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HOUSE BILL NO. 1021

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on March 4, 2002)

(Patron Prior to Substitute—Delegate D.W. Marshall)

A BILL to amend and reenact §§ 15.2-1500, 56-1, 56-265.1, 56-235.5, 56-265.4:4, 56-458, 56-462, 56-468.1, 56-484.4, 56-484.7:1, 56-484.7:2, 58.1-2660, and 58.1-3813.1 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 7 of Chapter 21 of Subtitle II of Title 15.2 a section numbered 15.2-2160, and by adding a section numbered 56-479.2, and by adding in Article 5.1 of Chapter 15 of Title 56 a section numbered 56-484.7:4, and to repeal § 56-484.7:3 of the Code of Virginia, relating to public utilities; telecommunications services.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1500, 56-1, 56-235.5, 56-265.1, 56-265.4:4, 56-458, 56-462, 56-468.1, 56-484.4, 56-484.7:1, 56-484.7:2, 58.1-2660, and 58.1-3813.1 of the Code of Virginia are amended and reenacted, and the Code of Virginia is amended by adding in Article 7 of Chapter 21 of Subtitle II of Title 15.2 a section numbered 15.2-2160, and by adding a section numbered 56-479.2, and by adding in Article 5.1 of Chapter 15 of Title 56 a section numbered 56-484.7:4, as follows:

§ 15.2-1500. Organization of local government.

A. Every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.

B. ~~Notwithstanding any other provision of law, general or special,~~ *Except as provided in § 15.2-2160 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56,* no locality shall establish any department, office, board, commission, agency or other governmental division or entity which has authority to offer telecommunications equipment, infrastructure, other than pole or tower attachments including antennas or conduit occupancy, or services, other than intragovernmental radio dispatch or paging systems shared by adjoining localities, for sale or lease to any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities, so long as any charges for such telecommunications equipment, infrastructure and services do not exceed the cost to the providing locality of providing such equipment, infrastructure or services. However, any town which is located adjacent to Exit 17 on Interstate 81 and which offered telecommunications services to the public on January 1, 1998, is hereby authorized to continue to offer such telecommunications services, but shall not acquire by eminent domain the facilities or other property of any telephone company or cable operator. Any locality may sell any telecommunications infrastructure, including related equipment, which such locality ~~had~~*has* constructed ~~prior to September 1, 1998~~, and such locality may receive from the purchaser or purchasers, as full or partial consideration for the sale of such infrastructure, communications services to be used solely for internal use of the locality. ~~Any locality which sells such infrastructure, including related equipment, may, at its option, exclude the incumbent local exchange carrier from the bid or other sale process.~~ *The locality shall not be involved in any way in the promotion or marketing of services provided by any purchaser.*

C. ~~Notwithstanding the provisions of subsection B,~~ a*A* locality, electric commission or board, industrial development authority, or economic development authority, may lease dark fiber ~~pursuant to § 56-484.7:1~~. For purposes of this section, "dark fiber" means fiber optic cable ~~which~~ *that* is not lighted by lasers or other electronic equipment. ~~The price for such lease may include reasonable provisions for the recovery of the cost of the network and installation of additional fiber and related facilities to complete the lessor's network but shall not be related to the revenue or profit of the lessee. The lessor may recover costs of constructing such leased network and any extensions or improvements thereto; however, such lessor may not profit from the leasing of such facilities. The lease may require the lessee to make additional investments in the lessee's facilities based on such factors as the number of customers, market share, the lessee's revenue or the lessee's profit. Any such extension or improvements constructed by a lessee shall remain the property of the lessee; however, the lessee may be required to provide dedicated use to the lessor for the lessor's own internal purposes for the life of the fiber.~~ The locality, electric commission or board, industrial development authority, or economic development authority, shall not be involved in the promotion or marketing of the lessee as the provider of the services.

§ 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 electric distribution system facilities as of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide such services within any locality within 75 miles of the geographic boundaries of its electric distribution system as such system existed on March 1, 2002.

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. 4. of § 56-265.4:4.

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.

§ 56-1. Definitions.

Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "the Commission" shall mean the State Corporation Commission.

The word "corporation" or "company" shall include all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

The words "interexchange telephone service" shall mean telephone service between points in two or more exchanges, which is not classified as local exchange telephone service.

The words "local exchange telephone service" shall mean telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission.

