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HOUSE BILL NO. 568

House Amendments in [] - January 25, 2006

A *BILL to amend and reenact §§ 8.01-225, 15.2-2108, 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 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, to repeal §§ 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.*

Patron Prior—Delegate Nixon

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-225, 15.2-2108, 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 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,

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59 doctor's office or other medical facility, shall be deemed qualified to administer such emergency
60 treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of
61 such emergency resuscitative treatments or procedures.

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

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

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

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

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

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

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

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

117 Any licensed physician serving without compensation as a supervisor of an automated external
118 defibrillator in this Commonwealth shall not be liable for any civil damages for any act or omission
119 resulting from rendering medical advice in good faith to the owner of the automated external
120 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 provider of telecommunication 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 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.

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.

182 Further, the public shall be urged to receive training on how to use cardiopulmonary resuscitation
183 (CPR) and an automated external defibrillator (AED) in order to acquire the skills and confidence to
184 respond to emergencies using both CPR and an AED.

185 § 15.2-2108. Licensing, etc., and regulation of cable television systems.

186 A. The words "cable television system" as used in this section shall mean any facility consisting of a
187 set of closed transmission paths and associated signal generation, reception and control equipment that is
188 designed to provide cable service which includes video programming and which is provided to multiple
189 subscribers within a community, except that such definition shall not include (i) a system that serves
190 fewer than ~~twenty~~ 20 subscribers; (ii) a facility that serves only to retransmit the television signals of
191 one or more television broadcast stations; (iii) a facility that serves only subscribers in one or more
192 multiple unit dwellings under common ownership, control, or management, unless such facility or
193 facilities use any public right-of-way; (iv) a facility of a common carrier which is subject, in whole or
194 in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except
195 that such facility shall be considered a cable system to the extent such facility is used in the
196 transmission of video programming directly to subscribers; (v) any facilities of any electric utility used
197 solely for operating its electric systems; or (vi) any portion of a system that serves fewer than ~~fifty~~ 50
198 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent
199 locality.

200 The words "cable service" as used in this section mean the one-way transmission to subscribers of (i)
201 video programming; or (ii) other programming service, and subscriber interaction, if any, which is
202 required for the selection of such video programming or other programming service.

203 *The words "cable television operator" as used in this section mean a person who (i) provides cable*
204 *service over a cable system and directly or through one or more affiliates owns a significant interest in*
205 *such cable system or (ii) otherwise controls or is responsible for, through any arrangement, the*
206 *management and operation of such cable system, whether or not he has entered into a franchise*
207 *agreement with a locality.*

208 B. A locality may grant a license or franchise, or issue a certificate of public convenience and
209 necessity to no more than one cable television system, and impose a fee thereon. However, a governing
210 body shall have the authority to award additional licenses, franchises or certificates of public
211 convenience as it deems appropriate, if such governing body finds that the public welfare will be
212 enhanced by such awards after a public hearing at which testimony is heard concerning the economic
213 consideration, the impact on private property rights, the impact on public convenience, the public need
214 and potential benefit, and such other factors as are relevant.

215 C. No such governing body shall grant any overlapping licenses, franchises or certificates of public
216 convenience for cable service within its jurisdiction on terms or conditions more favorable or less
217 burdensome than those in any existing license, franchise or certificate of public convenience within such
218 locality. The prohibitions of the foregoing sentence shall not apply when the area in which the
219 overlapping license, franchise or certificate of public convenience is being sought, is not actually being
220 served by any existing cable service provider holding a license, franchise or certificate of public
221 convenience for such area. As used in this subsection, the term "actually being served" means that cable
222 service is actually available to subscribers to such extent that the only act remaining in order to provide
223 cable service is the physical connection to the individual subscriber location as of ~~fifteen~~ 15 days prior
224 to any subsequent application for a franchise.

225 D. The governing body may regulate such systems, including the establishment of fees and rates, the
226 assignment of channels for public use, the operation of such channels assigned for public use, and the
227 placement of restrictions or conditions on the scope of the business activities engaged in by such
228 systems with regard to the sale, lease, rental or repair of television receivers or repair of video cassette
229 and disc recorders and players, or provide for such regulation and operation by such agents as the
230 governing body may direct. The owner or operator of any cable television system shall not be required
231 to pay the cost of interconnecting such cable television systems between localities.

