

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 76

An Act to amend and reenact §§ 2.2-3705.6, 15.2-2160, 56-265.4:4, 56-466.1, and 56-502 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 21 of Title 15.2 an article numbered 1.2, consisting of sections numbered 15.2-2108.19 through 15.2-2108.31, and to repeal § 15.2-2108 of the Code of Virginia, relating to licensing and regulation of cable television systems.

[H 1404]

Approved March 10, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.6, 15.2-2160, 56-265.4:4, 56-466.1, and 56-502 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 21 of Title 15.2 an article numbered 1.2, consisting of sections numbered 15.2-2108.19 through 15.2-2108.31, as follows:

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such entities, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private

Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Confidential proprietary records that are provided by a franchisee under ~~§ 15.2-2108~~ *Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2* to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

Article 1.2.

Licensing and Regulation of Cable Television Systems.

§ 15.2-2108.19. Definitions.

As used in this article:

"Act" means the Communications Act of 1934.

"Affiliate", in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

"Basic service tier" means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.

"Cable operator" means any person or group of persons that (i) provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (ii) otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. Cable operator does not include a provider of wireless or direct-to-home satellite transmission service.

"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

"Cable system" or "cable television system" means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

"Certificated provider of telecommunications services" means a person holding a certificate issued by the State Corporation Commission to provide local exchange telephone service.

"Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority, including a locality or the Commonwealth Transportation Board, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system, a telecommunications system, or other facility in the public rights-of-way. A negotiated cable franchise is granted by a locality after negotiation with an applicant pursuant to § 15.2-2108.20. An ordinance cable franchise is granted by a locality when an applicant provides notice pursuant to § 15.2-2108.21 that it will provide cable service in the locality.

"Force majeure" means an event or events reasonably beyond the ability of cable operator to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which cable operator's facilities are attached or to be attached or conduits in which cable operator's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

"Gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, in an ordinance cable franchise "gross revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of cable service for resale or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable

service; and (viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

"Interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

"Ordinance" includes a resolution.

"Transfer" means any transaction in which (i) an ownership or other interest in the cable operator is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the cable operator is transferred; or (ii) the rights and obligations held by the cable operator under the cable franchise granted under this article are transferred or assigned to another person or group of persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the cable franchise shall not include (a) transfer of an ownership or other interest in the cable operator to the parent of the cable operator or to another affiliate of the cable operator; (b) transfer of an interest in the cable franchise granted under this article or the rights held by the cable operator under the cable franchise granted under this article to the parent of the cable operator or to another affiliate of the cable operator; (c) any action that is the result of a merger of the parent of the cable operator; (d) any action that is the result of a merger of another affiliate of the cable operator; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the cable operator in the cable franchise or the system used to provide cable in order to secure indebtedness.

"Video programming" means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 et seq. In addition, references in this article to any federal law shall include amendments thereto as are enacted from time-to-time.

§ 15.2-2108.20. Authority to grant negotiated cable franchises and regulate cable systems.

A. A locality may grant a negotiated cable franchise in accordance with Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq., and this chapter.

B. A locality may, by ordinance, exercise all regulatory powers over cable systems granted by the Communications Act of 1934, except as limited by this article. These regulatory powers shall include the authority: (i) to enforce customer service standards in accordance with the Act; (ii) to enforce more stringent standards as agreed upon by the cable operator through the terms of a negotiated cable franchise; and (iii) to regulate the rates for basic cable service in accordance with the Act. A locality, however, shall not regulate cable operators, cable systems, or other facilities used to provide video programming through the adoption of ordinances or regulations (a) that are more onerous than ordinances or regulations adopted for existing cable operators; (b) that unreasonably prejudice or disadvantage any cable operator, whether existing or new; or (c) that are inconsistent with any provision of federal law or this article.

§ 15.2-2108.21. Ordinance cable franchises.