The word "person" shall include individuals, partnerships and corporations.

The words "public service corporation" or "public service company" shall include gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier~~, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth~~. *"Public service corporation" or "public service company" shall not include a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate.*

The word "railroad" shall include all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

The words "railroad company" shall include any company, trustee or other person owning, leasing or operating a railroad.

The word "rate" shall be considered to mean "rate charged for any service rendered or to be rendered."

The words "rate," "charge" and "regulation" shall include joint rates, joint charges and joint regulations, respectively.

The words "transportation company" shall include any railroad company, any company transporting express by railroad, and any ship or boat company.

§ 56-235.5. Telephone regulatory alternatives.

A. As used in this section, "telephone company" means any public service corporation or public service company which holds a certificate of public convenience and necessity to furnish local exchange telephone service, except that companies which are regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title are not included within this definition.

B. In regulating telephone services of any telephone company, and notwithstanding any provision of law to the contrary, the Commission, after giving notice and an opportunity for hearing, may replace the ratemaking methodology set forth in § 56-235.2 with any alternative form of regulation which: (i) protects the affordability of basic local exchange telephone service, as such service is defined by the Commission; (ii) reasonably ensures the continuation of quality local exchange telephone service; (iii) will not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services; and (iv) is in the public interest. Alternatives may differ among telephone companies and may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation. A hearing under this section shall include the right to present evidence and be heard. Prior to any hearing under this section, the Commission shall provide parties an opportunity to conduct discovery.

C. Any telephone company or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title may apply to the Commission at any time to obtain an alternative form of regulation. The Commission shall approve the application if it finds, after notice to all affected parties and hearing, that the proposal meets the standards for an alternative form of regulation set forth in subsection B.

1. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for an alternative form of regulation shall be entered no more than ninety 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. If the Commission approves the application with modifications, the telephone company, or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title, may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application, unless it is modified for a telephone company by the Commission pursuant to subsection B.

D. The Commission may, after notice and opportunity for hearing, alter, amend or revoke any alternative form of regulation previously implemented if it finds that (i) the affordability of basic local exchange service, as such service is defined by the Commission, is threatened by the alternative form of regulation; (ii) the quality of local exchange telephone service has deteriorated or will deteriorate to the point that the public interest will not be served by continuation of the alternative form of regulation; (iii) the terms ordered by the Commission in connection with approval of a company's application for alternative form of regulation have been violated; (iv) any class of telephone company customers or other providers of competitive services are being unreasonably prejudiced or disadvantaged by the alternative form of regulation; or (v) the alternative form of regulation is no longer in the public interest.

E. The Commission shall have the authority, after notice to all affected parties and an opportunity for hearing, to determine whether any telephone service of a telephone company is subject to competition and to provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified regulation determined by the Commission to be in the public interest for such competitive services.

F. The Commission may determine telephone services of any telephone company to be competitive when it finds competition or the potential for competition in the market place is or can be an effective regulator of the price of those services. *Such determination may be made by the Commission on a statewide or a more limited geographic basis, such as one or more political subdivisions or one or more telephone exchange areas.* In determining whether competition effectively regulates the prices of services, the Commission ~~may~~*shall* consider: (i) the ease of market entry, (ii) the presence of other providers reasonably meeting the needs of consumers, and (iii) other factors the Commission considers relevant. Notwithstanding any other provisions of this subsection, ~~all services classified as actually competitive services under the provisions of the Experimental Plan adopted by the Commission in Case No. PUC880035 in its final order of December 15, 1988, and remaining so classified as of the effective date of this section, shall be considered to be competitive services~~*any telephone services that are the*

functional equivalent of the services provided by a county, city or town pursuant to § 56-264.4:4 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title, either directly or pursuant to a public-private partnership, shall be deemed competitive services in the geographic area where the services of the county, city or town are offered for purposes of this article and any alternate regulatory plans approved by the Commission.

G. The Commission shall monitor the competitiveness of any telephone service previously found by it to be competitive under any provision of subsection F above and may change that conclusion, if, after notice and an opportunity for hearing, it finds that competition no longer effectively regulates the price of that service.

H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C above, or determines that a service is competitive pursuant to subsections E and F above, the Commission shall adopt safeguards to protect consumers and competitive markets. At a minimum these safeguards must ensure that there is no cross subsidization of competitive services by monopoly services.