232 E. The grant of authority by this section to localities to regulate cable television systems, including
233 regulations that displace or limit competition by or among persons owning or operating such systems,
234 has been and continues to be based on the policy of the Commonwealth to provide for the adequate,
235 economical, and efficient delivery of such systems to the consuming public, to protect the public from
236 excessive prices and unfair competition, and to prevent the owners and operators of such systems from
237 obtaining an unfair competitive advantage by reason of the license, franchise or certificate of
238 convenience over businesses that sell, lease, rent or repair television receivers or repair video cassette
239 and disc recorders and players. No locality may regulate cable television systems by regulations
240 inconsistent with either laws of the Commonwealth or federal law relating to cable television operations.

241 F. Localities may by ordinance exercise all the regulatory powers over cable television systems
242 granted by the Cable Television Consumer Protection and Competition Act of 1992 (P.L. 102-385,
243 1992). These regulatory powers shall include the authority (i) to enforce customer service standards in

accordance with the Act, (ii) to enforce more stringent standards as agreed upon by the cable television system operator through the terms of the franchise, and (iii) to regulate the rates for basic cable service in accordance with the Act.

G. To the extent that ~~If a franchised cable television operator has been authorized to use~~ *uses* the public rights-of-way in a locality and is obligated to pay a franchise fee to such locality, such ~~the~~ cable television operator shall not be subject to any occupancy, use, or similar fee, with respect to its use of such rights-of-way, by the locality or the Commonwealth Transportation Board ~~the Public Rights-of-Way Use Fee as provided in § 56-468.1.~~ *The Commonwealth Transportation Board may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees shall be established by regulations adopted under the Administrative Process Act. A locality may charge, on a nondiscriminatory basis, fees to recover the approximate actual cost incurred for the issuance of a permit to perform work within the rights-of-way and for inspections to ensure compliance with the conditions of the permit, as such fees existed on February 1, 1997, or as subsequently modified by ordinance.* The limitation as to fees charged for the use of the public rights-of-way shall not be applicable to pole attachments and conduit occupancy agreements between a franchise cable television operator and a locality or its authority or commission, which permits such operator to use the public poles or conduits.

H. ~~No new or renegotiated franchise agreement shall include a franchise fee on or after July 1, 2006, as long as cable television services are subject to the Virginia Communications Sales and Use Tax (§ 58.1-645 et seq. of Title 58.1). 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 television franchise agreements in effect as of July 1, 2006, 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 agreement for payment of a monetary franchise fee based on the gross receipts of the franchisee shall be fulfilled in the manner specified in subdivision 2.

2. Each cable television 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 then distribute to each county, city, or town the amount reported by each locality's franchisee(s). Such 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 franchise agreement (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 of this section. 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 multi-station 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

428 service for administrative, testing, intercept, and verification purposes; and commercial mobile radio
429 service lines.

430 "Cable television operator" has the same meaning as contained in § 15.2-2108.

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

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

437 "ISDN Primary Rate Interface" means digital communications service containing 24 64,000
438 bits-per-second channels.

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

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

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

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

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

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

453 "Provider of telecommunications service" means a public service corporation or locality holding a
454 certificate issued by the State Corporation Commission to provide local exchange or interexchange
455 telephone service to the public for a fee and any other person who provides local or long distance
456 telephone services to the public for a fee, other than a CMRS provider as that term is defined in
457 § 56-484.12.

458 "Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the
459 centerline mileage of highways and streets which are part of the State Highway System as defined in
460 § 33.1-25, the secondary system of highways as defined in § 33.1-67, the highways of those cities and
461 certain towns defined in § 33.1-41.1 and the highways and streets maintained and operated by counties
462 which have withdrawn or elect to withdraw from the secondary system of state highways under the
463 provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to
464 return.

465 "Subscriber" means a person who receives broadcast programming distributed by a cable television
466 system and does not further distribute it.

467 B. 1. Notwithstanding any other provisions of law, there is hereby established a Public
468 Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning,
469 subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a
470 certificated provider of telecommunications service by the Commonwealth Transportation Board or a
471 locality in connection with a permit for such occupation and use granted in accordance with § 56-458 or
472 § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia
473 Department of Transportation, and any county that has withdrawn or elects to withdraw from the
474 secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of
475 Assembly of 1932, may impose the Public Rights-of-Way Use Fee on providers of local
476 telecommunications service only by local ordinance. Localities, their authorities or commissions, and the
477 Commonwealth Transportation Board may allow certificated providers of telecommunications services
478 and cable television operators to use their electric poles or electric conduits in exchange for payment of
479 a fee.

