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**HOUSE BILL NO. 545**

Offered January 9, 2008

Prefiled January 7, 2008

A *BILL to amend and reenact § 56-235.5 of the Code of Virginia, relating to telephone regulatory alternatives.*

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Patron—Nixon

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Referred to Committee on Commerce and Labor

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**Be it enacted by the General Assembly of Virginia:****1. That § 56-235.5 of the Code of Virginia is amended and reenacted as follows:**

§ 56-235.5. Telephone regulatory alternatives.

A. As used in this section, "telephone:

"Detariff" means to offer telephone services to customers under contractual terms and conditions other than those contained in tariffs filed with the Commission.

"Lifeline service" means that part of the Virginia Universal Service Plan under which eligible low-income customers receive discounted residential dialtone telephone service.

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

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

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

1. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for an alternative form of regulation shall be entered no more than 90 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.

2. If the Commission approves the application with modifications, the telephone company, or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title, may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application, unless it is modified for a telephone company by the Commission pursuant to subsection B.

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

E. The Commission shall have the authority, after notice to all affected parties and an opportunity for hearing, to determine whether any telephone service of a telephone company is subject to competition

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59 and to provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified  
60 regulation determined by the Commission to be in the public interest for such competitive services.

61 F. The Commission may determine telephone services of any telephone company to be competitive  
62 when it finds competition or the potential for competition in the market place is or can be an effective  
63 regulator of the price of those services. Such determination may be made by the Commission on a  
64 statewide or a more limited geographic basis, such as one or more political subdivisions or one or more  
65 telephone exchange areas, or on the basis of a category of customers, such as business or residential  
66 customers, or customers exceeding a revenue or service quantity threshold, or some combination thereof.  
67 The Commission may also determine bundles composed of a combination of competitive and  
68 noncompetitive services to be competitive if the noncompetitive services are available separately  
69 pursuant to tariff or otherwise. In determining whether competition effectively regulates the prices of  
70 services, the Commission shall consider: (i) the ease of market entry, (ii) the presence of other providers  
71 reasonably meeting the needs of consumers, and (iii) other factors the Commission considers relevant.  
72 Notwithstanding any other provisions of this subsection, any telephone services that are the functional  
73 equivalent of the services offered individually or as part of a bundle of services by a county, city or  
74 town pursuant to § 56-265.4:4 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title, either  
75 directly or pursuant to a public-private partnership, shall be deemed competitive services in the  
76 geographic area where the services of the county, city or town are offered for purposes of this article  
77 and any alternate regulatory plans approved by the Commission.

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

82 H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C  
83 above, or determines that a service is competitive pursuant to subsections E and F above a telephone  
84 service offered by a telephone company is declared competitive, the Commission shall adopt safeguards  
85 apply the cross-subsidy test described in clause (v) of subdivision B 3 of § 56-265.4:4 and the rules  
86 promulgated thereunder as a safeguard to protect consumers and competitive markets. At a minimum  
87 these safeguards must ensure that there is no cross subsidization of competitive services by monopoly  
88 services.

89 H. 1. Notwithstanding any other provision of law, as of July 1, 2008, any and all telephone services,  
90 other than lifeline and E-911 services, offered by a telephone company are declared competitive for  
91 purposes of this title and are no longer subject to any alternative form of regulation adopted pursuant  
92 to this section. Lifeline and E-911 services may be found by the Commission to be competitive pursuant  
93 to subsections E and F.

94 2. Notwithstanding any other provision of law, the Commission shall have no jurisdiction over the  
95 prices charged for competitive telephone services except as set forth in this subsection. The monthly  
96 recurring charges for residential dialtone telephone service, including measured, message, and flat rate  
97 residential dialtone telephone services, shall not be increased more than \$1.50 per 12-month period for  
98 the 36 months following July 1, 2008. The Commission is authorized to extend this monthly cap on  
99 increases for up to an additional 24 months if the Commission finds, after notice and an opportunity for  
100 hearing, that competition or the potential for competition in the marketplace cannot be an effective  
101 regulator of the price of those services.

102 3. The Commission shall establish rules that will permit any telephone company to detariff its  
103 telephone services, other than E-911 services, offered to business customers. These rules shall be  
104 promulgated by the Commission to allow any telephone company choosing to detariff its business  
105 services to do so beginning no later than January 1, 2009.

106 4. The Commission shall establish rules that will permit any telephone company to detariff its  
107 telephone services, other than lifeline services, offered to residential customers. These rules shall be  
108 promulgated by the Commission to allow any local exchange carrier choosing to detariff its residential  
109 services to do so beginning no later than January 1, 2010.

110 5. Until such time as a telephone company detariffs its telephone services, it may offer promotional  
111 rates, terms, or conditions and individual customer pricing for its telephone services in accordance with  
112 the Commission's rules for competitive local exchange carriers promulgated pursuant to §§ 12.1-13 and  
113 56-265.4:4.

114 6. The Commission shall permit the detariffing of lifeline service or E-911 service when the  
115 Commission, after notice and an opportunity for hearing, determines that tariffing of such service is no  
116 longer required to protect the public interest.

117 7. The Commission shall ensure that the competitive services offered by all telephone companies are  
118 subject to the same rules and regulations. The Commission shall not enforce any rule, regulation, or  
119 order that is inconsistent with this section.

120 8. A telephone company offering competitive telephone services under this section shall not be

**121** *subject to Chapters 3 (§ 56-55 et seq.) and 4 (§ 56-76 et seq.).*  
**122** *9. Nothing in this subsection shall be construed to affect the Commission's authority to regulate*  
**123** *wholesale services, including access charges or other intercarrier compensation.*

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