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HOUSE BILL NO. 1327

Offered January 22, 2010

A *BILL to amend and reenact §§ 56-265.4:4 and 56-580 of the Code of Virginia and to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered 15.2-7200 through 15.2-7228, relating to the Bristol Virginia Utilities Authority.*

Patron—Kilgore

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.4:4 and 56-580 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered 15.2-7200 through 15.2-7228, as follows:

*Chapter 72.
BVU Authority Act.*

§ 15.2-7200. Short title.

This chapter shall be known and may be cited as the BVU Authority Act.

§ 15.2-7201. Creation; public purpose.

There is hereby created a political subdivision of the Commonwealth known as the BVU Authority.

The BVU Authority is created for the express purpose of receiving, by operation of this chapter, the powers, assets and debts of that separately managed and financed division of the City of Bristol, Virginia, heretofore known as Bristol Virginia Utilities and to provide the services Bristol Virginia Utilities has provided or may provide. The BVU Authority has the same powers and the same limitations and restrictions possessed by Bristol Virginia Utilities on December 31, 2009. The General Assembly therefore deems this to be an entity conversion and for all purposes the BVU Authority is the same entity as Bristol Virginia Utilities, which is hereby converted to the BVU Authority. The BVU Authority shall exercise the rights and duties as hereinafter set out to provide the various utility services it currently provides and such additional services in the future as it deems expedient to provide, all subject to the limitations as are herein set forth or referenced.

§ 15.2-7202. Definitions.

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

"Authority" means the BVU Authority created by entity conversion of Bristol Virginia Utilities by this chapter.

"Board," "Authority Board" or "Board of Directors" means the governing body of the Authority.

"Bonds" means any bonds, notes, debentures, bond acceptance notes or other evidence of financial indebtedness either issued or assumed by the Authority pursuant to this chapter.

"Bristol Virginia Utilities Board" means the Board of Directors of Bristol Virginia Utilities governing that entity until the Authority Board takes office on July 1, 2010.

"Broadband services" mean high speed Internet Protocol based services now or hereafter provided by Bristol Virginia Utilities or the Authority, including but not limited to, telecommunication and related services, including cable television, Internet, and all other broadband or wireless services, products or conveniences which might be rendered by use of its fiber optic and wireless system.

"City" means the City of Bristol, Virginia.

"City Council" means the City Council of the City of Bristol, Virginia.

"Commission" means the Virginia State Corporation Commission.

"Commonwealth" means the Commonwealth of Virginia.

"Infrastructure" means all property, whether attached to real property or not, now used by Bristol Virginia Utilities and hereafter used by the Authority for the provision of electric, water, sewer, broadband services and all other utility, management and consulting services the Authority may provide in the future.

"MLEC" means Municipal Local Exchange Carrier.

"Political subdivision" means a locality, authority or other public body of the Commonwealth or of any state in which the Authority does business.

"Utility," "utilities," or "utility services" means and includes electric, water, sewer and broadband services as defined herein.

§ 15.2-7203. Name of Authority; operating name or names.

The name of the Authority shall be "BVU Authority."

The BVU Authority is hereby authorized to operate under the names BVU, BVU OptiNet, CPC

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59 *OptiNet and BVU Focus. The name of the Authority and any division or operating name may be*
60 *changed upon approval of a simple majority of the Board of Directors. The Board of Directors may*
61 *adopt additional operating names in the future. If it does so, it shall comply with requisite fictitious*
62 *name recording requirements for any areas in which it is doing business.*

63 *§ 15.2-7204. Divisions.*

64 *Initially the BVU Authority shall have the following four divisions:*

65 *1. The Electric Division, which will operate all electrical services and the infrastructure that*
66 *supports those services.*

67 *2. The Water Division, which will operate retail and wholesale water services where the Board*
68 *deems it appropriate to provide such services and the infrastructure that supports those services.*