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

482 C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department
483 of Transportation (VDOT), based on the calculations described in subsection D of this section. In no
484 year shall the amount of the fee be less than ~~fifty cents~~ \$0.50 per access line per month.

485 D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the
486 number of public highway miles in the Commonwealth by a highway mileage rate (as defined in
487 subsection E of this section), and by adding the number of feet of new installations in the
488 Commonwealth (multiplied by ~~one dollar~~ \$1 per foot), and dividing this sum by the total number of
489 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 television 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 television 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 television 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 television service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local exchange service telecommunications service provider, 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 television 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 television 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~~ 10 percent of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to § 15.2-3530 shall use a minimum of ~~ninety~~ 90 percent of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each ~~certificated~~ provider of local exchange telephone 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 television 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.

551 J. Any locality with a franchise agreement, ordinance implementing a franchise agreement or other
552 form of consent allowing the use of the public rights-of-way *by a provider of local telecommunications*
553 *service*, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a
554 franchise fee or charge *on a provider of local telecommunications service* in effect as of February 1,
555 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form
556 of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or
557 town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional
558 rights-of-way management practices that do not comply with §§ 56-458 C and 56-462 C. The Public
559 Rights-of-Way Use Fee shall not be imposed in any such locality.

560 Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all
561 affected ~~certificated~~ providers of local ~~exchange telephone~~ *telecommunications* service no later than
562 March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such
563 locality to the registered agent of the affected ~~certificated~~ provider *or providers* of local ~~exchange~~
564 ~~telephone~~ *telecommunications* service. For localities adopting the Public Rights-of-Way Use Fee by
565 ordinance in 1998, collection of the fee shall begin on the first day of the month occurring ~~ninety~~ 90
566 days after receipt of notice as required by this subsection.

567 § 56-484.12. Definitions.

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

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

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

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

575 "Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to
576 § 2.2-2005.

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

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

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

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

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

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

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

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

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

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

604 "Wireless E-911 fund" means a dedicated fund consisting of all moneys collected pursuant to the
605 wireless E-911 surcharge, as well as any additional funds otherwise allocated or donated to the wireless
606 E-911 fund.

607 "Wireless E-911 PSAP costs" means all reasonable direct recurring and nonrecurring capital costs and
608 operating expenses incurred by a PSAP in designing, upgrading, leasing, purchasing, programming,
609 installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and
610 local exchange telephone service required to provide wireless E-911 service and direct personnel costs
611 incurred in receiving and dispatching wireless E-911 emergency telephone calls, which have been sworn
612 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

674 verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the
675 Board or credited to qualifying payments during the then current fiscal year, on such schedule as the
676 Board shall determine. If payments are less than the actual costs reported, the Board may include the
677 additional funding with the next quarterly payment for the then current fiscal year.

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

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

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

702 I. The special tax authorized by § ~~58.1-3813.4~~ 58.1-1730 shall not be imposed on consumers of
703 CMRS.

704 § 56-484.18. Designation of official State Police access number; blocking caller identification
705 prohibited.

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

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

716 § 58.1-3. Secrecy of information; penalties.

717 A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax
718 Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or
719 revenue officer or employee, or any person to whom tax information is divulged pursuant to
720 § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge
721 any information acquired by him in the performance of his duties with respect to the transactions,
722 property, including personal property, income or business of any person, firm or corporation. Such
723 prohibition specifically includes any copy of a federal return or federal return information required by
724 Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of
725 this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be
726 applicable, however, to:

- 727 1. Matters required by law to be entered on any public assessment roll or book;
- 728 2. Acts performed or words spoken or published in the line of duty under the law;
- 729 3. Inquiries and investigations to obtain information as to the process of real estate assessments by a
730 duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to
731 its study, provided that any such information obtained shall be privileged;
- 732 4. The sales price, date of construction, physical dimensions or characteristics of real property, or any
733 information required for building permits;
- 734 5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court
735 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 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