A. This section shall govern the procedures by which a locality may grant ordinance cable franchises.

B. An ordinance cable franchise, which shall have a term of 15 years, may be requested by (i) a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise; (ii) a certificated provider of telecommunications services that lacked previous consent to provide cable service in a locality but provided telecommunications services over facilities leased from an entity having previous consent to use of the public rights-of-way in such locality through a franchise; or (iii) a cable operator with previous consent to use the public rights-of-way to provide cable service in a locality through a franchise and who seeks to renew its existing cable franchise pursuant to § 15.2-2108.30 as an ordinance cable franchise. A cable operator with previous consent to use the public rights-of-way to provide cable service in a locality through a franchise may opt into the new terms of an ordinance cable franchise under § 15.2-2108.26.

C. In order to obtain an ordinance cable franchise, an applicant shall first file with the chief administrative officer of the locality from which it seeks to receive such ordinance cable franchise a request to negotiate the terms and conditions of a negotiated cable franchise under § 15.2-2108.20. An applicant shall request and make itself available to participate in cable franchise negotiations with the locality from which it seeks to receive negotiated cable franchise at least 45 calendar days prior to filing a notice electing an ordinance cable franchise; this prerequisite shall not be applicable if a locality refuses to engage in negotiations at the request of an applicant or if the applicant already holds a negotiated cable franchise from the locality. Thereafter, an applicant, through its president or chief executive officer, shall file notice with the locality that it elects to receive an ordinance cable franchise at least 30 days prior to offering cable in such locality. The notice shall be accompanied by a map or a

boundary description showing (i) the initial service area in which the cable operator intends to provide cable service in the locality within the three-year period required for an initial service area and (ii) the area in the locality in which the cable operator has its telephone facilities. The map or boundary description of the initial service areas may be amended by the cable operator by filing with the locality a new map or boundary description of the initial service area.

D. The cable operator shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides. The local franchising authority shall have the right to monitor and inspect the deployment of cable services and the cable operator shall submit semiannual progress reports detailing the current provision of cable services in accordance with the deployment schedule and its new service area plans for the next six months. The failure to correct or remedy any material deficiencies shall be subject to the same remedies as contained in the cable television franchise of the existing cable operator as that franchise existed at the time of the grant of the ordinance franchise.

E. The locality from which the applicant seeks to receive an ordinance cable franchise shall adopt any ordinance requiring adoption under this article within 120 days of the applicant filing the notice required in subsection C. Any ordinance adopted under this section that relates to a cable operator's provision of cable service shall apply to such cable operator retroactively to the date on which the cable operator began to offer cable service in the locality pursuant to this article.

F. Notice of any ordinance that requires a public hearing shall be advertised once a week for two successive weeks in a newspaper having general circulation in the locality. The advertisement shall include a statement that a copy of the full text of the ordinance is on file in the office of the clerk of the locality. All costs of such advertising shall be assessed against the operator or applicant.

G. If the governing body of any town adopts an ordinance pursuant to the provisions of this article, such town shall not be subject to any ordinance adopted by the county within which such town lies.

§ 15.2-2108.22. Regulation of fees, rates and services; penalties.

Upon receiving a notice requesting an ordinance cable franchise pursuant to § 15.2-2108.21, a locality shall adopt or maintain one or more ordinances that govern a cable operator who provides cable service under an ordinance cable franchise. The requirements of any specific provision in any such ordinance shall not exceed the requirements imposed in the same provision, if any, in any existing cable franchise within the locality. Such ordinance or ordinances, which shall be adopted after a public hearing, shall:

