VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 780

An Act to amend and reenact §§ 8.01-225, 56-458, 56-462, 56-468.1, 56-484.12, 56-484.17, 56-484.18, 58.1-3, 58.1-3815, and 58.1-3816.2 of the Code of Virginia, to amend the Code of Virginia by adding in Article 1 of Chapter 21 of Title 15.2 a section numbered 15.2-2108.1:1, by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 through 58.1-662, and by adding in Chapter 17 of Title 58.1 an article numbered 7, consisting of a section numbered 58.1-1730, and to repeal §§ 15.2-2108, 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia, and to repeal the third enactment clause of Chapter 858 of the 1972 Acts of Assembly, relating to the taxation of communications services; penalties.

[H 568]

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225, 56-458, 56-462, 56-468.1, 56-484.12, 56-484.17, 56-484.18, 58.1-3, 58.1-3815, and 58.1-3816.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 21 of Title 15.2 a section numbered 15.2-2108.1:1, by adding in Chapter 13 of Title 51.5 a section numbered 51.5-115, by adding in Title 58.1 a chapter numbered 6.2, consisting of sections numbered 58.1-645 through 58.1-662, and by adding in Chapter 17 of Title 58.1 an article numbered 7, consisting of a section numbered 58.1-1730, as follows:

§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services technician certified by the Board of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, rescue or emergency squad, or any governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission or storage of liquefied petroleum gas, liquefied natural gas, hazardous material or hazardous waste as defined in § 18.2-278.1 or regulations of the Virginia Waste Management Board shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation, cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator, or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility, shall be deemed qualified to administer such emergency

treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an automated external defibrillator at the scene of an emergency, trains individuals to be operators of automated external defibrillators, or orders automated external defibrillators, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an automated external defibrillator in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

8. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue or any other place or while transporting such injured or ill person to a place accessible for transfer to any available emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance, including but not limited to acts or omissions which involve violations of any state regulation or any standard of the National Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or omission was the result of gross negligence or willful misconduct.

9. Is an employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the child's medication schedule or such employee has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a school board is covered by the immunity granted herein, the school board employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

B. Any licensed physician serving without compensation as the operational medical director for a licensed emergency medical services agency in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency services agency in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency services in good faith by the personnel of such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who, in good faith and in the performance of his duties, provides instruction to persons for certification or recertification as a certified basic life support or advanced life support emergency medical services technician shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless such act or omission was the result of such emergency medical services instructor's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a medical advisor to an E-911 system in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as defined in § ~~58.1-3813.1~~ *58.1-1730*, when answering emergency calls unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a supervisor of an automated external defibrillator in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to the owner of the automated external defibrillator relating to personnel training, local emergency medical services coordination, protocol approval, automated external defibrillator deployment strategies, and equipment maintenance plans and records unless such act or omission was the result of such physician's gross negligence or willful misconduct.

C. Any *communications services* provider ~~of telecommunication service~~, as defined in § ~~58.1-3812~~ *58.1-647*, including mobile service, *and any provider of Voice-over-Internet Protocol service,* in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct. *For purposes of this subsection, the term "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.*

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. 1. In the absence of gross negligence or willful misconduct, a health care provider shall not be liable in any civil action resulting from (i) injuries to any health care worker sustained in connection with administration of the vaccinia (smallpox) vaccine or other smallpox countermeasure, or (ii) any injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker; provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration. Nothing in this subsection shall preclude an injured health care worker, who is otherwise eligible for workers' compensation benefits pursuant to Title 65.2, from receipt of such benefits.

2. In the absence of gross negligence or willful misconduct, a health care worker shall not be liable in any civil action for injuries to any other person sustained as a result of such other person coming into contact, directly or indirectly, with a health care worker, provided the vaccinia (smallpox) vaccine or smallpox countermeasure was administered and monitored in accordance with the recommendations of the Centers for Disease Control and Prevention in effect at the time of the vaccinia (smallpox) vaccine or other smallpox countermeasure administration.

3. For the purposes of this subsection, "health care provider" means a health care provider participating in a smallpox preparedness program, pursuant to a declaration by the United States Department of Health and Human Services (HHS), through which individuals associated with the health care provider have received the vaccinia (smallpox) vaccine or other smallpox countermeasure defined by HHS from any hospital, clinic, state or local health department, or any other entity that is identified by state or local government entities or the HHS to participate in a vaccination program.

4. For the purposes of this subsection, "health care worker" means a health care worker to whom the vaccinia (smallpox) vaccine or other smallpox countermeasure has been administered as part of a smallpox preparedness program pursuant to a declaration by HHS. Such health care workers shall include but shall not be limited to: (i) employees of a health care provider referenced in subdivision 3, (ii) independent contractors with a health care provider referenced in subdivision 3, (iii) persons who have practice privileges in a hospital, (iv) persons who have agreed to be on call in an emergency room, (v) persons who otherwise regularly deliver prehospital care to patients admitted to a hospital, and (vi) first responders who, for the purposes of this section, are defined as any law-enforcement officer, firefighter, emergency medical personnel, or other public safety personnel functioning in a role identified by a federal, state, or local emergency response plan.

F. For the purposes of this section, the term "compensation" shall not be construed to include (i) the salaries of police, fire or other public officials or personnel who render such emergency assistance, (ii) the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of § 45.1-161.38, 45.1-161.101, 45.1-161.199 or 45.1-161.263, (iii) complimentary lift tickets, food, lodging or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group or agency, or (iv) the salary of any person who (a) owns an automated external defibrillator for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate automated external defibrillators at the scene of emergencies, (c) orders automated external defibrillators for use at the scene of emergencies, or (d) operates an automated external defibrillator at the scene of an emergency.