69 *3. The Sanitary Sewer Division, which will operate the sanitary sewer services and infrastructure*
70 *that supports those services, wherever the Board deems it appropriate to provide such services.*
71 *Infrastructure includes the Authority's interest in the wastewater treatment plant that is in Sullivan*
72 *County, Tennessee, and jointly owned with the City of Bristol, Tennessee.*

73 *4. The OptiNet Division, which will operate all of the broadband, telecommunications and wireless*
74 *based services provided by use of the Authority's fiber optic and wireless infrastructure and the*
75 *infrastructure used to provide such services. The OptiNet Division also will provide consulting and*
76 *operation management services, within and without the Commonwealth pursuant to the power granted to*
77 *it to do so.*

78 *The Board may, by majority action, add to these divisions, rename any division and eliminate any*
79 *division as it deems expedient.*

80 *§ 15.2-7205. Limitation of cable territory.*

81 *Nothing in this chapter shall be deemed to expand the territory in which the Authority is authorized*
82 *to provide cable television services beyond that territory in which Bristol Virginia Utilities could provide*
83 *such services on December 31, 2009.*

84 *§ 15.2-7206. Appointment of a Board of Directors.*

85 *A. The powers of the Authority shall be vested in an Authority Board of Directors consisting of nine*
86 *directors. The number of Directors on the Board may not be increased by the Authority Board.*

87 *B. The Authority's Board, which will initially take office on July 1, 2010, shall be constituted as*
88 *follows.*

89 *1. Four Bristol, Virginia, citizen appointees. The four Bristol, Virginia, citizen appointees currently*
90 *on the Bristol Virginia Utilities Board are hereby directors on the Authority's Board and their respective*
91 *terms are extended on the Authority Board as follows:*

92 *a. The term ending June 30, 2010, will be extended to end June 30, 2014.*

93 *b. The term ending June 30, 2011, will be extended to end June 30, 2015.*

94 *c. The second term ending June 30, 2011, will be extended to end June 30, 2016.*

95 *d. The term ending June 30, 2012, will be extended to end June 30, 2016.*

96 *Each of said members will thereafter be eligible for one additional consecutive four-year term*
97 *pursuant to the limitation set forth herein.*

98 *2. Two members appointed by the Bristol City Council who are members of the Bristol City Council*
99 *serving on the Bristol Virginia Utilities Board as of June 1, 2010. Such members shall serve a four-year*
100 *term, coterminous with their term on Council, commencing July 1, 2010. Should no present member of*
101 *Council serving on the Bristol Virginia Utilities Board be a member of Council on that date, Council*
102 *may appoint two other members of Council to serve on the initial Authority Board for a term that is*
103 *coterminous with that member's term on Council.*

104 *3. One new Bristol, Virginia, citizen, who is not a city council member. Such citizen will be*
105 *appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010, until June 30,*
106 *2015.*

107 *4. One new member, a Bristol, Virginia citizen, appointed by the Bristol Virginia Utilities Board*
108 *whose term will start July 1, 2010, and end June 30, 2014.*

109 *5. One member of the Board of Supervisors of Washington County, Virginia, who will be appointed*
110 *by that Board of Supervisors to a four-year term coterminous with his or her term on the Board of*
111 *Supervisors commencing July 1, 2010.*

112 *C. If any appointments to the initial Board are made prior to the effective date of this chapter, such*
113 *appointments shall be deemed valid and effective as of such date.*

114 *D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia,*
115 *citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen*
116 *members will be elected by the Authority Board when the above terms expire. The City Council and the*
117 *Authority Board will alternate electing persons to fill an expiring term until each has appointed the*
118 *number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original*
119 *appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days*
120 *from the date the vacancy occurs.*

E. The term of the Council members shall be for four years coterminous with those members' terms of office on the City Council. Those City Council Members may serve as many terms as the City Council decides as long as the appointees are members of the City Council. The City Council may appoint other members of the City Council at the end of any four-year Council term or upon exit of the Council member from the Council. In the latter case the Council Member will serve for the remainder of the term vacated by an exiting City Council member.