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

802 D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the
803 commissioner of revenue or other assessing official is authorized to (i) provide, upon written request
804 stating the reason for such request, the chief executive officer of any county or city with information
805 furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of
806 any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the
807 local sales and use tax revenues payable to the county or city; (ii) provide to the Department of
808 Professional and Occupational Regulation for its confidential use the name, address, and amount of gross
809 receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a
810 profession or occupation administered by the Department of Professional and Occupational Regulation,
811 only after the Department of Professional and Occupational Regulation exhausts all other means of
812 obtaining such information; ~~and~~ (iii) provide to any representative of a condominium unit owners'
813 association, property owners' association or real estate cooperative association, or to the owner of
814 property governed by any such association, the names and addresses of parties having a security interest
815 in real property governed by any such association; however, such information shall be released only
816 upon written request stating the reason for such request, which reason shall be limited to proposing or
817 opposing changes to the governing documents of the association, and any information received by any
818 person under this subsection shall be used only for the reason stated in the written request [; ~~and~~ (iv)
819 ~~provide to any commissioner of the revenue or comparable taxing official of a county, city, or town, and~~
820 ~~to any dealer registered for the collection of the Communications Sales and Use Tax, a list of the names,~~
821 ~~business addresses, and dates of registration of all dealers registered for such purpose~~] . The treasurer
822 or other local assessing official may require any person requesting information pursuant to clause (iii) of
823 this subsection to pay the reasonable cost of providing such information. Any person to whom tax
824 information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties
825 prescribed herein as though he were a tax official.

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

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

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

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

848 CHAPTER 6.2.

849 VIRGINIA COMMUNICATIONS SALES AND USE TAX.

850 § 58.1-645. Short title.

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

853 § 58.1-646. Administration of chapter.

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

856 § 58.1-647. Definitions.

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

"Cable service" means the transmission of video, audio, or other programming service to customers and the customer interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other providers of communications services. The term "cable service" includes, but is not limited to, point-to-point and point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the customer's premises, but does not include direct-to-home satellite service, as defined in the Communications Act of 1934, 47 U.S.C. § 303v. The term includes basic, extended, premium, pay-per-view, digital, and music services.

"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 which 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 which 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 which 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.

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

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

934 § 58.1-648. Imposition of sales tax; exemptions.

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

939 B. The sales price on which the tax is levied shall not include charges for any of the following: (i)
940 an excise, sales, or similar tax levied by the United States or any state or local government on the
941 purchase, sale, use, or consumption of any communications service that is permitted or required to be
942 added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by
943 the United States or any state or local government, including but not limited to, regulatory fees and
944 emergency telephone surcharges, that is required to be added to the price of service if the fee or
945 assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a
946 prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in
947 47 C.F.R. § 22.99; (vi) a communications services provider's internal use of communications services in
948 connection with its business of providing communications services; (vii) charges for property or other
949 services that are not part of the sale of communications services, if the charges are stated separately
950 from the charges for communications services; (viii) sales for resale; and (ix) charges for
951 communications services to the Commonwealth, any political subdivision of the Commonwealth, and the
952 federal government and any agency or instrumentality of the federal government.

953 C. Communications services on which the tax is hereby levied shall not include the following: (i)
954 information services; (ii) installation or maintenance of wiring or equipment on a customer's premises;
955 (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not
956 limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet
957 access service, electronic mail service, electronic bulletin board service, or similar services that are
958 incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products
959 delivered electronically, such as software, downloaded music, ring tones, and reading materials; and
960 (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such
961 purposes by the Federal Communications Commission. [Also, those entities exempt from the tax
962 imposed in accordance with the provisions of Article 4 (§ 58.1-3812, et seq.) of Chapter 38 of Title
963 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with
964 the provisions of this chapter.]

965 § 58.1-649. Sourcing rules for communication services.

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

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

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

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

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

981 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 which 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 [60 15] days of receiving a notice [in the provider's billing dispute office] under this section, 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 this 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 this 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 which 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 which varies 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 which are owed to the communications services provider and which 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 [~~property~~ 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 [~~property~~ 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 [~~may~~ 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

1165 communications services provider until paid and shall be recoverable at law in the same manner as
1166 other debts.

1167 B. Notwithstanding any exemption from taxes which any communications services provider now or
1168 hereafter may enjoy under the Constitution or laws of this Commonwealth, or any other state, or of the
1169 United States, a communications services provider shall collect the tax from the customer of taxable
1170 communications services and shall remit the same to the Tax Commissioner as provided by this chapter.

1171 C. Any communications services provider collecting the communications sales or use tax on
1172 transactions exempt or not taxable under this chapter shall remit to the Tax Commissioner such
1173 erroneously or illegally collected tax unless or until he can affirmatively show that the tax has been
1174 refunded to the customer or credited to his account.