For the purposes of this section, an emergency medical care attendant or technician shall be deemed to include a person licensed or certified as such or its equivalent by any other state when he is performing services which he is licensed or certified to perform by such other state in caring for a patient in transit in this Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use cardiopulmonary resuscitation

(CPR) and an automated external defibrillator (AED) in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

§ 15.2-2108.1:1. Franchise fees and public rights-of-way fees on cable operators.

A. As used in this section:

"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, whether or not the operator has entered into a franchise agreement with a locality. 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 as defined in 47 U.S.C. § 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303(v).

"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.

"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, including either a negotiated cable franchise or an ordinance cable franchise.

B. Notwithstanding any other provision of law, if a cable operator uses the public rights-of-way the cable operator shall be subject to the Public Rights-of-Way Use Fee as provided in § 56-468.1. Any 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 cable operator and a locality or its authority or commission, which permits such operator to use the public poles or conduits.

C. Notwithstanding any other provision of law, no new or renewed cable franchise entered into on or after January 1, 2007, shall include a franchise fee as long as cable services are subject to the Virginia Communications Sales and Use Tax (§ 58.1-645 et seq.). Franchise fee as used in this subsection shall have the same meaning as that term is defined in 47 U.S.C. § 542(g).

1. All cable franchises in effect as of January 1, 2007, shall remain in full force and effect, and nothing in this section shall impair any obligation of any such agreement; provided, however, that any requirement in such an existing franchise for payment of a monetary franchise fee based on the gross revenues of the franchisee shall be fulfilled in the manner specified in subdivision 2.

2. Each cable operator owing monetary payments for franchise fees, until the expiration of one or more such existing franchises, shall include with its monthly remittance of the Communications Sales and Use Tax a report, by locality, of the amounts due for franchise fees accruing during that month. The Department of Taxation shall, on behalf of the cable operator in the relevant locality, then distribute to each county, city, or town the amount reported by each locality's franchisee(s). Such payments shall reduce the cable operator's franchise fee liability. The monthly distributions shall be paid from the Communications Sales and Use Tax Trust Fund before making the other calculations and distributions required by § 58.1-662. Until distributed to the individual localities, such amounts shall be deemed to be held in trust for their respective accounts.

3. A locality's acceptance of any payment under subdivision 2 shall not prejudice any rights of the locality under the applicable cable franchises (i) to audit or demand adjustment of the amounts reported by its franchisee, or (ii) to enforce the provisions of the franchise by any lawful administrative or judicial means.

§ 51.5-115. Telecommunications relay service; standards; funding.

A. As used in this section, unless the context requires otherwise, the term:

"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 telecommunications relay 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.

"VITA" means the Virginia Information Technologies Agency.

"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.

B. The Department, with the assistance of VITA, shall be responsible for the provision and operation of telecommunications relay service for all text telephones within the Commonwealth. Telecommunications relay service shall include at a minimum:

1. Twenty-four-hour-a-day, seven-day-a-week statewide access with no limitations or restrictions that are not applicable to voice users of the telephone network;

2. An answer rate that ensures that at least 85% of the incoming calls are operator-answered within 20 seconds and at least 99% of incoming calls are answered within 60 seconds;

3. Technological advances, including the capability of voice carryover; and

4. Adequate facilities and personnel to ensure that calls are interpreted accurately; notwithstanding this provision, unless miscommunication on a call is caused by the willful misconduct of the telecommunications relay service provider, liability of the telecommunications relay service provider shall be limited to the charges imposed on users for the call.

C. All costs associated with the establishment and operation of the telecommunications relay service, including but not limited to personnel costs incurred by the Department for administering the service, shall be funded through a distribution made to the Department in accordance with the provisions of § 58.1-662 and any money transferred from the Department as provided for in subsection D. Such distributions, when appropriate, may be zero. The distributions shall be based on projected costs and special interim distributions may be made if actual costs exceed projections. No distribution shall be made and no funds shall be expended to support any activities that are not reasonably and directly necessary for the operation of the telecommunications relay service as defined in this section.

D. The Department shall transfer any funds received from the National Exchange Carrier Association, or other funding sources for purposes of operating telecommunications relay services, to VITA for costs associated with telecommunications relay service.

§ 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~~ *J* 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, 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~~ *J* 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, 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~~ *(packet or circuit)* lines connecting the customer premises to the ~~end office switch.~~ *public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multistation telecommunications services will incur a Public Rights-of-Way Use Fee on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched network. ISDN Primary Rate Interface services will be charged five Public Rights-of-Way Use Fees for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications service provider shall be charged one fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network.* 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 *internally provided and* used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service ~~lines~~.

"Cable operator" and "cable system" have the same meanings as contained in subsection A of § 15.2-2108.1:1.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

~~"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.~~

"ISDN Primary Rate Interface" means digital communications service containing 24 bearer channels, each of which is a full 64,000 bits-per-second.

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

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"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.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Provider of local telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange telephone service and any other person who provides local telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"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 to the public for a fee and any other person who provides local or long distance telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"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.

"Subscriber" means a person who receives video programming, as defined in 47 U.S.C. § 522(20), distributed by a cable operator, as defined in subsection A of § 15.2-2108.1:1, and does not further distribute it.