F. All other directors shall serve four-year terms, except for the longer appointments to the initial Board. Those directors may serve a maximum of two terms and then must be off the Board for one full year before election to fill another full term or to fill the remainder of a vacated term.

G. If funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties. Such expense allowance shall constitute a cost of operation and maintenance of such utility systems and shall be prorated among each of the systems it manages using the "3-Factor" allocation method approved by the Commission. The three factors consist of the percentages that each division comprises of total plant in service, total operating revenues and total customer accounts. Once each operating division's percentage of each of the three factors is calculated, the sum of the three factors divided by 3 results in the operating division's share of the total direct or indirect costs.

§ 15.2-7207. Organization; compensation.

A simple majority of the directors in office shall constitute a quorum. No vacancy in the Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The Board of Directors shall hold regular meetings at such times and places as may be established by its bylaws.

The Board of Directors shall hold its first organizational meeting on July 1, 2010. Bylaws shall be duly adopted and published at said meeting. Also at said meeting, the Board of Directors shall elect a chairman and a vice-chairman from its membership and a secretary of the Board from the staff of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually elect a chairman and a vice-chairman from its membership and a secretary from the staff of the Authority at its June meeting, to take office on the following July 1. The terms of such officers shall be for one year.

The Board of Directors shall continue to appoint and contract with a president and CEO to manage the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect and be binding upon the Authority. The Board of Directors shall also authorize the position of executive vice-president and CFO, to be filled and managed by the president. The president shall have the authority to hire, fire and manage such staff as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers and duties at such salaries as the president deems most effective for the efficient operation of the Authority.

Except for the purpose of inquiry, the Board and its individual members shall deal with Authority employees solely through the president. Neither the Board nor any member thereof shall give orders to any of the subordinates of the president, either publicly or privately. Any such orders or other interferences on the part of the Board or any of its members with subordinates or appointees of the president, instead of dealing or communicating directly with the president, are prohibited. Neither shall the Board or any of its members direct the appointment or removal of any person from any office or employment by the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact with the president and general counsel, both of whom report directly to the Board.

The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members, amend and repeal bylaws governing the manner in which the Authority's business may be transacted and in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of such bylaws shall be adopted at the first regular meeting of the Board following the Board's first organizational meeting. The Board of Directors may appoint such committees as it may deem advisable and fix the duties and responsibilities of such committees. The Board of Directors shall have the power to request amendments to this chapter as set forth by the Code of Virginia that the Board deems necessary and expedient for the proper operation of the Authority.

15.2-7208. Powers generally.

The Authority is hereby granted all powers necessary or appropriate to carry out the purposes of this chapter in order to provide electric, water, sewer, and Broadband. Such powers include, without limitation, except as set forth hereafter, the following:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business;
2. To sue and be sued in the Authority's name;
3. To have perpetual succession;