1. Require a cable operator to provide the locality with access to a number of public, educational, and governmental access channels, equal to the lowest number of such channels provided by any other cable operator in the same franchise area of the locality. If the existing cable operator provides less than three such public, educational, and governmental access channels pursuant to a franchise agreement, the locality may require each cable operator to provide up to three such channels. Any additional channels provided subject to this provision shall be subject to the reclamation formula set forth below. In addition, a locality may, by ordinance adopted after a public hearing, require a cable operator to interconnect with any other cable operator to ensure the carriage of required public, educational, and governmental access channels; if the new cable operator and all existing cable operators cannot agree to an interconnection agreement within 180 days of a request to interconnect by the new cable operator, then the locality is authorized to determine an interconnection point. The locality or its designee shall assume responsibility for management, operation, and programming of such channels. A locality that substantially utilizes its existing public, educational, and governmental access channels may require a reasonable number of additional public, educational, and governmental access channels by the enactment of an ordinance, after a public hearing, so long as (i) the ordinance applies equally to all providers of cable service within a franchise area, (ii) the total number of additional public, educational, and governmental access channels does not exceed three channels in the basic service tier, and (iii) the total number of public, educational, and governmental access channels shall not exceed seven channels in the aggregate. Notwithstanding the foregoing, but consistent with federal law, the locality and a cable operator may enter into written agreements for the carriage of additional public, educational, and governmental access channels, including other arrangements for the carriage of such programming. Any additional public, educational, and governmental access channel provided pursuant to this article that is not utilized by the locality for at least eight hours a day shall no longer be made available to the locality, but may be programmed at the cable operator's discretion. At such time as the locality can certify to the cable operator a schedule for at least eight hours of daily programming for a period of three months, the cable operator shall restore the previously re-allocated channel. For purposes of this subdivision, a public, educational, and governmental access channel shall be considered to be substantially utilized when 12 hours are programmed on that channel each calendar day; in addition, at least 33% of the 12 hours of programming for each business day on average over each calendar quarter must be nonrepeat programming. For purposes of this subdivision, nonrepeat programming shall include the first three videocastings of a program and shall include programming on other public, educational, and governmental access channels in that locality. Programming for purposes of determining substantial utilization shall not include an alphanumeric scroll, except that for purposes

of requiring one or more additional public, educational, and governmental access channels, an alphanumeric scroll shall be included as programming on not more than one channel;

2. Require a cable operator to pay a franchise fee, remitted on the same schedule as the least frequent schedule of an existing cable operator, but no more frequently than quarterly, calculated by multiplying a franchise fee percentage rate by the cable operator's gross revenues in such franchise area for the remittance period; however, the franchise fee rate shall (i) not exceed 5% of such gross revenues and (ii) not exceed the lowest franchise fee rate paid or provided by an existing cable operator in the locality. The locality may further require that the cable operator make the franchise fee payments to the locality no later than 45 days following the end of the remittance period and require that the franchise fee payment be submitted with a brief report prepared by a duly authorized representative of the cable operator showing the basis for the computation. The locality shall have the right to reasonably require further supporting information that does not exceed the information required to be provided by existing cable operators in the locality;

3. Require a cable operator to pay a recurring fee, hereafter referred to as the PEG Capital Fee, to support the capital costs of public, educational, and governmental channel facilities, including institutional networks, provided that the PEG Capital Fee is equal to the lowest recurring fee imposed on a per subscriber or a percentage of gross revenue basis and paid by any existing cable operator in the locality to support the capital costs of such facilities. The PEG Capital Fee shall only be imposed on a per subscriber or a percentage of gross revenue basis. If the existing cable operator has paid a lump sum capital grant at award or renewal of its current franchise, or is providing in-kind equipment in lieu of such a capital grant, to support public, educational, and governmental channel facilities, including institutional networks, the locality, by ordinance adopted after a public hearing, shall also impose an additional monthly recurring fee to be known as the PEG Capital Grant Surcharge Fee on the new cable operator equal to the lower of (i) 1.5% of the new cable operator's gross revenues derived from the operation of its cable system in that locality or (ii) the lowest amount of capital contribution paid or provided in-kind, as shown on the books of the cable operator, by an existing cable operator in the locality (a) when such capital contribution is amortized over the term of the existing cable operator's franchise and (b) divided by the number of subscribers or annual gross revenue of the existing cable operator as shown on its most recent report to the locality, depending on recovery methodology chosen by the locality. Both the PEG Capital Fee and the PEG Capital Grant Surcharge Fee may only be collected by the locality for the remainder of the shortest remaining franchise term of any existing cable operator in the locality; however, at the end of such term the locality may negotiate with all cable operators to set a new, recurring fee to support the reasonable and necessary capital costs of public, educational, and governmental channel facilities, including institutional networks, that shall be imposed on all cable operators such that the fee applies equally to all of the customers of all cable operators in the locality. At the end of such term, no cable operator shall be required to provide any further in-kind public, educational, and governmental access channels, including institutional network, support. If the cable operators and the locality cannot agree on such a recurring capital cost fee, the locality, by ordinance adopted after a public hearing, may impose a recurring fee, calculated on a per subscriber or percentage of gross revenue basis, to support the reasonable and necessary capital costs of public, educational, and governmental channel facilities, including institutional networks; however, such fee may not exceed the PEG Capital Fee previously imposed on cable operators by the locality. Any and all fees permitted under this subdivision shall be paid by the cable operator to the locality on the same schedule as franchise fees are paid. Nothing in this subdivision shall be construed to permit a locality to require cable operators to pay capital grants at the time of the grant or renewal of a franchise or otherwise except for the PEG Capital Grant Surcharge Fee specifically provided in this subdivision;