B. *1.* 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 *on the ultimate end-users of local*

telecommunications service only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow ~~certificated~~ providers of telecommunications services *and cable operators* to use their electric poles or electric conduits in exchange for payment of a fee.

2. The Public Rights-of-Way Use Fee established by this section is hereby imposed on all cable operators that use the public rights-of-way.

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~~ *$0.50* 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~~ *$1* 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~~ *12*.

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~~ *telecommunications* services.

G. A ~~certificated~~ provider of local ~~exchange telephone~~ *telecommunications* service shall collect the Public Rights-of-Way Use Fee on a per access line basis *and the cable operator shall collect the Public Rights-of-Way Use Fee on a per subscriber basis* by adding the fee to each ultimate end user's monthly bill for local ~~exchange telephone~~ *telecommunications* service *or cable service. A company providing both local telecommunications service and cable service to the same ultimate end user may collect only one Public Rights-of-Way Use Fee from that ultimate end user based on (i) the local telecommunications service if the locality in which the ultimate end user resides has imposed a Public Rights-of-Way Use Fee on local telecommunications service or (ii) cable service if the locality in which the subscriber resides has not imposed a Public Rights-of-Way Use Fee on local telecommunications 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~~ *telecommunications* service *and cable service*. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local ~~exchange service~~ *telecommunications service* provider *or cable operator,* the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality, ~~or~~ VDOT, *or the Department of Taxation, as may be applicable*. If any ultimate end user *or subscriber* refuses to pay the Public Rights-of-Way Use Fee, the local ~~exchange~~ *telecommunications* service provider *or cable operator* shall notify the locality, ~~or~~ VDOT, *or the Department of Taxation,* 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.~~ *All fees collected in accordance with the provisions of this section shall be deemed to be held in trust by the local telecommunications service provider and the cable operator until remitted to the locality, VDOT, or the Department of Taxation, as applicable.*

H. Within two months after the end of each calendar quarter, each ~~certificated~~ provider of local ~~exchange telephone~~ *telecommunications* 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~~ *telecommunications* 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~~ *10%* 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~~ *90%* 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~~ *telecommunications* 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. *The Public Rights-of-Way Use Fee billed by a cable operator shall be remitted to the Department of Taxation for deposit into the Communication Sales and Use Tax Trust Fund by the twentieth day of the month following the billing of the fee.*

J. 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 *by a provider of local telecommunications service*, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge *on a provider of local telecommunications service* 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~~ *telecommunications* 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 *or providers* of local ~~exchange telephone~~ *telecommunications* 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.~~

§ 56-484.12. Definitions.

As used in this article, unless the context requires a different meaning:

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

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

"Board" means the Wireless E-911 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth of Virginia.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"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.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

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

"Place of primary use" has the meaning ~~attributed in subsection M of § 58.1-3812~~ *as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended*.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process E-911 calls or (ii) that intends to receive and process E-911 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the

wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless E-911 fund.

"Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service and direct personnel costs incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn to by an authorized agent of the PSAP.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of $.75 billed by each CMRS provider and CMRS reseller on each CMRS number of a customer with a place of primary use in Virginia; provided, however, that any fee collected or paid pursuant to the third paragraph of subsection B of § 56-484.17 is not required to be billed.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Except as provided in § 2.2-2031, moneys in the Fund shall be used solely for the purposes stated in subsections C through F. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Information Officer of the Commonwealth.

B. Each CMRS provider shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. In addition, the wireless E-911 surcharge shall be imposed on wireless customers who purchase prepaid CMRS service, subject to the provisions in this subsection. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Board for deposit in the Fund. Each CMRS provider and CMRS reseller may retain an amount equal to three percent of the amount collected to defray the costs of collecting the surcharges. State and local taxes shall not apply to any wireless E-911 surcharge collected from customers. Surcharges collected from customers who do not purchase CMRS service on a prepaid basis shall be subject to the provisions of ~~subsection K of § 58.1-3812~~ *the federal Mobile Telecommunications Sourcing Act (4 U.S.C. § 116 et seq., as amended)*.

For CMRS customers who do not purchase CMRS service on a prepaid basis, the CMRS provider and CMRS reseller shall collect the surcharge through regular periodic billing.

For CMRS customers who purchase CMRS service on a prepaid basis, the wireless E-911 surcharge shall be determined according to one of the following methodologies:

a. The CMRS provider and CMRS reseller shall collect, on a monthly basis, the wireless E-911 surcharge from each active prepaid customer whose account balance is equal to or greater than the amount of the surcharge; or

b. The CMRS provider and CMRS reseller shall divide its total earned prepaid wireless telephone revenue with respect to prepaid customers in the Commonwealth within the monthly E-911 reporting period by $50, multiply the quotient by the surcharge amount, and pay the resulting amount to the Board without collecting a separate charge from its prepaid customers for such amount; or

c. The CMRS provider and CMRS reseller shall collect the surcharge at the point of sale.

Collection of the wireless E-911 surcharge from or with respect to prepaid customers shall not reduce the sales price for purposes of taxes which are collected at point of sale.

C. To the extent of appropriated funds, the Board shall provide full payment to PSAP operators for all wireless E-911 PSAP costs and to CMRS providers of all wireless E-911 CMRS costs. For these purposes (i) each PSAP operator shall submit to the Board on or before October 1 of each year, an estimate of wireless E-911 PSAP costs it expects to incur during its next fiscal year and (ii) each CMRS provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it operates. The Board shall review such estimates and advise each PSAP operator and CMRS provider on or before the following March 1 whether its estimate qualifies for payment hereunder and whether the Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. Each PSAP operator and CMRS provider shall notify the Board promptly of any material change in its plans to provide wireless E-911 service.

