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SENATE BILL NO. 308

Offered January 8, 2014

Prefiled January 6, 2014

A *BILL to amend and reenact § 15.2-2160 of the Code of Virginia, relating to the provision of telecommunications services.*

Patrons—Vogel; Delegate: Rasoul

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2160 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2160. Provision of telecommunications services.

A. Any locality that operates an electric distribution system may provide telecommunications services, including local exchange telephone service as defined in § 56-1, within or outside its boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide telecommunications services within any locality in which it ~~has had~~ electric distribution system facilities as of March 1, ~~2002~~ 2012. Any locality providing telecommunications services on March 1, ~~2002~~ 2012, may provide telecommunications, Internet access, broadband, information, and data transmission services within any locality within ~~75~~ 100 miles of the geographic boundaries of its electric distribution system as such system existed on March 1, ~~2002~~ 2012.

B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services; (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services; (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services; and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits, or other permanent distribution facilities owned, leased, or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

D. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services; or (ii) as permitted by the provisions of subdivision B 5 of § 56-265.4:4. The provisions of this subsection shall not apply to Internet access, broadband, information, ~~and~~ or data transmission services provided by any locality providing telecommunications services ~~on~~ as of March 1, ~~2002~~ 2012.

E. No locality providing such services shall acquire by eminent domain the facilities or other property of any telecommunications service provider to offer cable, telephone, data transmission, or other information or online programming services.

F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit.

G. As used in this section, "locality" ~~shall mean~~ means any county, city, town, authority, or other governmental entity ~~which~~ that provides or seeks to provide telecommunications services. Every locality shall comply with the requirements of § 56-265.4:4 or 56-484.7:1 unless otherwise specifically exempt. Any locality that has obtained a certificate pursuant to § 56-265.4:4, and which surrenders or transfers such certificate, shall continue to remain subject to subsections C, D, and E if any substantial part of its telecommunications assets or operations are transferred to an entity in which the locality has the right to

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59 appoint board members, directors, or managers.