182 4. To adopt a corporate seal and alter the same at its pleasure;
183 5. To maintain offices at such places as it may designate;
184 6. To appoint, employ or engage such officers, employees, architects, engineers, attorneys,
185 accountants, financial advisors, investment bankers and other advisors, consultants and agents as may
186 be necessary or appropriate, and to fix their duties and compensation;
187 7. To establish personnel rules;
188 8. To make, assume and enter into all contracts, leases and arrangements necessary or incidental to
189 the exercise of its powers, including contracts for the management or operation of all or any part of its
190 facilities;
191 9. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting
192 casual deficits in its revenues;
193 10. To provide electric, water, sewer and Broadband services in and only in all the areas Bristol
194 Virginia Utilities has been authorized to provide those same services. With respect to Broadband
195 services, the Authority shall have the powers granted in the Charter of the City of Bristol and the
196 general laws of the Commonwealth in existence as of December 31, 2009, to provide and operate
197 telecommunication and related services, including, without limitation, Broadband services; provided
198 further that the Authority shall have the power, within and without the City of Bristol, Virginia, and
199 within and without the Commonwealth of Virginia, to provide consulting and operations management
200 services for the operation of telecommunication services, including without limitation, cable television,
201 Internet and all other services that might be rendered by use of a fiber optic and wireless system,
202 subject to any limitations or restrictions in existence in the general laws of the Commonwealth on
203 December 31, 2009;
204 11. To determine fees, rates and charges for the services and products it provides, subject only to
205 such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or
206 federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation,
207 electric, water and sewer and broadband furnished by the Authority. Rates for MLEC telephone service
208 are regulated by the Commission. All rate increases for services other than electric, which are set by
209 TVA, and telephone, which are set by the Commission, shall require a favorable vote at two meetings,
210 one of which must be a regular meeting of the BVU Authority Board.
211 The Authority may assess such rates and charges for such services or products directly against the
212 owner(s) of the improvements or against the tenant(s). Where charged against the tenant(s), the
213 owner(s) shall be directly liable in the event such tenant(s) fail to pay. This authority shall not exist for
214 Broadband services.
215 In the case of water service, the rate may be based on actual water consumption, making due
216 allowances for the commercial use of water; on the number and kind of water outlets on or in
217 connection with the real estate; on the number and kind of plumbing or sewage fixtures or facilities on
218 or in connection with the real estate; on the average number of persons residing or working on or
219 otherwise connected or identified with the real estate or on any other factors determining the type, class
220 and amount of water used.
221 Similarly, rational alternate means of determining rates for other utilities, services, products and
222 goods provided by the Authority may be authorized by the Board.
223 The Authority shall have the power to combine charges for water, sewer and electric services on one
224 statement, provided that the charge for each type of specific service is clearly set forth separately, and
225 to bill the beneficiary of such services in such manner as to require the payment of all charges as a
226 unit and to enforce the payment of such charges by discontinuing the water service, the sewer service
227 and the electrical service, as provided for in the policies already established and currently enforced by
228 Bristol Virginia Utilities.
229 The Authority shall have the power to combine cable, telephone and other broadband services on
230 one bill in such a manner as to require the payment of all charges as a unit and to enforce the payment
231 of such charges by discontinuing all of said services upon failure to pay for any of said services, subject
232 to the laws of the Commonwealth and pursuant to the policies already established and currently
233 enforced by Bristol Virginia Utilities. If a partial payment is made for all services, the Authority will
234 comply with SCC rules and regulations and the laws of the Commonwealth.
235 A reasonable penalty may be set by the Board for any late payment of a service bill.
236 When the water, sewer, electric or broadband services have been shut off for nonpayment, they shall
237 not be turned on again until the delinquent charges together with the penalty and a reasonable service
238 charge to be fixed by the Board for shutting it off and turning it on again has been paid. Such fees,
239 rents, charges and penalty may be recovered by the Authority, by action at law or suit in equity;
240 12. To adopt, amend and repeal rules and regulations for the use, maintenance and operation of its
241 facilities and utility services and governing the conduct of persons and organizations using its facilities
242 or obtaining its utility services and to enforce such rules and regulations and all other rules,
243 regulations, ordinances and statutes relating to its facilities and services, as authorized by the enacting

body of such rules, regulations, ordinances and statutes. The civil penalty for violation of any such rules and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in terminating services and by the imposition of monetary penalties to be billed to the customer. The Authority may request the governing body of each locality in which it does business to impose by ordinance such penal liability for violation of such rules and regulations as such body deems appropriate.