D. The Board shall make such qualifying payments to each PSAP operator and CMRS provider at the beginning of each calendar quarter of such fiscal year or on an alternate schedule approved by the Board. If the Wireless E-911 Fund is insufficient during any calendar quarter to make all such qualifying payments, the Board shall prorate payments equally among all PSAP operators and CMRS providers during such calendar quarter. Unpaid amounts may be included in future funding requests to

the Board.

E. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall determine whether qualifying payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or CMRS provider. Each PSAP operator or CMRS provider shall provide such verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the Board or credited to qualifying payments during the then current fiscal year, on such schedule as the Board shall determine. If payments are less than the actual costs reported, the Board may include the additional funding with the next quarterly payment for the then current fiscal year.

F. Any estimate of wireless E-911 PSAP costs submitted to the Board after October 1 and any estimate of wireless E-911 CMRS costs submitted to the Board after December 31 of any year shall be reviewed by the Board as described in subsection C to the extent practicable as determined by the Board; however, any PSAP or CMRS costs submitted after the start of the fiscal year shall not be considered by the Board. Qualifying payments based on estimates submitted in accordance with the schedule set forth in subsection C shall have priority for payment.

G. CMRS providers and PSAPs found by the Board to be using the Wireless E-911 Fund moneys for purposes other than those authorized by the Board shall be provided with written notice by the Board of such unauthorized expenditures. Upon receipt of the notice, the named CMRS provider or PSAP shall cease making any expenditure involving Wireless E-911 Fund moneys identified by the Board as unauthorized. The CMRS provider or PSAP may petition and shall receive a hearing before the Board within a reasonable time. At the Board's discretion, the CMRS provider or PSAP shall be required to refund within 90 days any Wireless E-911 Fund moneys spent on unauthorized expenditures to the Board for deposit into the Wireless E-911 Fund. CMRS providers or PSAPs who fail to cease making unauthorized expenditures or fail to comply with a request to refund Wireless E-911 Fund moneys shall be subject to a suspension of future Wireless E-911 funding by the Board until such time as they comply with all provisions of this article. Any action of the Board made pursuant to this subsection shall be subject to appeal to the circuit court in which the CMRS provider or PSAP is located, or to the Circuit Court for the City of Richmond.

H. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission.

I. The special tax authorized by ~~§ 58.1-3813.1~~ *§ 58.1-1730* shall not be imposed on consumers of CMRS.

§ 56-484.18. Designation of official State Police access number; blocking caller identification prohibited.

A. Telephone number #77 is hereby designated as an official access number for wireless telephone usage in the Commonwealth for access to designated offices of the Department of State Police and shall be used solely for official business.

B. No caller shall block caller identification or other essential information on calls made to telephone number #77. Where technically feasible, wireline and wireless telephone providers shall provide calling party number identification for all wireless #77 calls. Any *communications services* provider ~~of telecommunications service~~, as defined in ~~§ 58.1-3812~~ *§ 58.1-647*, including mobile service, in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to #77 calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;

2. Acts performed or words spoken or published in the line of duty under the law;

3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;

4. The sales price, date of construction, physical dimensions or characteristics of real property, or any

information required for building permits;

5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;

6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable, and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Director of the Department of Charitable Gaming such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the remaining effective provisions of the Enterprise Zone Act (§ 59.1-270 et seq.), and the Enterprise Zone Grant Program (§ 59.1-538 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; ~~and~~ (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712*; and (xvii) provide to any commissioner of the revenue, director of finance, or any other officer of any county, city, or town performing any or all of the duties of a commissioner of the revenue and to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names, business addresses, and dates of registration of*

all dealers registered for such tax. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D of this section. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

CHAPTER 6.2.
VIRGINIA COMMUNICATIONS SALES AND USE TAX.

§ 58.1-645. Short title.

This chapter shall be known and may be cited as the "Virginia Communications Sales and Use Tax Act."

§ 58.1-646. Administration of chapter.

The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.

§ 58.1-647. Definitions.

Terms used in this chapter shall have the same meanings as those used in Chapter 6 of this title, unless defined otherwise, as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming as defined in 47 U.S.C. § 522(20) or (ii) other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d) and any direct-to-home satellite service as defined in 47 U.S.C. § 303(v).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Coin-operated communications service" means a communications service paid for by means of inserting coins in a coin-operated telephone.

"Communications services" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for the transmission or conveyance. The term includes, but is not limited to, (i) the connection, movement, change, or termination of communications services; (ii) detailed billing of communications services; (iii) sale of directory listings in connection with a communications service; (iv) central office and custom calling features; (v) voice mail and other messaging services; and (vi) directory assistance.

"Communications services provider" means every person who provides communications services to customers in the Commonwealth and is or should be registered with the Department as a provider.

"Cost price" means the actual cost of the purchased communications service computed in the same manner as the sales price.

"Customer" means the person who contracts with the seller of communications services. If the person who utilizes the communications services is not the contracting party, the person who utilizes the services on his own behalf or on behalf of an entity is the customer of such service. "Customer" does not include a reseller of communications services or the mobile communications services of a serving carrier under an agreement to serve the customer outside the communications service provider's licensed service area.

"Customer channel termination point" means the location where the customer either inputs or receives the private communications service.

