

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 187

An Act to amend and reenact § 56-265.4:4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-481.2, relating to public service companies; local exchange telephone companies.

[S 880]

Approved March 14, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 56-265.4:4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-481.2 as follows:

§ 56-265.4:4. Certificate to operate as a telephone utility.

A. No certificate shall be granted to an applicant proposing to furnish local exchange telephone service in the territory of another certificate holder unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience. If the Commission shall be of the opinion that the service rendered by the existing certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, that certificate holder shall be given reasonable time and opportunity to remedy the inadequacy before any certificate shall be granted to an applicant proposing to operate in that territory.

B. The Commission may, however, grant certificates to competing telephone companies for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. Any company so certificated shall not be allowed to offer services within local market areas as defined by the State Corporation Commission or in local access and transport areas as established under federal court order until January 1, 1986.

C.1. *Effective January 1, 1996, after notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the Commission may, however, grant certificates to applicants proposing to furnish local exchange telephone service in the service territory of another certificate holder. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and any incumbent local exchange telephone company, and is in the public interest.*

2. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional thirty-day increments not to exceed an additional ninety days in all.

3. The Commission shall promulgate rules necessary to implement this subsection. These rules shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the applicant and incumbent local exchange telephone company so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) require that the Commission determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services.

§ 56-481.2. Rates, charges and regulations for local exchange telephone services provided by new entrants.

If, under subsection C of § 56-265.4:4, a certificate of public convenience and necessity is issued to a new entrant to provide local exchange telephone service, the Commission shall at the same time adopt a form of regulation for the new entrant's local exchange services and, upon application pursuant to

§ 56-235.5, for the incumbent local exchange telephone company, that does not regulate the earnings of either. In approving the form of regulation of the new entrant's local exchange services, the Commission shall do so in a manner that is equitable to the new entrant and the incumbent local exchange telephone company and in the public interest. In determining the appropriate form of regulation for the new entrant, the Commission shall: (i) consider whether the form of regulation reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and incumbent local exchange telephone company, and is in the public interest. In approving the appropriate form of regulation for the new entrant, the Commission may take such action as it deems appropriate in the public interest, with due consideration being given to the competitiveness of the services, including deregulation and detariffing the services. Nothing in this section shall be construed to deprive the Commission of its power to modify the form of regulation, after notice and an opportunity for hearing, if it finds that competition or the potential for competition no longer effectively regulates the price of a service. Except as provided for in this section and in subsection C of § 56-265.4:4, no other provision of law relating to the regulation of rates, charges, and regulation of local exchange telephone services shall apply to the provision of such services by new entrants.

2. That, prior to January 1, 1996, the State Corporation Commission may institute a rulemaking proceeding to adopt rules pursuant to the provisions of this act.