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, *unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.*

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than fifty customers. Any company furnishing water or sewer services to ten or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within thirty days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than thirty-five commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within sixty days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to any city with a population of at least

64,000 but no more than 69,000 or any county with a population of at least 500,000.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than one commercial or industrial purchaser or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within sixty days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to a commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

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

A. The Commission may grant certificates to competing telephone companies, *or any county, city or town that operates an electric distribution system,* 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. A certificate to provide interexchange services shall not authorize the holder to provide local exchange services. The Commission may grant a certificate to a carrier, *or any county, city or town that operates an electric distribution system,* to furnish local exchange services as provided in subsection B.

B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to ~~applicants~~ *any telephone company, or any county, city or town that operates an electric distribution system,* proposing to furnish local exchange telephone service in the ~~service territory of another certificate holder~~*Commonwealth*. 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. *All local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002,*

unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002.

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~~*certificated* local exchange telephone ~~company~~ *companies* 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. *The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 4 of this subsection.*

4. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

5. The Commission shall promulgate rules necessary to implement this subsection.

C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city or town that has obtained a certificate pursuant to this section.

§ 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same.

A. Every telegraph company and every telephone company incorporated by this or any other state, or by the United States, may construct, maintain and operate its line along and parallel to any of the railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues and alleys in any of the counties, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within this Commonwealth, for the erection of poles and wires, or cables, or the laying of underground conduits, portions of which they may lease, rent, or hire to other like companies; provided, however, that if the road or street be in the State Highway System or the secondary system of state highways, the consent of the board of supervisors or other governing authority of any county shall not be necessary, but a permit for such occupation and use shall first be obtained from the Commonwealth Transportation Board.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; provided, however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.

C. No locality or the Commonwealth Transportation Board shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the

following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within forty-five days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth Transportation Board shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Commonwealth Transportation Board to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection I of § 56-468.1, or the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees charged by certificated providers of telecommunications services for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Commonwealth Transportation Board continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only ~~and~~ , does not cover any relocation, rearrangement or other make-ready costs, *and does not apply to any county, city or town that has obtained a certificate pursuant to § 56-265.4:4*.

§ 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of streets, etc., and construction thereon.

A. No incorporated city or town shall grant to any such telegraph or telephone corporation the right to erect its poles, wires, or cables, or to lay its conduits upon or beneath its parks, streets, avenues, or alleys until such company shall have first obtained, in the manner prescribed by the laws of this Commonwealth, the franchise to occupy the same. Any city or town may impose upon any such corporation any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its parks, streets, avenues, and alleys, and as to the construction and maintenance of the facilities of such company along, over, or under the same, that the city or town may deem expedient and proper. The Commonwealth Transportation Board may also impose upon any such company any terms, rules, regulations, requirements, restrictions and conditions consistent herewith and supplemental hereto, as to the occupation and use of roads and streets in either state highway system, and as to the construction, operation or maintenance of the works along, over, or under the same, which the Board may deem expedient and proper, but not in conflict, in incorporated cities and towns, with any vested contractual rights of any such company with such city or town.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.

C. No locality or the Commonwealth Transportation Board shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within forty-five days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth

Transportation Board shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Commonwealth Transportation Board to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection I of § 56-468.1, or the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Commonwealth Transportation Board continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only ~~and~~, does not cover any relocation, rearrangement or other make-ready costs*, and does not apply to any county, city or town that has obtained a certificate pursuant to § 56-265.4:4*.

§ 56-468.1. Public Rights-of-Way Use Fee.

A. As used in this article:

"Access lines" are defined to include residence and business telephone lines and other switched common lines connecting the customer premises to the end office switch. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service lines.

"Certificated provider of telecommunications service" means a public service corporation *or locality* holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service.

"Locality" has the same meaning as contained in § 15.2-102.

"New installation of telecommunications facilities" or "new installation" includes the construction of new pole lines and new conduit systems, and the burying of new cables in existing public rights-of-way. New installation does not include adding new cables to existing pole lines and conduit systems.

"Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the centerline mileage of highways and streets which are part of the State Highway System as defined in § 33.1-25, the secondary system of highways as defined in § 33.1-67, the highways of those cities and certain towns defined in § 33.1-41.1 and the highways and streets maintained and operated by counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to return.

B. Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a certificated provider of telecommunications service by the Commonwealth Transportation Board *or a locality* in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, may impose the Public Rights-of-Way Use Fee only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow certificated providers of telecommunications services to use their electric poles or electric conduits in exchange for payment of a fee.

C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department of Transportation (VDOT), based on the calculations described in subsection D of this section. In no year shall the amount of the fee be less than fifty cents per access line per month.

D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the number of public highway miles in the Commonwealth by a highway mileage rate (as defined in subsection E of this section), and by adding the number of feet of new installations in the Commonwealth (multiplied by one dollar per foot), and dividing this sum by the total number of access lines in the Commonwealth. The monthly rate shall be this annual rate divided by twelve.

E. The annual multiplier per mile is $250 from July 1, 1998, through June 30, 1999; $300 per mile for the year July 1, 1999, through June 30, 2000; $350 per mile for the year July 1, 2000, through June 30, 2001; and $425 per mile beginning July 1, 2001 and thereafter.

F. The data used for the calculation in subsection D shall be based on the following information and schedule: (i) all certificated providers of telecommunications services shall remit to VDOT by December 1 of each year data indicating the number of feet of new installations made during the one-year period

ending September 30 of that year, which shall be auditable by affected localities, and the number of access lines as of September 30 of that year, which shall be auditable by affected localities; and (ii) the public highway mileage from the most recently published VDOT report. By the following January 15, VDOT shall calculate the Public Rights-of-Way Use Fee to be used in the fiscal year beginning the next ensuing July 1 and report it to all affected localities and certificated providers of local exchange telephone services.

G. A certificated provider of local exchange telephone service shall collect the Public Rights-of-Way Use Fee on a per access line basis by adding the fee to each ultimate end user's monthly bill for local exchange telephone service. The Public Rights-of-Way Use Fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local exchange telephone service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local exchange service provider, the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality or VDOT. If any ultimate end user refuses to pay the Public Rights-of-Way Use Fee, the local exchange service provider shall notify the locality or VDOT, as appropriate. After the consumer pays the Public Rights-of-Way Use Fee to the local exchange service provider, such fee collected shall be deemed to be held in trust by the local exchange service provider until remitted to the locality or VDOT.

H. Within two months after the end of each calendar quarter, each certificated provider of local exchange telephone service shall remit the amount of Public Rights-of-Way Use Fees it has billed to ultimate end users during such preceding quarter, as follows:

1. The certificated provider of local exchange telephone service shall remit directly to the applicable locality all Public Rights-of-Way Use Fees billed in (i) cities, (ii) towns whose public streets and roads are not maintained by VDOT, and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return, provided, however, that such counties shall use a minimum of ten percent of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to § 15.2-3530 shall use a minimum of ninety percent of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each certificated provider of local exchange telephone service to VDOT. VDOT shall allocate the total amount received from certificated providers to the construction improvement program of the secondary system of state highways. Within such allocation to the secondary system, VDOT shall apportion the amounts so received among the several counties, other than those described in clause (iii) of subdivision 1, on the basis of population, with each county being credited a share of the total equal to the proportion that its population bears to the total population of all such counties. For purposes of this section the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and apportionment of Public Rights-of-Way Use Fees shall be in addition to, and not in lieu of, any other allocation of funds to such secondary system and apportionment to counties thereof provided by law.

I. Any locality with a franchise agreement, ordinance implementing a franchise agreement or other form of consent allowing the use of the public rights-of-way, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge in effect as of February 1, 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional rights-of-way management practices that do not comply with §§ 56-458 C and 56-462 C. The Public Rights-of-Way Use Fee shall not be imposed in any such locality.

Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all affected certificated providers of local exchange telephone service no later than March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such locality to the registered agent of the affected certificated provider of local exchange telephone service. For localities adopting the Public Rights-of-Way Use Fee by ordinance in 1998, collection of the fee shall begin on the first day of the month occurring ninety days after receipt of notice as required by this subsection.

§ 56-479.2. Anti-competitive acts.

A. No telecommunications service provider shall engage in anti-competitive acts or practices in connection with its provision of telecommunications services including price discrimination, predatory pricing or tying arrangements, as such terms are commonly applied in antitrust law.