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services for purposes other than the electronic transmission, conveyance, or routing.

"Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. "Internet access service" does not include telecommunications services, except to the extent telecommunications services are purchased, used, or sold by a provider of Internet access to provide Internet access.

"Place of primary use" means the street address representative of where the customer's use of the communications services primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile communications services, the place of primary use shall be within the licensed service area of the home service provider.

"Postpaid calling service" means the communications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, debit card, or by a charge made to a telephone number that is not associated with the origination or termination of the communications service.

"Prepaid calling service" means the right to access exclusively communications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars that decrease in number with use.

"Private communications service" means a communications service that entitles the customer or user to exclusive or priority use of a communications channel or group of channels between or among channel termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

"Retail sale" or a "sale at retail" means a sale of communications services for any purpose other than for resale or for use as a component part of or for the integration into communications services to be resold in the ordinary course of business.

"Sales price" means the total amount charged in money or other consideration by a communications services provider for the sale of the right or privilege of using communications services in the Commonwealth, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the communications services provider, including but not limited to, sales taxes on goods or services purchased by the communications services provider, property taxes, taxes measured by net income, and universal-service fund fees.

"Service address" means, (i) the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If the location is not known in clause (i), "service address" means (ii) the origination point of the signal of the telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If the location is not

known in clauses (i) and (ii), the service address means (iii) the location of the customer's place of primary use.

§ 58.1-648. Imposition of sales tax; exemptions.

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with § 58.1-649.

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; and (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

§ 58.1-649. Sourcing rules for communication services.

A. Except for the defined communication services in subsection C, the sale of communications service sold on a call-by-call basis shall be sourced to the Commonwealth when the call (i) originates and terminates in the Commonwealth or (ii) either originates or terminates in the Commonwealth and the service address is also located in the Commonwealth.

B. Except for the defined communication services in subsection C, a sale of communication services sold on a basis other than a call-by-call basis, shall be sourced to the customer's place of primary use.

C. The sale of the following communication services shall be sourced to the Commonwealth as follows:

1. Subject to the definitions and exclusions of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116, a sale of mobile communication services shall be sourced to the customer's place of primary use.

2. A sale of postpaid calling service shall be sourced to the origination point of the communications signal as first identified by either (i) the seller's communications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. A sale of a private communications service shall be sourced as follows:

a. Service for a separate charge related to a customer channel termination point shall be sourced to each jurisdiction in which such customer channel termination point is located;

b. Service where all customer termination points are located entirely within one jurisdiction shall be sourced to such jurisdiction in which the customer channel termination points are located;

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced 50% to each jurisdiction in which the customer channel termination points are located; and

d. Service for segments of a channel located in more than one jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on a percentage determined by dividing the number of customer channel termination points in each jurisdiction by the total number of customer channel termination points.

§ 58.1-650. Bundled transaction of communications services.

A. For purposes of this chapter, a bundled transaction of communications services includes communications services taxed under this chapter and consists of distinct and identifiable properties,

services, or both, sold for one nonitemized charge for which the tax treatment of the distinct properties and services is different.

B. In the case of a bundled transaction described in subsection A, if the charge is attributable to services that are taxable and services that are nontaxable, the portion of the charge attributable to the nontaxable services shall be subject to tax unless the communications services provider can reasonably identify the nontaxable portion from its books and records kept in the regular course of business.

§ 58.1-651. Tax collectible by communication service providers; jurisdiction.

A. The tax levied by § 58.1-648 shall be collectible by all persons who are communications services providers, who have sufficient contact with the Commonwealth to qualify under subsection B, and who are required to be registered under § 58.1-653. However, the communications services provider shall separately state the amount of the tax and add that tax to the sales price of the service. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. A communications services provider shall be deemed to have sufficient activity within the Commonwealth to require registration if he does any of the activities listed in § 58.1-612.

C. Nothing contained in this chapter shall limit any authority that the Commonwealth may enjoy under the provisions of federal law or an opinion of the United States Supreme Court to require the collection of communications sales and use taxes by any communications services provider.

§ 58.1-652. Customer remedy procedures for billing errors.

If a customer believes that an amount of tax, or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications service provider reasonably requires to process the request. Within 15 days of receiving a notice under this section in the provider's billing dispute office, the communications service provider shall review its records, within an additional 15 days, to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications service provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications service provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

§ 58.1-653. Communications services providers' certificates of registration; penalty.

A. Every person desiring to engage in or conduct business as a communications services provider in the Commonwealth shall file with the Tax Commissioner an application for a certificate of registration.

B. Every application for a certificate of registration shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business, and such other information as the Tax Commissioner may reasonably require.

C. When the required application has been made, the Tax Commissioner shall issue to each applicant a certificate of registration. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of the business designated therein.

D. Whenever a person fails to comply with any provision of this chapter or any rule or regulation relating thereto, the Tax Commissioner, upon a hearing after giving the noncompliant person 30 days' notice in writing, specifying the time and place of the hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend the certificate of registration held by that person. The notice may be personally served or served by registered mail directed to the last known address of the noncompliant person.

E. Any person who engages in business as a communications services provider in the Commonwealth without obtaining a certificate of registration, or after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor as shall each officer of a corporation that so engages in business as an unregistered communications services provider. Each day's continuance in business in violation of this section shall constitute a separate offense.

