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SENATE BILL NO. 707

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-596 through 56-600, relating to cable television; nondiscriminatory access to broadband Internet access transport services.

Patrons—Barry, Norment, Saslaw and Schrock; Delegates: Byron and Weatherholtz

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-596 through 56-600, as follows:

CHAPTER 24.**ACCESS TO BROADBAND INTERNET ACCESS TRANSPORT SERVICES.****§ 56-596. Definitions.**

As used in this chapter:

"Access" means the ability to make a physical connection to the facilities of a cable operator at any place where the cable operator exchanges consumer data with any Internet service provider, or at any other technically feasible point selected by the requesting Internet service provider, so as to enable consumers to exchange data over such facilities with the Internet service provider selected by the consumer.

"Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. As used herein, "own" and "ownership" refer to ownership of any management interest or ownership of ten percent or more of the equity or other financial interest, or the equivalent thereof, in an entity.

"Broadband" means a capability to transmit data at a rate in excess of 200 kilobits per second.

"Broadband Internet access transport services" means the broadband transmission of data between a user and his Internet service provider's point of interconnection with the broadband Internet access transport provider's facilities.

"Cable operator" has the same meaning as set forth in 47 U.S.C. § 522 (5).

"Cable service" has the same meaning as set forth in 47 U.S.C. § 522 (7).

"Franchise" has the same meaning as set forth in 47 U.S.C. § 522 (9).

"Franchising authority" has the same meaning as set forth in 47 U.S.C. § 522 (10).

"Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprises the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

"Internet service provider" means a person who provides a service that enables users to access content, information, electronic mail, or other services offered over the Internet.

§ 56-597. Nondiscriminatory access.

A. Each cable operator holding a franchise to provide cable service pursuant to § 15.2-2108 shall provide to any requesting Internet service provider access to its broadband Internet access transport services, unbundled from the provision of content, on rates, terms, and conditions that are at least as favorable as those on which it provides such access to itself, to its affiliates, or to any other person. Such access to the cable operator's broadband Internet access transport services shall be provided at any technically feasible point selected by the requesting Internet service provider. Except as otherwise specifically required by law, such cable operator shall not restrict the content of information that a consumer may receive over the Internet.

B. The requirements imposed pursuant to this chapter on any cable operator shall apply equally to any other entity (i) to which the cable operator's franchise is transferred, assigned, or granted, or (ii) which otherwise subsequently exercises rights under the cable operator's franchise.

§ 56-598. Effect of more favorable access requirements.

If a cable operator providing broadband Internet access transport services is or shall become subject to more extensive or different access requirements with respect to the provision of broadband Internet access transport services imposed by or agreed upon with any other jurisdiction in the United States, any requesting Internet service provider may, at its option, require such cable operator to comply with such other requirements in lieu of the requirements imposed pursuant to § 56-597. In such event, nothing shall alter the applicability of §§ 56-599 and 56-600.

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59 § 56-599. *Private right of action.*

60 Any Internet service provider who suffers loss as a result of being denied access to a cable
61 operator's broadband Internet access transport services in violation of § 56-597 or § 56-598 shall be
62 authorized to maintain a private action to enforce its rights under this chapter and to seek all other
63 appropriate relief, including, without limitation, injunctive relief and monetary damages. In such an
64 action, the court may in its discretion award to the party substantially prevailing its reasonable costs,
65 expenses, and attorneys' fees.

66 § 56-600. *Enforcement.*

67 In addition to any other penalties, remedies, or other enforcement measures provided for by federal,
68 state or local law, regulation or ordinance, the Attorney General and the locality granting the franchise
69 for cable service are authorized to bring an action to enforce the requirements of § 56-597 and
70 § 56-598 and to seek all appropriate relief, including, without limitation, injunctive relief. In addition,
71 the locality granting the franchise for cable service may require the cable operator and any requesting
72 Internet service provider to submit their dispute to mediation or any other dispute resolution proceeding
73 authorized pursuant to Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01.