive telephone company, to determine whether  
92 the wireline or terrestrial wireless communications service available to the party requesting service is a  
93 reasonably adequate alternative to local exchange telephone service.

94 D. The use by a competitive telephone company of wireline and terrestrial wireless technologies shall  
95 not be construed to grant any additional jurisdiction or authority to the Commission over such  
96 technologies.

97 E. For purposes of subsection A, "prevailing market rates" means rates similar to those generally  
98 available to consumers in competitive areas for the same services.

99 **§ 56-54.7. Enforcement.**

100 In all matters within the jurisdiction of the Commission, it shall have the powers of a court of record  
101 to administer oaths, to compel the attendance of witnesses and the production of documents, to punish  
102 for contempt, and to enforce compliance with its lawful orders or requirements by adjudging and  
103 enforcing by its own appropriate process such fines or other penalties as may be prescribed or  
104 authorized by law.

105 In the administration and enforcement of all laws within its jurisdiction, the Commission shall have  
106 the power to impose and collect such fines or other penalties as are provided by law, to enter  
107 appropriate orders, and to issue temporary and permanent injunctions. The Commission is empowered  
108 to suspend or revoke any Commission-issued license, certificate, registration, permit, or any other  
109 Commission-issued authority of any person who fails to satisfy any fine or penalty imposed by an order  
110 of the Commission.

111 Whenever no fine or other penalty is specifically imposed by statute for the failure of any such  
112 individual or business conducted by any entity other than an individual to comply with any provision of  
113 law or with any valid rule, regulation, or order of the Commission, the Commission may impose and  
114 collect from such individual or business conducted by any entity other than an individual a fine in an  
115 amount not to exceed \$5,000 in the case of an individual, and in the case of a business conducted by  
116 any entity other than an individual not to exceed \$10,000.

117 **§ 56-54.8. Service provided to the Commonwealth.**

118 The Commission shall have no jurisdiction or authority over (i) schedules of rates for any  
119 telecommunications service provided to the public by virtue of any contract with, (ii) any service  
120 provided under or relating to a contract for telecommunications services with, or (iii) contracts for

service rendered by any competitive telephone company to, the Commonwealth or any agency thereof.

**§ 56-57. Securities to which chapter is applicable.**

A. This chapter shall apply to every stock or stock certificate or other evidence of interest or ownership, and, except as otherwise provided by § 56-65, every bond, note or other evidence of indebtedness, of a public service company, which may be issued, and to every obligation or liability as guarantor, endorser, surety or otherwise in respect of the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months or more after the date thereof, which may be or may have been assumed after March 24, 1934, notwithstanding the fact that any preparatory steps, whether by the issuance or amendment of a certificate of incorporation, or by the action of the board of directors, or the stockholders or otherwise, may have been taken prior to such date.

B. Notwithstanding subsection A, this chapter shall not apply to any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness of a (i) public service company that operates under an alternative form of regulation approved by the Commission pursuant to § 56-235.5, unless the Commission rescinds such exemption as hereafter authorized, or (ii) competitive telephone company as defined in § 56-54.2, provided such securities are issued for lawful purposes pursuant to § 56-58. Any public service company exempt from this chapter shall instead provide notice to the Commission of the issuance of any stock or stock certificate or other evidence of interest or ownership, or, except as otherwise provided by §§ 56-65 and 56-65.1, any bond, note or other evidence of indebtedness, within ninety days of issuance. The Commission may rescind the exemption from this chapter provided by this subsection to any public service company that operates under an alternative form of regulation approved by the Commission pursuant to § 56-235.5 if the Commission finds, after notice and an opportunity for a hearing, that such exemption is not in the public interest.

**§ 56-88.1. Acquisition or disposition of control of a public utility.**

A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of:

1. A public utility within the meaning of this chapter, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90; or

2. A telephone company, or all of the assets thereof, without the prior approval of the Commission. In determining whether to grant approval, the Commission shall consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring control of or all of the assets of the telephone company.

The Commission shall, after the filing of a completed application, approve or disapprove the requested acquisition or disposition within 60 days. The 60-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within 60 days or any extended period ordered by the Commission.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

C. For purposes of this section, "control" means (i) the acquisition of 25 percent or more of the voting stock or (ii) the actual exercise of any substantial influence over the policies and actions of any public utility or telephone company.

D. This section shall not apply to (i) any company engaged in the business of generating electricity whose rates and services are not regulated by the State Corporation Commission or (ii) any competitive telephone company as defined in § 56-54.2.

2. That any order issued by the State Corporation Commission pursuant to any authority the Commission had to regulate, supervise, or promulgate rules relating to the retail services, rates, and terms of service of a competitive telephone company, which authority ceases to exist upon the effective date of this act, shall have no effect from and after such date. Orders issued by the Commission pursuant to authority granted or continued under this act, including rules promulgated under such orders, shall continue in effect.

3. That notwithstanding the provisions of this act, (i) the residential price cap approved by the State Corporation Commission in Case No. PUC-2012-00008 shall continue in effect until it expires as currently scheduled on December 31, 2014, and (ii) any safeguards ordered by the Commission in response to competitive service applications filed pursuant to subsection F of § 56-235.5 of the Code of Virginia after January 1, 2014, shall continue in effect as ordered by the Commission.