F. If the holder of a certificate of registration ceases to conduct his business, the certificate shall expire upon cessation of business, and the certificate holder shall inform the Tax Commissioner in writing within 30 days after he has ceased to conduct business. If the holder of a certificate of registration desires to change his place of business, he shall so inform the Tax Commissioner in writing and his certificate shall be revised accordingly.

G. This section shall also apply to any person who engages in the business of furnishing any of the things or services taxable under this chapter. Moreover, it shall apply to any person who is liable only

for the collection of the use tax.

§ 58.1-654. Returns by communications services providers; payment to accompany return.

A. Every communications services provider required to collect or pay the sales or use tax shall, on or before the twentieth day of the month following the month in which the tax is billed, transmit to the Tax Commissioner a return showing the sales price, or cost price, as the case may be, and the tax collected or accrued arising from all transactions taxable under this chapter. In the case of communications services providers regularly keeping books and accounts on the basis of an annual period that varies from 52 to 53 weeks, the Tax Commissioner may make rules and regulations for reporting consistent with such accounting period.

A sales or use tax return shall be filed by each registered communications services provider even though the communications services provider is not liable to remit to the Tax Commissioner any tax for the period covered by the return.

B. At the time of transmitting the return required under subsection A, the communications services provider shall remit to the Tax Commissioner the amount of tax due after making appropriate adjustments for accounts uncollectible and charged off as provided in § 58.1-655. The tax imposed by this chapter shall, for each period, become delinquent on the twenty-first day of the succeeding month if not paid.

§ 58.1-655. Bad debts.

In any return filed under the provisions of this chapter, the communications services provider may credit, against the tax shown to be due on the return, the amount of sales or use tax previously returned and paid on accounts that are owed to the communications services provider and that have been found to be worthless within the period covered by the return. The credit, however, shall not exceed the amount of the uncollected payment determined by treating prior payments on each debt as consisting of the same proportion of payment, sales tax, and other nontaxable charges as in the total debt originally owed to the communications services provider. The amount of accounts for which a credit has been taken that are thereafter in whole or in part paid to the communications services provider shall be included in the first return filed after such collection.

§ 58.1-656. Discount.

For the purpose of compensating a communications services provider holding a certificate of registration under § 58.1-653 for accounting for and remitting the tax levied by this chapter, a communications services provider shall be allowed the following percentages of the first 3% of the tax levied by § 58.1-648 and accounted for in the form of a deduction in submitting his return and paying the amount due by him if the amount due was not delinquent at the time of payment.

Monthly Taxable Sales	Percentage
$0 to $62,500	4%
$62,501 to $208,000	3%
$208,001 and above	2%

The discount allowed by this section shall be computed according to the schedule provided, regardless of the number of certificates of registration held by a communications services provider.

§ 58.1-657. Sales presumed subject to tax; exemption certificates; Internet access service providers.

A. All sales are subject to the tax until the contrary is established. The burden of proving that a sale of communications services is not taxable is upon the communications services provider unless he takes from the taxpayer a certificate to the effect that the service is exempt under this chapter.

B. The exemption certificate mentioned in this section shall relieve the person who obtains such a certificate from any liability for the payment or collection of the tax, except upon notice from the Tax Commissioner that the certificate is no longer acceptable. The exemption certificate shall be signed, manually or electronically, by and bear the name and address of the taxpayer; shall indicate the number of the certificate of registration, if any, issued to the taxpayer; shall indicate the general character of the communications services sold or to be sold under a blanket exemption certificate; and shall be substantially in the form as the Tax Commissioner may prescribe.

C. In the case of a provider of Internet access service that purchases a telecommunications service to provide Internet access, the Internet access provider shall give the communications service provider a certificate of use containing its name, address and signature, manually or electronically, of an officer of the Internet access service provider. The certificate of use shall state that the purchase of telecommunications service is being made in its capacity as a provider of Internet access in order to provide such access. Upon receipt of the certificate of use, the communications service provider shall be relieved of any liability for the communications sales and use tax related to the sale of telecommunications service to the Internet access service provider named in the certificate. In the event the provider of Internet access uses the telecommunications service for any taxable purpose, that provider shall be liable for and pay the communications sales and use tax directly to the Commonwealth in accordance with § 58.1-658.

D. If a taxpayer who holds a certificate under this section and makes any use of the service other than an exempt use or retention, demonstration, or display while holding the communications service for resale in the regular course of business, such use shall be deemed a taxable sale by the taxpayer as of

the time the service is first used by him, and the cost of the property to him shall be deemed the sales price of such retail sale.

§ 58.1-658. Direct payment permits.

A. Notwithstanding any other provision of this chapter, the Tax Commissioner shall authorize a person who uses taxable communications services within the Commonwealth to pay any tax levied by this chapter directly to the Commonwealth and waive the collection of the tax by the communications services provider. No such authority shall be granted or exercised except upon application to the Tax Commissioner and issuance by the Tax Commissioner of a direct payment permit. If a direct payment permit is issued, then payment of the communications sales and use tax on taxable communications services shall be made directly to the Tax Commissioner by the permit holder.

B. On or before the twentieth day of each month every permit holder shall file with the Tax Commissioner a return for the preceding month, in a form prescribed by the Tax Commissioner, showing the total value of the taxable communications services so used, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the submitted return, and other information as the Tax Commissioner deems reasonably necessary. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time for filing returns and paying the tax. Interest on the tax shall be chargeable on every extended payment at the rate determined in accordance with § 58.1-15.