4. Require a cable operator to comply with the customer service requirements imposed by the locality pursuant to 47 U.S.C. § 552(a)(1) and this article through the adoption of an ordinance after a public hearing. Any customer service requirements imposed by the locality that exceed the requirements established by the Federal Communications Commission under 47 U.S.C. § 552(b) shall (i) not be designed so that the cable operator cannot also comply with any other customer service requirements under state or federal law or regulation applicable to the cable operator in its provision of other services over the same network used to provide cable service, (ii) be no more stringent than the customer service requirements applied to other cable operators in the franchise area, and (iii) be reasonably tailored to achieve appropriate customer service goals based on the technology used by the cable operator to provide cable service;

5. Adopt procedures by which it will enforce the provisions of this article and the applicable mandatory requirements of 47 U.S.C. §§ 521-573 and the regulations promulgated thereunder. Such procedures shall require the locality to: (i) informally discuss the matter with the cable operator in the event that the locality believes that a cable operator has not complied with this article or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 and (ii) notify the cable operator in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The cable operator shall have 15 days from receipt of

this written notice to: (a) respond to the locality, if the cable operator contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 15-day period, initiate reasonable steps to remedy such default and notify the locality of the steps being taken and the projected date that they will be completed. The locality shall schedule a public hearing in the event that the cable operator fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within 30 days of the date projected above if the locality intends to continue its investigation into the default. The locality shall provide the cable operator at least 30 business days prior written notice of such hearing, which will specify the time, place, and purpose of such hearing, and provide the cable operator the opportunity to be heard;

6. Adopt a schedule of uniform penalties or liquidated damages that it may impose upon any cable operator with an ordinance cable franchise when the locality determines that the cable operator has failed to materially comply with (i) customer service standards; (ii) carriage of public, educational, and governmental channels; (iii) reporting requirements; or (iv) timely and full payment of the franchise fee or the fee assessed for the provision of public, educational, or governmental access channels, including institutional networks. Any penalty or liquidated damage for any of the foregoing violations shall be the same penalty or liquidated damage already established for a cable operator in the same franchise area, if any. In addition, a locality shall not impose any penalty or liquidated damage adopted pursuant to this subdivision until the cable operator has been afforded a reasonable cure period between the time the cable operator is notified of the violation and the penalty or liquidated damage is imposed. A separate violation for purposes of this article and the ordinances passed to implement this article as it pertains to customer service standards shall be deemed to occur whenever the locality reasonably determines that a separate customer service standard violation has occurred on one day; however, the cable operator shall not be charged with multiple violations for a single act or event affecting one or more subscribers on the same day. The locality may charge interest at the legal rate as set forth in § 6.1-330.53 for any amounts due the locality by the cable operator in clause (iv) of this subdivision that remain unpaid and undisputed;

