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HOUSE BILL NO. 13

Offered January 8, 2014

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A BILL to amend and reenact § 56-1.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-247.2, relating to regulation of aspects of commercial mobile radio service as a public utility; contents of telecommunications billing statements and service contracts; disclosing releases of certain information.

Patron—Marshall, R.G.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-1.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-247.2 as follows:

§ 56-1.3. Regulation of Voice-over-Internet protocol service.

Notwithstanding any provision of law, except §§ 56-247.2, 56-484.12:1, and 58.1-1730, to the contrary:

1. "Telecommunications service" and "telephone service" shall not include the provision of Voice-over-Internet protocol service for purposes of regulation by the Commission.

2. The Commission shall not have jurisdiction with respect to the regulation of Voice-over-Internet protocol service, including but not limited to the imposition of regulatory fees, certification requirements, and the filing or approval of tariffs.

3. 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, as may be determined by the Commission.

§ 56-247.2. Telecommunications providers to disclose releases of certain information; authority of Commission.**A. As used in this section:**

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"Customer" means any residential, commercial, or governmental customer of telecommunications service whose mailing address on the records of the telecommunications provider is located within the Commonwealth.

"Mobile telephone" means a CMRS device that is capable of sending and receiving telephone calls over a radio link through a connection to a cellular network.

"Session identifying information" includes originating and terminating telephone numbers, International Mobile Subscriber Identity (IMSI) numbers, and International Mobile station Equipment Identity (IMEI) numbers.

"Telecommunications contract" means any agreement entered into within the Commonwealth pursuant to which (i) a telecommunications provider, either directly or through an agent or licensee, sells or leases to a customer a telephone, mobile telephone, VoIP hardware, or software that is intended to be used in connection with the provision of telecommunications service by the telecommunications provider to the customer or (ii) a customer will receive telecommunications service from a telecommunications provider. For purposes of this section, an agreement shall be deemed to have been entered into within the Commonwealth if any party thereto was physically located within the Commonwealth at the time the agreement was executed, regardless of whether the agreement was entered into via mail, telephone, or the Internet.

"Telecommunications provider" means any entity subject to the jurisdiction of the Commission engaged in the business of providing telecommunications service to residential customers in the Commonwealth.

"Telecommunications service" means (i) local exchange telephone service or interexchange telephone service provided by any public service company or public service corporation that holds a certificate of public convenience and necessity to furnish such service, (ii) CMRS, or (iii) Voice-over-Internet protocol service.

"Telephony metadata" includes comprehensive communications routing information, including session identifying information, trunk identifier, telephone calling card numbers, and time and duration of any call. "Telephony metadata" does not include the substantive content of any communication, as defined by 18 U.S.C. § 2510(8), or the name, address, or financial information of a subscriber or customer.

INTRODUCED

HB13

59 "USA Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools
60 Required to Intercept and Obstruct Terrorism Act of 2001 (P.L. 107-56), as amended by the USA
61 PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the USA PATRIOT Act Additional
62 Reauthorizing Amendments Act of 2006, and the PATRIOT Sunsets Extension Act of 2011 and as it may
63 hereafter be amended.

64 B. Unless federal statutory law or court order prohibits a telecommunications provider from so
65 doing, the Commission shall require that each telecommunications provider that periodically bills its
66 customers for telecommunications service pursuant to a telecommunications contract shall disclose to its
67 customers on each customer's periodic billing statement, and each telecommunications provider that
68 enters into a telecommunications contract with a customer shall disclose to the customer at the time of
69 entering into the telecommunications contract, (i) whether the telecommunications provider is being or
70 has been directed by order of the U.S. Foreign Intelligence Surveillance Court or other court to provide
71 call detail records or telephony metadata for its customers to the National Security Agency or other
72 agency of the federal government and (ii) if so, a description of the nature and type of call detail
73 records or telephony metadata that the telecommunications provider is being or has been directed to
74 provide to such agency. However, if the telecommunications provider is prohibited by federal statutory
75 law or court order from disclosing the information described in clause (i) or (ii), and unless federal
76 statutory law or court order prohibits a telecommunications provider from so doing, the
77 telecommunications provider shall disclose to its customers on each customer's periodic billing
78 statement, and at the time the customers enters into a telecommunications contract, that (a) the
79 telecommunications provider is prohibited from disclosing to its customers specific information
80 regarding the call detail records or telephony metadata that the telecommunications provider is being or
81 has been directed to provide to such agency and (b) federal law may require the telecommunications
82 provider to provide the customer's call detail records or telephony metadata to federal agencies.