C. A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the Tax Commissioner.

D. A person holding a direct payment permit that has not been cancelled shall not be required to pay the tax to the communications services provider as otherwise required by this chapter. Such persons shall notify each communications services provider from whom purchases of taxable communications services are made of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of notice, a communications services provider shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of taxable communications services to the direct payment permit holder. Communications services providers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

E. Upon the cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the direct payment permit, and that person shall promptly notify in writing communications services providers from whom purchases of taxable communications services are made of such cancellation or surrender. Upon receipt of notice, the communications services provider shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of taxable communications services thereafter made to the former direct payment permit holder.

§ 58.1-659. Collection of tax; penalty.

A. The tax levied by this chapter shall be collected and remitted by the communications services provider, but the communications services provider shall separately state the amount of the tax and add such tax to the sales price or charge. Thereafter, the tax shall be a debt from the customer to the communications services provider until paid and shall be recoverable at law in the same manner as other debts.

B. Notwithstanding any exemption from taxes that any communications services provider now or hereafter may enjoy under the Constitution or laws of the Commonwealth, or any other state, or of the United States, a communications services provider shall collect the tax from the customer of taxable communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

C. Any communications services provider collecting the communications sales or use tax on transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been refunded to the customer or credited to his account.

D. Any communications services provider who intentionally neglects, fails, or refuses to collect the tax upon every taxable sale of communications services made by him, or his agents or employees on his behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.

All sums collected by a communications services provider as required by this chapter shall be deemed to be held in trust for the Commonwealth.

§ 58.1-660. Sale of business.

If any communications services provider liable for any tax, penalty, or interest levied by this chapter sells his business or stock of goods or quits the business, he shall make a final return and payment within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes,

penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid that were incurred by the business operation of the former owner. In no event, however, shall the tax, penalties, and interest due by the purchaser be more than the purchase price paid for the business or stock of goods.

§ 58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis.

The provisions in §§ 58.1-630 through 58.1-637 of this title shall apply to this chapter, mutatis mutandis, except as herein provided and except that whenever the term "dealer" is used in these sections, the term "communications services provider" shall be substituted. The Tax Commissioner shall promulgate regulations to interpret and clarify the applicability of §§ 58.1-630 through 58.1-637 to this chapter.

§ 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department of Deaf and Hard-of-Hearing in accordance with the provisions of § 51.5-115 and (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007.

B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. The net revenue distributable among the counties, cities, and towns shall be apportioned and distributed monthly during the remainder of Fiscal Year 2007 and during each subsequent fiscal year according to the percentage of telecommunications and television cable funds (local consumer utility tax on landlines and wireless, E-911, business license tax in excess of 0.5%, cable franchise fee, video programming excise tax, local consumer utility tax on cable television) they received respectively in Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006. An amount equal to the total franchise fee paid to each locality with a cable franchise existing on the effective date of this section at the rate in existence on January 1, 2007, shall be subtracted from the amount owed to such locality prior to the distribution of moneys from the Fund.

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. If errors are made in any distribution, or adjustments are otherwise necessary, the errors shall be corrected and adjustments made in the distribution for the next month or for subsequent months.

Article 7.

E-911 Tax.

§ 58.1-1730. Tax for enhanced 911 service; definitions.

A. As used in this section, unless the context requires a different meaning:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade-capable telecommunications services. Centrex, PBX or other multistation telecommunications services will incur an E-911 tax charge on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched telephone network. ISDN Primary Rate Interface services will be charged five E-911 tax charges for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications provider shall be charged one tax for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. 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 internally provided and used by providers of telecommunications services for administrative, testing, intercept, coin, and verification purposes; and commercial mobile radio service.

"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.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"Communications services provider" means the same as provided in § 58.1-647.

"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 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.

"ISDN Primary Rate Interface" means 24 bearer channels, each of which is a full 64,000 bits per second. One of the channels is generally used to carry signaling information for the 23 other channels.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Public safety answering point" or "PSAP" means a communications facility equipped and staffed on a 24-hour basis to receive and process 911 calls.

B. There is hereby imposed a monthly tax of $0.75 on the end user of each access line of the telephone service or services provided by a communications services provider. However, no such tax shall be imposed on federal, state, and local government agencies or on consumers of CMRS, as that term is defined in § 56-484.12. The revenues shall be collected and remitted monthly by the communications services provider to the Department and deposited into the Communications Sales and Use Tax Trust Fund. This tax shall be subject to the notification and jurisdictional provisions of subsection C.

C. If a customer believes that an amount of tax or an assignment of place of primary use or taxing jurisdiction included on a billing is erroneous, the customer shall notify the communications services provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use or taxing jurisdiction, the account name and number for which the customer seeks a correction, a description of the error asserted by the customer, and any other information that the communications services provider reasonably requires to process the request. Within 15 days of receiving a notice under this section, the communications services provider shall review its records within an additional 15 days to determine the customer's taxing jurisdiction. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is in error, the communications services provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the communications services provider shall provide a written explanation to the customer. The procedures in this section shall be the first course of remedy available to customers seeking correction of assignment of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes erroneously collected by the communications services provider, and no cause of action based upon a dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and procedures set forth in this subsection.

For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the same meanings provided in § 58.1-647.

D. For the purpose of compensating a communications services provider for accounting for and remitting the tax levied by this section, each communications services provider shall be allowed 3% of the amount of tax revenues due and accounted for in the form of a deduction in submitting the return and remitting the amount due.

§ 58.1-3815. Consumer taxes upon lessees of certain property.