B. Any telecommunications service provider injured or threatened with injury by a violation of any of the provisions of this section or § 15.2-2160 may maintain a cause of action for injunctive relief, damages, or both, and for reasonable costs and attorney's fees before the circuit court for the locality in

which the injury occurs.

§ 56-484.4. Definitions.

As used in this article, unless the context otherwise requires, the term:

"Department" means the Department for the Deaf and Hard-of-Hearing.

"Operation" means those functions reasonably and directly necessary for the provision of telecommunications relay service, including contract procurement and administration, and public education and information regarding such service.

"Telecommunications relay service" means a facility whereby a person who has a hearing or speech disability using a text telephone and a person using a conventional telephone device can communicate with each other via telephone.

"Telephone company" means a certificated local exchange telephone company, *or any county, city or town that has obtained a certificate pursuant to § 56-265.4:4,* which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

"Voice carry over" means technology that will enable a deaf or hard-of-hearing person with good speech to use his voice, instead of the text telephone, to communicate back to the hearing person.

Article 5.1.

Lease*Provision* of Certain Telecommunications Infrastructure*Communications Services.*

§ 56-484.7:1. Offering of communications services.

Notwithstanding the provisions of § 15.2-1500, a*A* county, city, town, electric commission or board, industrial development authority, or economic development authority may lease on nondiscriminatory terms, for a term not to exceed ten years, dark fiber, as that term is defined in subsection C of § 15.2-1500, to one or more certificated local exchange telephone companies and to not-for-profit educational schools and institutions, hospitals, health clinics and medical facilities for use in serving their not-for-profit purposes. Any such lease must specify the qualifying telecommunications service to be offered by the lessee and the geographic area in which that service will be offered. *offer qualifying communications services, or enter into public-private partnerships to offer such qualifying communications services, in accordance with the provisions of this article.* For purposes of this section*article*, a "qualifying telecommunications *communications* service" is a telecommunications *communications* service, which shall include but is not limited to, high-speed data service and Internet access service, of general application to be offered by the lessee which is not otherwise generally and competitively available in the geographic area in which the service will be offered by an entity other than an entity leasing from the . *The* county, city, town, electric commission or board, industrial development authority, or economic development authority. Such lessee shall not be prohibited from offering authorized telecommunications services in addition to the qualifying telecommunications service over the leased facilities. *shall demonstrate in its petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition.* No such lease *services* shall be effective *offered* unless, prior to entering into such lease *offering such services*: (i) the proposed lessee *county, city, town, electric commission or board, industrial development authority or economic development authority* petitions the State CorporationCommission to approve such lease of the dark fiber *the offering of such qualifying communications services within a specified geographic area* and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the lease *petition* or fails to approve or disapprove the lease *petition* within sixty days after notice. The sixty-day period may be extended by Commission order for a period not to exceed an additional sixty days. The lease*petition* shall be deemed approved if the Commission fails to act within sixty days after notice or any extended period ordered by the Commission.

§ 56-484.7:2. Approval.

The State Corporation Commission shall find that it is in the public interest to approve the lease of dark fiber *offering of qualifying communications services* as specified *defined* in § 56-484.7:1 unless it shall be demonstrated to the Commission and found that, within the geographic area to be served by the lease *specified in the petition*: (i) the lease will not promote the provision of competitive communications service within the geographic area; (ii) the lease will not enhance economic development; (iii) the qualifying telecommunications *communications* service specified in its lease*the petition* as provided for in § 56-484.7:1 is*, or functional substitutes therefor, is* readily and generally available from three or more nonaffiliated certificated local exchange companies, not including any lessee; (iv)*(ii)* the lease *petition* is not in compliance with the requirements of § 56-484.7:1; or (v)*(iii)* the lease*offering of the proposed qualifying communications services* will not benefit consumers. The factor stated in clause (iii) shall not apply to leases of dark fiber filed for approval within five years of the Commission's approval of the first lease of dark fiber by that county, city, town, electric commission or board, industrial development authority, or economic development authority.

§ 56-484.7:4. Revocation of Commission approval.