7. Adopt procedures under which the locality may inspect and audit, upon 30 days prior written notice, the books and records of the cable operator and recompute any amounts determined to be payable under the ordinances adopted pursuant to this article. The procedures adopted by the locality shall not exceed the following requirements: (i) the locality may require the cable operator to make available to the locality all records reasonably necessary to confirm the accurate payment of fees; (ii) the locality may require the cable operator to bear the locality's reasonable out-of-pocket audit expenses if the audit discloses an underpayment of more than 3% of any quarterly payment, but not less than \$5,000; (iii) the locality may require the cable operator to pay any additional undisputed amounts due to the locality as a result of the audit within 30 days following written notice by the locality to the cable operator; (iv) in the event the cable operator disputes any underpayment discovered as the result of an audit conducted by the locality, the locality shall work together with the cable operator in good faith to promptly resolve such dispute; (v) the locality shall provide that the cable operator and the locality maintain all rights and remedies available at law regarding any disputed amounts; (vi) the locality shall have no more than three years from the time the cable operator delivers a payment to provide a written, detailed objection to or dispute of that payment, and if the locality fails to object to or dispute the payment within that time period, the locality shall be barred from objecting to or disputing it after that time period; and (vii) the locality shall not audit a cable operator more frequently than every 24 months;

8. Adopt reasonable reporting requirements for annual financial information and quarterly customer service information that must be provided by a cable operator to the locality so long as such information does not exceed the reporting requirements for any existing cable operator in that locality;

9. Require cable operators to provide, without charge, within the area actually served by the cable operator, one cable service outlet activated for basic cable service to each fire station, public school, police station, public library, and any other local government building. The ordinance shall apply equally to all providers of cable services in the locality, but shall not apply in cases where it is not technically feasible for a cable operator to comply;

10. Subject to § 15.2-2108.24, adopt requirements and procedures for (i) the management of the public rights-of-way that do not exceed the standards set forth in clauses (i) and (ii) of subsection C of § 56-462 and (ii) the construction of a cable system in the public rights-of-way;

11. Adopt the following allocation procedure if cable services subject to a franchise fee, or any other fee determined by a percentage of the cable operator's gross revenues in a locality, are provided to subscribers in conjunction with other services: the fee shall be applied only to the value of these cable services, as reflected on the books and records of the cable operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the State Corporation Commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction; and

12. *Require cable operators to make cable service available to (i) up to all of the occupied residential dwelling units in the initial service area selected by cable operator within no less than three years of the date of the grant of the franchise and (ii) no more than 65% of the residential dwelling units in the area in the locality in which the cable operator has its telephone facilities, within no less than seven years of the date of the grant of the franchise. Notwithstanding the foregoing provision, a cable operator shall not be required to make cable service available: (a) for periods of force majeure; (b) for periods of delay caused by the locality; (c) for periods of delay resulting from the cable operator's inability to obtain authority to access rights-of-way in the service area; (d) in areas where developments or buildings are subject to claimed exclusive arrangements; (e) in developments or buildings that the cable operator cannot access under industry standard terms and conditions after good faith negotiation; (f) in developments or buildings that the cable operator is unable to provide cable service for technical reasons or that require facilities that are not available or cannot be deployed on a commercially reasonable basis; (g) in areas where it is not technically feasible to provide cable service due to the technology used by the cable operator to provide cable service; (h) in areas where the average occupied residential household density is less than 30 occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the cable operator's active cable system (or such higher average density number as may be contained in an existing cable operator's cable franchise); and (i) when the cable operator's prior service, payment, or theft of service history with a subscriber or potential subscriber has been unfavorable. Should, through new construction, an area within the cable operator's service area meet the density requirement, a cable operator shall, subject to the exclusions in this subdivision, provide cable service to such area within six months of receiving notice from the locality that the density requirements have been met. A locality may not require a cable operator using its telephone facilities to provide cable service to provide any cable service outside of the area in the locality in which the cable operator has its telephone facilities. During the 12-month period commencing after the seventh-year anniversary date of the grant of the franchise, a locality may, by ordinance adopted after a public hearing in which the locality specifically finds that such a requirement is necessary to promote competition in cable services within the locality, require the cable operator to make service available to no more than 80% of the residential dwelling units in the area in the locality in which the cable operator has its telephone facilities within no less than 10 years of the date of the grant of the franchise, subject to the exclusions in clauses (a) through (i) of this subdivision. If the cable operator notifies the locality that it is unwilling to accept this additional service availability requirement, the locality may, after notice and public hearing, terminate the cable operator's ordinance cable franchise. The cable operator shall file a certificate at its third and seventh, and if applicable, tenth, anniversary dates certifying its compliance with the foregoing service requirements. For purposes of an ordinance cable franchise, the date of the grant of the franchise shall be the date the notice required by § 15.2-2108.21 is filed with the locality. For purposes of a negotiated cable franchise, the date of the grant of the franchise shall be the date the respective locality has granted a negotiated cable franchise pursuant to § 15.2-2108.20.*

§ 15.2-2108.23. Regulation of rights-of-way; fees.