Any county, city or town authorized to levy and collect consumer utility taxes as provided in ~~§§ 58.1-3812 and~~ *§* 58.1-3814 may levy such taxes upon and collect them from the occupant or lessee of any premises, title to which is held by (i) a person whose property is tax exempt under Chapter 36 (§ 58.1-3600 et seq.) of this title, or (ii) by a person who is exempt from license taxation by virtue of § 58.1-2508. Such taxes shall be applied to the utility services purchased by such person and furnished at such premises for the use and benefit of such occupant or lessee. Such taxes may be fixed at a specific amount per rental unit or other base or measured in some other manner as the county, city or town levying such taxes may prescribe. This section shall not be construed to empower any county, city or town to impose such taxes upon (i) the Commonwealth or any of its political subdivisions or

agencies of either, or (ii) the federal government or any of its agencies, or (iii) any person who by law is exempt therefrom.

§ 58.1-3816.2. Exemptions from consumer utility taxes.

The governing body of any county, city or town may exempt utilities consumed on all property that has been designated or classified as exempt from property taxes pursuant to Article X, Section 6 (a) (2) or Article X, Section 6 (a) (6) of the Constitution of Virginia, from the consumer utility taxes that may be imposed under this article.

~~Any county, city, or town providing such exemption for the tax imposed by § 58.1-3812 shall provide the telephone account numbers of all exempted organizations to all service providers required to collect the tax as part of the notice required pursuant to subsection B of § 58.1-3812. No exemption shall apply to the E-911 tax imposed by § 58.1-3813.1.~~

2. That §§ 15.2-2108, 56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and §§ 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia and the third enactment clause of Chapter 858 of the 1972 Acts of Assembly are repealed, notwithstanding any contrary provision of a local charter or other special act.

3. That the local consumer utility tax imposed on franchised cable services, local telecommunications services, and local mobile telecommunications are repealed, notwithstanding any contrary provision of any local charter, special act, or general law.

4. That all taxes and fees imposed in accordance with the provisions of any Code of Virginia section or any local charter that are repealed or otherwise amended by this act and that remain unpaid as of January 1, 2007, shall be subject to payment and collection in accordance with any administrative or judicial remedies existing prior or subsequent to this act's enactment and any bad debt associated with such taxes and fees that occurs after January 1, 2007, shall be offset against revenues collected from the Communications Sales and Use Tax.

5. That any funds held by the State Corporation Commission for the Telephone Services Relay Center as of January 1, 2007, shall be transferred to the Communications Sales and Use Tax Trust Fund.

6. That the provisions of the eighth enactment of this act shall be effective beginning on July 1, 2006, and the remaining provisions of this act, with the exception of § 58.1-656 of the Code of Virginia, shall be effective beginning on January 1, 2007.

7. Section 58.1-656 of the Code of Virginia shall become effective on the first day of the month following 60 days after the Auditor of Public Accounts certifies that the taxes and fees collected in the fiscal year under the provisions of the act are at least equal to the amount of taxes and fees revenue collected for the taxes and fees repealed or amended by this act for the fiscal year ending June 30, 2006, at the tax rates that were adopted on or before January 1, 2006, plus the annual cost to the Department of Taxation to pay for the administration of the Virginia Communications Sales and Use Tax. The APA certification shall be completed within 60 days after the end of the fiscal year.

8. That the Auditor of Public Accounts (APA) shall determine the amount of revenues received by every county, city, and town for the fiscal year commencing July 1, 2005, and ending June 30, 2006, at rates adopted on or before January 1, 2006, for each of the following taxes and fees collected by the service providers: gross receipts tax in excess of 0.5%, local consumer utility tax, video program excise tax, cable franchise fee, and 911 taxes and fees, where they are collected. Based on each locality's percentage of the total Fiscal Year 2006 receipts from these sources, the APA shall calculate each locality's percentage share of future distributions of the Telecommunications Sales and Use Tax by the Department of Taxation. Local governments and service providers shall cooperate with the APA and provide information to him as requested. Every town with a population of less than 3,500, and any other county, city, or town whose annual audited financial statement cannot be completed by October 1, 2006, shall provide to the APA by that date a statement of its receipts during Fiscal Year 2006 from such telecommunications and cable sources, verified in writing by an independent certified public accountant. Any locality that fails to furnish the information required to make this calculation in a timely manner shall not be entitled to participate in the distribution of such tax, and its percentage share shall be disregarded in calculating the distribution to other localities. The APA or his agent shall not divulge any information acquired by him in the performances of his duties under this section that may identify specific service providers. The APA shall report his findings on a tax-by-tax basis to the chairmen of the House and Senate Finance Committees and the Department of Taxation no later than December 1, 2006. Further, the APA shall collect annually from local governments and service providers the necessary data to determine changes in: (i) market area and number of customers served, (ii) types of services available, (iii) population, and (iv) possible local reimbursement. The APA shall report his findings to the Chairmen of the House and Senate Committees on Finance no later than December 1 each year.

9. That if any of the provisions of this act are declared invalid in a nonappealable court order, then the remaining provisions of this act shall be invalid and the provisions of §§ 15.2-2108,

56-468.1, 56-484.4, 56-484.5, 56-484.6, 56-484.12, 58.1-3812, 58.1-3813.1, 58.1-3815, 58.1-3816.2, and 58.1-3818.1 through 58.1-3818.7 of the Code of Virginia and the third enactment clause of Chapter 858 of the 1972 Acts of Assembly as they were in effect immediately prior to the effective date of this act shall be given effect beginning 90 days after the nonappealable court order is issued.