13. To apply for and accept gifts or grants of money or gifts, grants or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance or repair of its infrastructure or for the payment of principal of any indebtedness of the Authority, interest thereon or other cost incident thereto, or for the operation of any of its services, or for any other purpose of the Authority, and to this end the Authority shall have the power to render such services, comply with such conditions and execute such agreements and legal instruments as may be necessary, convenient or desirable or imposed as a condition to such financial aid;

14. Subject to subparagraph 16, to acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate electric, water, sewer, broadband, wireless and other infrastructure and facilities that are owned or managed by the Authority within the territorial areas in which it operates or provides services;

15. To construct, install, maintain and operate facilities and infrastructure for managing its utility, consulting and operational management services. The Authority shall have the power and duty to manage and operate the electric, public lighting, water, sewerage, broadband, telecommunications and wireless based services of the Authority directly, or it may subcontract such functions. The Authority shall construct, maintain and operate all facilities necessary thereto; shall sell and distribute to the public electric power, light, water, sewer, broadband, telecommunications and other services as they now exist or may exist in the future; and shall collect the rates and charges provided for all such services;

16. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property and dispose of any or all such properties as is deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire property and easements as needed for its various utility services within the areas it provides or can provide such services. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited;

17. To purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee or agent of the Authority and on behalf of the Authority itself against any liability asserted against it or him or incurred by it or him in any such capacity or arising out of his status as such;

18. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the Authority's infrastructure, including but not limited to its poles, conduits and collocation sites;

19. To fund economic development projects and, in advance of economic development projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and support economic development;

20. To have police powers on all of the properties of the Authority within the Commonwealth, exercised through appointment of an armed conservator of the peace. The President of the Authority may apply to the circuit court for any locality in which the Authority has property for the appointment of one or more special conservators of the peace under procedures specified by § 19.2-13 et seq. of the Code of Virginia or any successor provisions. Any such special conservator of the peace shall have, within the lands and facilities controlled by the Authority, the powers, functions, duties, responsibilities and authority of any other armed conservator of the peace. Nothing in this section shall be construed to prevent the conservator of the peace currently serving Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority during the remainder of his term, if not removed for cause; and,

21. To have free use of the rights of way and public ways of the City of Bristol, Virginia, to place, repair, maintain and otherwise insure the proper infrastructure for the provision of its services to its customers.

§ 15.2-7209. Powers relating to public works, utilities and properties.

The Authority shall have the power to acquire, construct, own, maintain, regulate, operate, hold, improve, manage, sell, encumber, donate or otherwise obtain or dispose of any property, real or personal, or any estate or interest therein, and any structure or improvement thereon, within or without the city and within or without the Commonwealth of Virginia for:

1. Sewers and sewage disposal and sewage treatment services.

a. The Authority may join with the City of Bristol, Tennessee, and other political subdivisions, including authorities, within and without the Commonwealth in the construction, maintenance, use and operation of sanitary sewer lines and sewage disposal plants within either the Commonwealth of Virginia or the State of Tennessee; use Beaver Creek and Little Creek and all other creeks flowing within the jurisdiction of the Authority's service area as part of its storm sewer system, to the extent permitted by law, and to this end the Board may order the channel of such creeks to be altered, widened, deepened, straightened, improved or the location thereof changed, as it may think proper, and such wall or walls to be constructed along its banks as will tend to prevent overflow. The Authority may condemn any land or interest in land or any riparian rights or property rights necessary for the purpose of so altering, widening, deepening, straightening, improving or changing the location of the channel of such creeks.

b. The Authority shall have the power to require the owner, tenant or occupant of each lot or parcel of land that contains a sanitary sewer owned by the Authority or abuts upon a street or other public way that contains such sanitary sewer and upon which lot or parcel of land a building exists for residential, commercial, industrial or other human use, to connect such building's sewer with such sanitary sewer and to cease to use any other means for the disposal of sewage, sewage waste or other polluting matters.