A. To the extent that a franchised cable operator has been authorized to use the public rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such cable operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such rights-of-way, by the locality or the Commonwealth Transportation Board except to the extent that such cable operator is also a certificated provider of telecommunications services and subject to the public rights-of-way use fee under § 56-468.1. The Commonwealth Transportation Board may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees shall be established by regulations adopted under the Administrative Process Act (§ 2.2-4000 et seq.); however, such fees may not apply to certificated providers of telecommunications services except to the extent permitted under §§ 56-458, 56-462, and 56-468.1.

B. A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees existed on February 1, 1997, or as subsequently modified by ordinance; however, such fees may not apply to certificated providers of telecommunications services except to the extent permitted under §§ 56-458, 56-462, and 56-468.1. The limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a franchised cable operator and a locality or its authority or commission, which permits such operator to use the public poles or conduits.

C. Except as provided in §§ 56-458, 56-462, and 56-468.1 and in any rules adopted by the Commonwealth Transportation Board under § 33.1-12, the cable franchise granted hereunder supersedes and replaces any and all other requirements and fees in local laws and the laws of the Commonwealth relating to the use of the public rights-of-way by a cable system or other facilities for the provision of cable service, whether such other authorizations are designated as franchises, permits, consents, ordinances, or otherwise. No cable operator that is (i) a certificated provider of telecommunications

services that has previous consent to use the public rights-of-way in a locality through a franchise or (ii) a certificated provider of telecommunications services that lacked prior consent to provide cable service in a locality but provided telecommunications service over facilities leased from an entity having previous consent to use the public rights-of-way in such locality through a franchise and granted a franchise and paying fees pursuant to this section shall be required, in order to develop or operate a cable system or other facilities to provide video services, to (a) obtain consent in accordance with §§ 15.2-2105 through 15.2-2107, 56-458 or 56-462, except for permits or other permission to open streets and roads, or (b) submit bids, bonds or applications in accordance with §§ 15.2-2100 through 15.2-2105, except for reasonable performance bonds or letters of credit not in excess of \$50,000. The restrictions in §§ 15.2-2105 through 15.2-2108, 15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107, including but not limited to the advertisement and receipt of bids for franchises, shall not apply to a cable system or other facilities used to provide cable services by cable operator that is a certificated provider of telecommunications services with previous consent to use the public rights-of-way in a locality through a franchise, including the provision of telecommunications services over facilities leased from an entity with previous consent to use the public rights-of-way in a locality through a franchise, but without previous consent to provide cable service in that locality.

§ 15.2-2108.24. Regulation of facility construction or rights-of-way management requirements for certain cable operators.

A locality shall not impose through a franchise to provide cable service, whether by negotiation or by ordinance, any facility construction or rights-of-way management requirements on a cable operator that is (i) a certificated provider of telecommunications services that has a franchise to use the public rights-of-way in a locality or (ii) a certificated provider of telecommunications services that lacked prior consent to provide cable service in a locality but provided telecommunications services over facilities leased from an entity having a franchise to use the public rights-of-way in such locality, except that a municipality must meet the requirements of Article 1.1 (§ 15.2-2108.2 et seq.) of this chapter or otherwise be authorized to provide cable service.

§ 15.2-2108.25. Itemization.

A cable operator providing cable service may identify as a separate line item on each regular bill of each subscriber (i) the amount of the total bill assessed as a franchise fee, or any equivalent fee, and the locality to which such fee is paid; (ii) the amount of the total bill assessed to satisfy any requirements imposed on the cable operator, including those to support public, educational, or governmental access facilities, including institutional networks; and (iii) the amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental entity on the transaction between the cable operator and the subscriber.