1175 D. Any communications services provider who intentionally neglects, fails, or refuses to collect the
1176 tax upon every taxable sale of communications services made by him, or his agents or employees on his
1177 behalf, shall be liable for and pay the tax himself. Moreover, any communications services provider who
1178 intentionally neglects, fails, or refuses to pay or collect the tax herein provided, either by himself or
1179 through his agents or employees, shall be guilty of a Class 1 misdemeanor.

1180 All sums collected by a communications services provider as required by this chapter shall be
1181 deemed to be held in trust for the Commonwealth.

1182 § 58.1-660. Sale of business.

1183 If any communications services provider liable for any tax, penalty, or interest levied by this chapter
1184 sells his business or stock of goods or quits the business, he shall make a final return and payment
1185 within 15 days after the date of selling or quitting the business. His successors or assigns, if any, shall
1186 withhold a sufficient amount of the purchase money to cover taxes, penalties, and interest due and
1187 unpaid until the former owner produces a receipt from the Tax Commissioner showing that all taxes,
1188 penalties, and interest have been paid or a certificate stating that no taxes, penalties, or interest are
1189 due. If the purchaser of a business or stock of goods fails to withhold the purchase money as required
1190 above, he shall be personally liable for the payment of the taxes, penalties, and interest due and unpaid
1191 that were incurred by the business operation of the former owner. In no event, however, shall the tax,
1192 penalties, and interest due by the purchaser be more than the purchase price paid for the business or
1193 stock of goods.

1194 § 58.1-661. Certain provisions in Chapter 6 of this title to apply, mutatis mutandis.

1195 The provisions in §§ 58.1-630 through 58.1-637 of this title shall apply to this chapter, mutatis
1196 mutandis, except as herein provided and except that whenever the term "dealer" is used in these
1197 sections, the term "communications services provider" shall be substituted. The Tax Commissioner shall
1198 promulgate regulations to interpret and clarify the applicability of §§ 58.1-630 through 58.1-637 to this
1199 chapter.

1200 § 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and
1201 Use Tax Trust Fund; localities' share.

1202 A. There is hereby created in the Department of the Treasury a special nonreverting fund which
1203 shall be known as the Communications Sales and Use Tax Trust Fund (the "Fund"). The Fund shall be
1204 established on the books of the Comptroller and any funds remaining in the Fund at the end of a
1205 biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds
1206 shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation
1207 to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to
1208 the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after
1209 the payment (i) for the telephone relay service center is made to the Department of Deaf and
1210 Hard-of-Hearing in accordance with the provisions of subsection § 51.5-115, and (ii) of any franchise
1211 fee amount due to localities in accordance with any cable television franchise agreements in effect as of
1212 July 1, 2006.

1213 B. The localities' share of the net revenue distributable under this section among the counties, cities,
1214 and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after
1215 the close of each month during which the net revenue was received into the Fund. The distribution of
1216 the localities' share of such net revenue shall be computed with respect to the net revenue received in
1217 the state treasury during each month.

1218 C. The net revenue distributable among the counties, cities, and towns shall be apportioned and
1219 distributed monthly during the remainder of Fiscal Year 2007 and during each subsequent fiscal year
1220 -according to the percentage of telecommunications and television cable funds (local consumer utility tax
1221 on landlines and wireless, E-911, business license tax in excess of 0.5%, cable franchise fee, video
1222 programming excise tax, local consumer utility tax on cable television) they received respectively in
1223 Fiscal Year 2006 from local tax rates adopted on or before January 1, 2006. An amount equal to the
1224 total franchise fee paid to each locality with a cable franchise existing on the enactment date of this
1225 section at the rate in existence on July 1, 2006, shall be subtracted from the amount owed to such
1226 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

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1288 information that the communications services provider reasonably requires to process the request.
1289 Within [~~60~~ 15] days of receiving a notice under this section, the communications services provider
1290 shall review its records [within an additional 15 days] to determine the customer's taxing jurisdiction.
1291 If this review shows that the amount of tax or assignment of place of primary use or taxing jurisdiction
1292 is in error, the communications services provider shall correct the error and refund or credit the
1293 amount of tax erroneously collected from the customer for a period of up to two years. If this review
1294 shows that the amount of tax or assignment of place of primary use or taxing jurisdiction is correct, the
1295 communications services provider shall provide a written explanation to the customer. The procedures in
1296 this section shall be the first course of remedy available to customers seeking correction of assignment
1297 of place of primary use or taxing jurisdiction, or a refund of or other compensation for taxes
1298 erroneously collected by the communications services provider, and no cause of action based upon a
1299 dispute arising from such taxes shall accrue until a customer has reasonably exercised the rights and
1300 procedures set forth in this subsection.