83 C. Unless federal statutory law or court order prohibits a telecommunications provider from making
84 such disclosures, the form of the disclosures required pursuant to subsection B shall conform in material
85 respects to the following, unless the Commission, on application of a telecommunications provider, has
86 approved an alternative form of the disclosures:

87 1. A disclosure that the telecommunications provider is being or has been directed by order of the
88 U.S. Foreign Intelligence Surveillance Court or other court to provide call detail records or telephony
89 metadata for its customers to the National Security Agency or other agency of the federal government
90 shall include the following:

91 "Pursuant to the USA Patriot Act, the U.S. Foreign Intelligence Surveillance Court or other court
92 has in the past required, or currently is requiring, (Name of telecommunications provider) to turn over
93 to the National Security Agency or other agency of the federal government information regarding your
94 telephone calls."

95 2. In addition to the information described in subdivision 1, if the telecommunications provider is
96 permitted to disclose the types of call detail records and telephony metadata it is being or has been
97 directed to turn over to federal agencies and the period during which such information has been or will
98 be turned over, the disclosure shall include the following:

99 "The information that (Name of telecommunications provider) is being or has been required by order
100 of the U.S. Foreign Intelligence Surveillance Court or other court to disclose to the (Name of federal
101 agency) includes: (List types of call detail records and telephony metadata disclosed). The disclosure of
102 such information to government agencies covers the period (Start date) to (End date)."

103 3. If the telecommunications provider is prohibited from disclosing that the types of call detail
104 records and telephony metadata it is being or has been directed to turn over to a federal agency and
105 the period during which such information has been or will be turned over, the disclosure shall include
106 the following:

107 "(Name of telecommunications provider) is prohibited from disclosing to its customers information
108 regarding the call detail records or telephony metadata it is being or has been required to turn over to
109 a federal agency."

110 4. If the telecommunications provider is prohibited from disclosing that it has been required or is
111 being required to turn over call detail records and telephony metadata to a federal agency, the
112 disclosure shall include the following:

113 "Federal law may require (Name of telecommunications provider) to provide your call detail records
114 or telephony metadata to a federal agency."

115 D. Each disclosure or statement required pursuant to subsection B or C to be included in a periodic
116 billing statement or a telecommunications contract shall be conspicuous, as such term is defined in
117 subdivision (b)(10) of § 8.1A-201.

118 E. A finding by the Commission or other entity that a telecommunications service is competitive shall
119 not affect the obligation of the telecommunications provider providing such service to make any
120 disclosure or provide any statement required pursuant to this section.

121 *F. The Commission, with or without an investigation, may require any telecommunications provider*
122 *to furnish to it, in such form, at such times, and in such detail as the Commission shall require, such*
123 *accounts, reports, and other information of whatsoever kind or character as it may deem proper, in*
124 *order to show completely the compliance of the telecommunications provider with the requirements of*
125 *this section.*

126 *G. Unless preempted by federal law, (i) CMRS shall constitute a public utility and (ii) a provider of*
127 *CMRS in the Commonwealth shall constitute a public utility company or public utility corporation as*
128 *may be required to ensure the Commission has jurisdiction to enforce the requirements of this section*
129 *that are applicable to telecommunications providers providing CMRS.*