§ 15.2-2108.26. Reciprocity.

Upon the request by an existing cable operator in the locality, a locality that has negotiated and granted a cable franchise to a new cable provider through negotiation, whether before or after July 1, 2006, shall make available to that existing cable operator the applicable terms and conditions that such locality provides to a new cable operator, by an amendment and restatement in lieu of its existing franchise document. In addition, upon the request by an existing cable operator in the locality, a locality adopting an ordinance under this article shall make available to that existing cable operator the applicable terms and conditions from any such ordinance by opting into an ordinance cable franchise. In either such event, the existing cable operator may accept all applicable terms and conditions only in their entirety and in lieu of its existing franchise document and without the ability to accept specific terms and conditions. The locality and the existing cable operator shall amend the cable franchise of the existing cable operator to substitute the new, applicable terms and conditions upon notice of acceptance from the existing cable operator. An existing cable provider in a locality shall have an enforceable right to require that its cable franchise be amended and restated within 90 days of its request to substitute the new, applicable terms and conditions of the new negotiated franchise or new ordinance cable franchise granted to a new cable franchisee. Notwithstanding any other provision in this article, (i) no existing cable operator shall reduce the geographic area in which it actually provides cable service as of July 1, 2006, by the exercise of its rights under this article, but its service obligations within such service areas shall be subject to the service exclusions set forth in clauses (a) through (i) of subdivision 12 of § 15.2-2108.22 and (ii) the provisions of this section shall not alter the time period remaining in any unexpired, existing franchise.

§ 15.2-2108.27. Modification.

No locality, without the consent of the franchisee, shall accelerate the term of, require the renegotiation of, or otherwise modify in any way, an agreement with any entity or a franchise, ordinance, permit, consent, or other authorization for such entity to use the public rights-of-way because such entity has been granted a cable franchise under this article to use the public rights-of-way for the development and operation of a cable system.

§ 15.2-2108.28. Transfer.

No transfer of any franchise granted under this article shall occur without the prior consent of the locality, provided that such locality shall not unreasonably withhold, delay, or condition such consent.

No transfer shall be made to a person, group of persons or affiliate that is not legally, technically, and financially qualified to operate the cable system and satisfy the franchise obligations.

§ 15.2-2108.29. Surrender.

Notwithstanding the provisions of this article, a new cable franchisee that considers, within three years after the grant of a cable franchise under this article, that its provision of cable services within the locality is no longer economically feasible may notify the locality and surrender its cable franchise for the entire locality without liability to such locality. If a new cable franchisee surrenders its cable service franchise, it shall not be eligible to obtain a new cable service franchise within such locality until after the normal expiration date of the franchise that such franchisee surrendered. Such surrender of a cable franchise shall have no impact on other franchises held by the new cable franchisee or noncable services offered by the new cable franchisee.

§ 15.2-2108.30. Renewal.

A cable operator electing to renew its cable franchise shall do so (i) pursuant to the renewal procedures in 47 U.S.C. § 546 or (ii) by providing notice to the locality that it will opt into an ordinance cable franchise pursuant to this article. A cable operator may file such notification that its cable franchise will be renewed by an ordinance cable franchise not more than one year in advance of the expiration date of the existing franchise or by a renewal certification filed within 90 days after the effective date of this act in the case of a current cable franchise whose original, renewal, or extension term has expired. Except as provided by federal law, the restrictions in §§ 15.2-2015 through 15.2-2018, 15.2-2100 through 15.2-2105, 15.2-2106 and 15.2-2107, including, but not limited to, the advertisement and receipt of bids for cable franchises, shall not apply to renewal certifications except where a renewal would result in a city or town having granted a cable franchise and a renewal with combined terms in excess of 40 years.

§ 15.2-2108.31. Article construed.

The fact that any person obtains a negotiated franchise or ordinance cable franchise to provide cable services under this article shall not create any presumption that such person is providing cable services, is controlling or responsible for the management and operation of a cable system, or is a cable operator, for purposes of federal law.

