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HOUSE BILL NO. 774

Offered January 8, 2014

Prefiled January 7, 2014

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 56-54.7, relating to the regulation of local exchange telephone companies; competitive telephone companies.*

Patrons—Hugo and 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 56-54.7, 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, excluding a city, town, or county, 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 to the extent such company is 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 the company's 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 grants, affects, modifies, or limits any rights, duties, obligations, or authority of any entity, including the Commission, (i) pursuant to the provisions for 47 U.S.C. § 251 and 47 U.S.C. § 252 or (ii) related to wholesale telephone services

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59 and issues, including the payment of switched network access rates or other intercarrier compensation,
60 interconnection, porting, and numbering.

61 **§ 56-54.5. Powers of the Commission.**

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

66 B. The Commission shall continue to have jurisdiction and authority to ensure the reasonably
67 adequate provision by competitive telephone companies of the telecommunications portions of emergency
68 911 services provided to PSAPs, as that term is defined in § 56-484.12.

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

74 D. The Commission shall continue to have jurisdiction and authority to permit existing and new
75 retail tariffs to be filed by competitive telephone companies; however, nothing in this chapter shall be
76 construed to require a competitive telephone company to file tariffs concerning retail services.

77 E. Existing extended local service calling plans ordered by the Commission pursuant to Article 4
78 (§ 56-484.1 et seq.) of Chapter 15 that are applicable to competitive telephone companies shall remain
79 in effect, but shall not be expanded by the Commission. The Commission shall continue to have
80 jurisdiction and authority to enforce these extended local service calling plans but shall not create any
81 new plans.

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

84 G. The Commission may promulgate such rules, including the revision and repeal of current rules,
85 as may be necessary to implement the specific authority granted in this chapter.

86 **§ 56-54.6. Duties of a competitive telephone company.**

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

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

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

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

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

102 F. A competitive telephone company shall have the obligation to provide access to emergency 911
103 service to its end-user retail customers.

104 **§ 56-54.7. Service provided to the Commonwealth.**

105 The Commission shall have no jurisdiction or authority over (i) schedules of rates for any
106 telecommunications service provided to the public by virtue of any contract with, (ii) any service
107 provided under or relating to a contract for telecommunications services with, or (iii) contracts for
108 service rendered by any competitive telephone company to, the Commonwealth or any agency thereof.

109 **§ 56-57. Securities to which chapter is applicable.**

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

119 B. Notwithstanding subsection A, this chapter shall not apply to any stock or stock certificate or
120 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, (ii) *any competitive telephone company as defined in § 56-54.2*, or (iii) *a telephone company that has a certificate issued pursuant to § 56-265.4:4*.

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 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.