1301 For the purposes of this subsection, the terms "customer" and "place of primary use" shall have the
1302 same meanings provided in § 58.1-647.

1303 D. For the purpose of compensating a communications services provider for accounting for and
1304 remitting the tax levied by this section, each communications services provider shall be allowed 3% of
1305 the amount of tax revenues due and accounted for in the form of a deduction in submitting the return
1306 and remitting the amount due.

1307 § 58.1-3815. Consumer taxes upon lessees of certain property.

1308 Any county, city or town authorized to levy and collect consumer utility taxes as provided in
1309 §§ ~~58.1-3812~~ and § 58.1-3814 may levy such taxes upon and collect them from the occupant or lessee
1310 of any premises, title to which is held by (i) a person whose property is tax exempt under Chapter 36
1311 (§ 58.1-3600 et seq.) of this title, or (ii) by a person who is exempt from license taxation by virtue of
1312 § 58.1-2508. Such taxes shall be applied to the utility services purchased by such person and furnished
1313 at such premises for the use and benefit of such occupant or lessee. Such taxes may be fixed at a
1314 specific amount per rental unit or other base or measured in some other manner as the county, city or
1315 town levying such taxes may prescribe. This section shall not be construed to empower any county, city
1316 or town to impose such taxes upon (i) the Commonwealth or any of its political subdivisions or
1317 agencies of either, or (ii) the federal government or any of its agencies, or (iii) any person who by law
1318 is exempt therefrom.

1319 § 58.1-3816.2. Exemptions from consumer utility taxes.

1320 The governing body of any county, city or town may exempt utilities consumed on all property that
1321 has been designated or classified as exempt from property taxes pursuant to Article X, Section 6 (a) (2)
1322 or Article X, Section 6 (a) (6) of the Constitution of Virginia, from the consumer utility taxes that may
1323 be imposed under this article.

1324 Any county, city, or town providing such exemption for the tax imposed by § ~~58.1-3812~~ shall
1325 provide the telephone account numbers of all exempted organizations to all service providers required to
1326 collect the tax as part of the notice required pursuant to subsection B of § ~~58.1-3812~~. No exemption
1327 shall apply to the E-911 tax imposed by § ~~58.1-3813.1~~.

1328 2. That §§ ~~56-484.4, 56-484.5, 56-484.6, 58.1-3812, 58.1-3813.1, and § 58.1-3818.1 through~~
1329 ~~58.1-3818.7~~ of the Code of Virginia and the third enactment clause of Chapter 858 of the 1972
1330 Acts of Assembly are repealed, notwithstanding any contrary provision of a local charter or other
1331 special act.

1332 3. That the local consumer utility tax imposed on franchised cable services, local
1333 telecommunications services, and local mobile telecommunications are repealed, notwithstanding
1334 any contrary provision of any local charter, special act, or general law.

1335 4. That all taxes and fees imposed in accordance with the provisions of any Code of Virginia
1336 section or any local charter that are repealed or otherwise amended by this act and that remain
1337 unpaid as of the January 1, 2007, shall be subject to payment and collection in accordance with
1338 any administrative or judicial remedies existing prior or subsequent to this act's enactment and
1339 any bad debt associated with such taxes and fees that occurs after January 1, 2007, shall be offset
1340 against revenues collected from the Communications Sales and Use Tax.

1341 5. That any funds held by the State Corporation Commission for the Telephone Services Relay
1342 Center as of January 1, 2007, shall be transferred to the Communications Sales and Use Tax
1343 Trust Fund.

1344 6. That the provisions of the eighth enactment of this act shall be effective beginning on July 1,
1345 2006, and the remaining provisions of this act, with the exception of § 58.1-656, shall be effective
1346 beginning on January 1, 2007.

1347 7. Section 58.1-656 shall become effective on the first day of the month following 60 days after the
1348 Auditor of Public Accounts certifies that the taxes and fees collected in the fiscal year under the
1349 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 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 Auditor of Public Accounts shall annually collect from local governments and such providers such data as may be necessary to determine changes in: (1) market area and number of customers served, (2) types of services available, (3) population, and (4) possible local reimbursement. The Auditor of Public Accounts will report his findings to the Chairmen of the House and Senate Finance Committees.]

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.