§ 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~~ telecommunications, Internet access, broadband, information, and data transmission 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 5 of § 56-265.4:4. *The provisions of this subsection shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002.**

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.

§ 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 any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange telephone service in the 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. Except as provided in subsection A of § 15.2-2160, 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 30-day increments not to exceed an additional 90 days in all.

3. The Commission 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 certificated local exchange telephone 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) 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 5 of this subsection.

4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 (P.L. 104-104) (the Act) and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the Commission may exercise its discretion to defer selected issues under the Act. If the Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

5. 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. Each certificated county, city, or town that provides telecommunications services regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) of this subdivision have been met. 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.

6. A locality that has obtained a certificate pursuant to this section 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.).

7. Each locality that has obtained a certificate pursuant to this section 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.

8. 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. *The provisions of this subdivision shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002.*

9. The Commission shall promulgate rules necessary to implement this section. In no event, however, shall the rules necessary to implement subdivisions B 5 iii and iv, B 6 ii through v, and B 8 impose any obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing telecommunications services regulated by the Commission.

10. Public records of a locality that has obtained a certificate pursuant to this section, 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 subdivision, 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.

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.

D. Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other communications service that its infrastructure is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of cable television services or other multi-channel video programming service. Furthermore, nothing in this subsection shall alter the authority of the Commission.

E. Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to December 31, 2002, is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the Commission to regulate cable television service.

§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers.

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to ~~§ 15.2-2108~~ Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting

its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

"Public utility" has the same meaning ascribed thereto in § 56-232.

"Rearrangement" means work performed at the request of a telecommunications service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

B. Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system.

C. After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions and the payment of reasonable annual charges and the cost of any required rearrangement, the attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such telecommunications service provider or cable television system that is authorized by law, to construct and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the service and operation of the public utility or create a safety hazard.

D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility, provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons of safety, reliability, or generally applicable engineering principles.

E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

§ 56-502. Regulation by State Corporation Commission.

Every cooperative organized under this chapter shall be subject to the jurisdiction of the State Corporation Commission with respect to telephone services and facilities in the same manner and to the same extent as are other similar utilities under the laws of Virginia, except that (i) the Commission shall have no jurisdiction over the rates, service quality and types of service offerings of the cooperative to its members; (ii) a cooperative shall not be required to file a local service tariff with the Commission; and (iii) where a cooperative establishes a cable television system, it shall be subject to ~~§ 15.2-2108 Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2.~~

2. That § 15.2-2108 of the Code of Virginia is repealed.

3. That in any locality in which the governing body of the locality has granted one or more new cable franchises during the 12-month period prior to July 1, 2006, that include an overlapping geographic service area with another cable franchise within that locality, all franchises within that locality shall remain in full force and effect until the earliest expiration date of the overlapping franchises or until one is terminated pursuant to the terms of the franchise and shall not be subject to the provisions of Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia, except as set forth in this clause. A locality that has granted one or more new, overlapping franchises within the 12-month period prior to July 1, 2006, shall have the option not to offer, accept, or implement the ordinance cable franchise process described in § 15.2-2108.22 of the Code of Virginia until the earliest expiration date of the overlapping franchises, but may determine only to grant new cable franchises during such period through the negotiated cable franchise process. Any such locality, when granting any additional cable franchises after July 1, 2006, and until the existing cable franchises expire or are terminated pursuant to their terms, shall make the terms of any such newly granted franchise available, pursuant to § 15.2-2108.26 of the Code of Virginia, to all cable operators with existing franchises. Any locality in which the governing body of the locality has granted one or more new cable franchises during the 12-month period prior to July 1, 2006, that include an overlapping geographic service area with another cable franchise within that locality, shall make the terms of any such newly granted franchise available, in the manner described in § 15.2-2108.26, to all cable operators with existing franchises on the date the subsequent overlapping franchise was awarded. Upon the expiration of a current

cable franchise that is subject to this clause, this clause shall no longer be applicable to any cable franchise in such locality and the locality shall thereafter be subject to all provisions of Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 of the Code of Virginia.