

LD6917288

## HOUSE BILL NO. 1957

Offered January 20, 1995

*A BILL to amend and reenact § 56-265.4:4 of the Code of Virginia, relating to public service companies; certificate to operate as a telephone utility.*

Patrons—Heilig, Albo, Baker, Ball, Behm, Bloxom, Callahan, Christian, Cooper, Councill, Crittenden, Croshaw, Dickinson, Dillard, Dudley, Fisher, Forbes, Giesen, Griffith, Hamilton, Hargrove, Harris, Hull, Ingram, Jones, J.C., Kidd, May, McClure, Moore, Murphy, Nelms, O'Brien, Orrock, Phillips, Puller, Robinson, Rollison, Ruff, Shuler, Stump, Thomas and Wagner; Senators: Calhoun, Maxwell, Waddell and Woods

Referred to Committee on Corporations, Insurance and Banking

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

**1. That § 56-265.4:4 of the Code of Virginia is amended and reenacted 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. On and after January 1, 1996, after notice and hearing, the Commission may, however, grant certificates to applicants proposing to furnish local exchange telephone service in the service territory of another certificate holder if, after considering the public convenience, the public need and potential benefits and any such other factors the Commission determines relevant, it deems such action to be in the public interest. No overlapping certificate for local exchange telephone service shall be granted on terms or conditions more favorable or less burdensome than those in the incumbent local exchange telephone company's certificate, and the Commission shall ensure that there is no cross-subsidization of the applicants' local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services.

1. 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.

2. Notwithstanding any other provision of this Code, if a certificate is issued under this subsection or subsection B to provide telephone service, and upon the actual entry of the competitor's service into the incumbent's territory, it shall be presumed that the corresponding service provided by the incumbent local exchange telephone company is subject to competition, and, at that time, this service of the local exchange company and that of its competitor shall be classified in the affected territory as a competitive service for regulatory purposes. The Commission may, upon complaint of any interested person, hold a hearing to determine whether competition is an effective regulator of the rates of the incumbent local exchange company and change that competitive classification in accordance with subsections F and G of § 56-235.5 of this Code.

3. Notwithstanding any other provision of this Code, if a certificate is issued under this subsection, the Commission shall, if it has not already done so, adopt a form of regulation for the incumbent local exchange telephone company and the new entrant that does not rely on the regulation of earnings of either of the companies.

4. Notwithstanding any other provision of this Code, no certificate shall be issued: (i) to a company to provide local exchange telephone services in the service territory of a telephone company subject to

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60 *the provisions of Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of Title 56, unless such*  
61 *telephone company or any of its affiliated companies is certificated to provide local exchange telephone*  
62 *service outside of its certificated service territory, (ii) to a cable television company, licensed, franchised*  
63 *or certificated pursuant to § 15.1-23.1 of the Code, in locations where the affected local exchange*  
64 *telephone company is prohibited by federal or state law from providing, either directly or through an*  
65 *affiliated company, video programming services to subscribers, or (iii) to a company which offers or*  
66 *intends to offer an interexchange telephone service as well as a local exchange telephone service within*  
67 *the affected local exchange telephone company's certificated territory and the local exchange telephone*  
68 *company is prohibited by federal or state mandate from providing that interexchange service on either*  
69 *an interstate or intrastate basis.*