The Commission may revoke its approval of a petition under § 56-484.7:1 no earlier than five years after such approval if it finds (i) that the factors described in § 56-484.7:2 on which the approval was based no longer exist or are no longer being satisfied, or (ii) that the petitioner has not made satisfactory progress toward making generally available the qualifying communications services specified in the petition. If the Commission finds that such approval should be revoked, it shall determine a date by which the county, city, town, electric commission or board, or authority shall cease to offer such qualifying communications services. In determining such date the Commission shall allow a reasonable time for the entity to offer its equipment, infrastructure and other assets related to such qualifying communications services for sale at fair market value. The provisions of this section shall not apply to the use of telecommunications equipment and services for intragovernmental purposes as specified in § 15.2-1500.

§ 58.1-2660. (Applicable for tax years beginning on and after January 1, 2002) Special revenue tax; levy.

In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of § 58.1-2664, a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, by means of gas or steam, except for electric suppliers, gas utilities, and gas suppliers as defined in § 58.1-400.2 and pipeline distribution companies as defined in § 58.1-2600;

2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Telephone companies whose gross receipts from business done within the Commonwealth exceed $50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;

4. The Virginia Pilots' Association;

5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § 58.1-2661; ~~and~~

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than forty miles measured one way between their place of work, school or recreation and their place of abode*; and*

7. Any county, city or town that obtains a certificate pursuant to § 56-265.4:4.

§ 58.1-3813.1. Local tax for enhanced 911 service; definitions.

A. As used in this section and § 58.1-3813.2, unless context requires a different meaning:

"Automatic location identification" or "ALI" means a telephone network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireline 9-1-1 call.

"Automatic number identification" or "ANI" means a telephone network capability that enables the automatic display of the telephone number used to place a wireline 9-1-1 call.

"Board" means the Wireless E-911 Services Board established pursuant to § 56-484.13.

"Enhanced 9-1-1 service" or " E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"Local exchange carrier" means any public service company *or county, city or town* granted a certificate to ~~furnish public utility service for the provision of~~ *provide* local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a twenty-four-hour basis to receive and process 911 calls.

B. Any county, city or town which has, singly or by joint agreement, established or will establish an enhanced 911 service may impose a special tax on the consumers of the telephone service or services provided by any corporation subject to the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, not to exceed a monthly fee of three dollars. However, no such tax shall be imposed on federal, state and local government agencies or on consumers of CMRS, as such term is defined in § 56-484.12. Such tax shall be subject to the notification and jurisdictional provisions of § 58.1-3812.

C. The governing body of any county, city or town may exempt from payment of the tax any subscriber to individual telephone service who resides in a nursing home or similar adult care facility.

D. Prior to imposing such tax, the governing body of any city, town or county shall find that an enhanced 911 service, as defined in subsection A, has been or will be installed in its respective locality and that the telephone company has central office equipment which will permit such system to be established.

E. For the purpose of compensating a telephone utility for accounting for and remitting the tax levied by this section, such telephone utility shall be allowed three percent of the amount of tax due and accounted for in the form of a deduction in submitting the return and paying the amount due by it.

F. Any such taxes imposed by this section shall be accounted for in a separate special revenue fund or accounted for using a cost center and revenue accounting system acceptable to the Auditor of Public Accounts. The locality shall report revenues, expenditures, and balances of the E-911 special revenue fund or cost center in accordance with the specifications set forth in § 15.2-2510. Amounts collected from the tax shall be used solely to pay for reasonable, direct recurring and nonrecurring capital costs, and operating expenses incurred by a public safety answering point in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware and software required to receive and process emergency telephone calls through an E-911 system, including salaries and fringe benefits of dispatchers and direct call-takers of an E-911 system and costs incurred in training dispatchers and direct call-takers in receiving and dispatching emergency telephone calls, and the salary and fringe benefits of the public safety answering point director or coordinator so long as such person has no other duties other than the responsibility for the public safety answering point.

G. Localities shall ensure that the audit contract with their independent certified public accountant includes audit procedures, in accordance with the specifications set forth in § 15.2-2511, of the separate special revenue fund or cost center required to be established for receiving and accounting for amounts collected under the tax authorized by this section. The specifications shall require an annual audit, beginning July 1, 2000, of such fund or cost center so as to ensure that the amounts collected from such tax are expended solely to pay wireline PSAP cost as defined in this article. The independent certified public accountants shall report any findings to the Auditor of Public Accounts by November 30 following the fiscal year end. The Auditor of Public Accounts shall summarize findings from all localities and report those findings annually to the Governor, the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission by February 1 of the next year.

2. That § 56-484.7:3 of the Code of Virginia is repealed.