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## HOUSE BILL NO. 1636

Offered January 14, 2009

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A *BILL to amend and reenact § 56-265.4:4 of the Code of Virginia, relating to certificated service territories of telephone utilities.*

Patron—Saxman

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That § 56-265.4:4 of the Code of Virginia is amended and reenacted as follows:**

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

A. The Commission may grant certificates to competing telephone companies, or any county, city or town that operates an electric distribution system, for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions, limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. A certificate to provide interexchange services shall not authorize the holder to provide local exchange services. The Commission may grant a certificate to a carrier, or any county, city or town that operates an electric distribution system, to furnish local exchange services as provided in subsection B.

B. 1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and any incumbent local exchange telephone company, and is in the public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002, *except that the Commission may make changes to an incumbent local exchange carrier's certificated service territory at the request of those incumbent local exchange carriers that are directly involved in a proposed change in the certificated service territory.*

2. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone

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59 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue  
60 received by a county, city or town for providing telecommunications services shall not be  
61 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas  
62 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized  
63 pursuant to subdivision 5 of this subsection.

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

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

87 6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all  
88 applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable  
89 estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility  
90 taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit  
91 provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any  
92 franchise fees and other state and local fees (including permit fees and pole rental fees), and  
93 right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider  
94 of telecommunications services, (iv) prepare and publish annually financial statements in accordance  
95 with generally accepted accounting principles showing the results of operations of its provision of  
96 telecommunications services, and (v) maintain records demonstrating compliance with the provisions of  
97 this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of  
98 Information Act (§ 2.2-3700 et seq.).

99 7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory  
100 access to for-profit providers of telecommunications services on a first-come, first-served basis to  
101 rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the  
102 locality unless the facilities have insufficient capacity for such access and additional capacity cannot  
103 reasonably be added to the facilities.

104 8. The prices charged and the revenue received by a locality for providing telecommunications  
105 services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in  
106 areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as  
107 permitted by the provisions of subdivision B 5. The provisions of this subdivision shall not apply to  
108 Internet access, broadband, information, and data transmission services provided by any locality  
109 providing telecommunications services on March 1, 2002.

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

114 10. Public records of a locality that has obtained a certificate pursuant to this section, which records  
115 contain confidential proprietary information or trade secrets pertaining to the provision of  
116 telecommunications service, shall be exempt from disclosure under the Freedom of Information Act  
117 (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary  
118 information or trade secrets if its acquisition by a competing provider of telecommunications services  
119 would provide the competing provider with a competitive benefit.

120 C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title shall not apply to a county, city or

town that has obtained a certificate pursuant to this section.

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

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