c. The Authority shall have the power to regulate in any manner required by the laws of the United States or the Commonwealth of Virginia or as the Authority may determine necessary for the health, safety and welfare of the citizens of the City of Bristol, Virginia, and individuals in jurisdictions contiguous thereto, what materials may be placed in the Authority's sanitary sewer system. The Authority may promulgate regulations upon property owners placing materials in the sanitary sewer system or from whose property water flows into the stormwater system to require such owners to prevent the placing of certain materials in either system or to pretreat certain substances prior to their introduction into either the sanitary or storm sewer system;

2. All buildings and other structures necessary or useful in carrying out the powers and duties of the Authority for the furtherance of any of its services;

3. Waterworks, gas plants and electric plants, water supply and pipe and transmission lines, and all necessary equipment for water, electricity, Broadband services, gas supplies and distribution systems and any other utility or utilities, and such other services as the Authority by its Board shall determine are necessary or expedient to its customers.

a. The Authority shall have the power to make all necessary rules and regulations to promote the purity of its water supply, to protect the same from pollution, both within and without the city, and to exercise full police power over all lands comprised within the limits of the watershed tributary to such water supply wherever such lands may be located in the Commonwealth.

b. The Authority may impose and enforce penalties for the violation of such rules and regulations, and may prevent by injunction any pollution or threatened pollution of such water supply by any and all acts likely to impair the purity thereof.

c. The Authority may acquire lands, interest in lands, water power properties, reservoirs, pumping stations, filtering plants, purification processes, auxiliary steam plants and other works; property rights and riparian rights; or personal property for such use by eminent domain.

d. In acquiring and developing additional water supplies, electric transmission or production facilities, gas production or transmission facilities and water and sewer transmission, disposal and purification facilities either within or without the Commonwealth, the Authority shall also have the power to merge such systems as it may have with the City of Bristol, Tennessee, or any entity owned and controlled by the City of Bristol, Tennessee, or any other political subdivision, including any authority, within and without the Commonwealth under joint ownership, control and operation, either incorporated or unincorporated or as any authority, and to join with the City of Bristol, Tennessee, or such other political subdivision.

4. Rail tracks, spurs, crossings, switching, terminals, warehouses and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares and merchandise, including the power to perform any services in connection with the receipt, delivery, shipment and transfer in transit, weighing, marking, tagging, ventilating, refrigerating, etc., wares and merchandise as the same may be needed for the provision of electric, water and sewer services.

5. Lands for rock quarries, gravel pits, sand pits and any other public purpose within or without the Commonwealth. The Authority shall have the power to install thereon all necessary machinery and equipment to operate the same for producing materials required for construction, repair and maintenance of public properties, to sell any surplus of such materials for private purposes and to build and operate a plant or plants for the preparation and mixing of materials for the construction of all public improvements and the maintenance and repair thereof as the same may be needed for the provision of electric, water and sewer services.

§ 15.2-7210. Powers and limitation of powers relating specifically to broadband services.

A. The establishment of the BVU Authority is deemed to be an entity conversion and all assets of and all certificates, authorizing the furnishing of Local Exchange Telephone Service and the furnishing of interexchange telecommunications services, granted to and held by Bristol Virginia Utilities and the City of Bristol, Bristol Virginia Utilities Division are hereby deemed to be transferred to BVU Authority without further application by BVU Authority to the Commission. The Commission shall issue appropriate documentation to effectuate this transfer without further action on behalf of BVU Authority. It is further deemed that the Authority has met all conditions precedent to qualify for such certificates and the powers granted therein and the limitations, restrictions and requirements set forth thereto continuing in full force and effect.

B. BVU Authority will be deemed to be an MLEC notwithstanding any provisions of general law to the contrary.

C. Upon enactment of this chapter the Authority shall file a name change with the State Corporation Commission.

D. No bond shall be required of BVU Authority by the State Corporation Commission.

E. BVU Authority will continue to have the same authority to provide telecommunications related services, including but not limited to cable television, broadband, and all other services that might be rendered by use of its fiber optic and wireless system as such authority existed as of December 31, 2009, and with the same limitations and restrictions thereto as existed on that date with respect to Bristol Virginia Utilities pursuant to the Charter of the City of Bristol, the general laws of the Commonwealth and certificates issued by the State Corporation Commission.

F. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited.

G. Public records of the Authority that contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, and proprietary information or trade secrets received from another entity pursuant to a nondisclosure agreement, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit.

H. The Authority is authorized to own and operate a cable television system or other multi-channel video programming in accordance with the Authority, in existence as of December 31, 2009, having been previously granted to the City of Bristol Bristol Virginia Utilities pursuant to the charter of the City of Bristol and the general laws of the Commonwealth, subject to all limitations and restrictions on those powers as of that date. Nothing in this subsection shall authorize the State Corporation Commission to regulate cable television service.

§ 15.2-7211. Transfer of properties and debt.

All of the properties, infrastructure and other assets used by Bristol Virginia Utilities for any of its utility services or otherwise, whether held in its name or in the name of the City of Bristol, Virginia, are hereby transferred to the Authority and declared to be held by the Authority as its property. The portion of the City's debt that was incurred for the benefit of Bristol Virginia Utilities is hereby declared to be the debt of the Authority. That debt will be the sole responsibility of the Authority. The Authority will either assume that debt or issue new bonded indebtedness to pay it off as soon as practical and in accordance with all bond covenants in the BVU bonds on the City's financial statements.

§ 15.2-7212. Reports.

The Authority shall keep minutes of its proceedings, which minutes shall be open to public inspection during normal business hours. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually by an independent certified public accountant. Such audited financial reports will be provided to the Commonwealth Auditor of Public Accounts and to each participating political subdivision each year and shall be open to public inspection.

§ 15.2-7213. Procurement.

All contracts that the Authority may let for professional services, nonprofessional services, or goods, materials and equipment shall be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Nothing herein will be construed to prevent the Authority from adopting a small purchases policy in keeping with such Act. If the Authority is procuring pursuant to a federal grant or program that requires compliance with federal procurement law, then the Authority may procure in compliance with federal law. If the Authority in the exercise of its powers is procuring in another state for use in that state, the Authority may procure in compliance with that state's procurement law.

§ 15.2-7214. Deposit and investment of funds.

All moneys of the Authority shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations having their principal offices in the Commonwealth. Such deposits shall

428 *be continuously secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et*
429 *seq.).*

430 *Funds of the Authority not needed for immediate use or disbursement may, subject to the provisions*
431 *of any contract between the Authority and the holders of its bonds or any contract between the*
432 *Authority and TVA, be invested in securities that are considered lawful investments for fiduciaries.*

433 *§ 15.2-7215. Authority to issue bonds.*

434 *The Authority shall have the power to issue bonds from time to time in its discretion, for any of its*
435 *purposes, including the payment of all or any part of the cost of Authority infrastructure and facilities;*
436 *including the payment or retirement of bonds previously issued by it and including the costs of the*
437 *issuance of such bonds. The Authority may issue such types of bonds as it may determine, including,*
438 *without limitation, bonds payable, both as to principal and interest: (i) from its revenues and receipts*
439 *generally and (ii) exclusively from the revenues and receipts of certain designated operations or*
440 *facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Any*
441 *such bonds may be additionally secured (i) by a pledge of any grant or contribution from the*
442 *Commonwealth, or any political subdivision, agency, or instrumentality thereof, any federal agency or*
443 *any unit, private corporation, co-partnership, association, or individual, or other entity, or (ii) by*
444 *mortgage or encumbrance of any property or facilities of the Authority. Unless otherwise provided in*
445 *the proceedings authorizing the issuance of the bonds, or in the trust indenture securing the same, all*
446 *bonds shall be payable solely and exclusively from the revenues and receipts of the Authority. Bonds*
447 *may be executed and delivered by the Authority at any time and from time to time, may be in such form*
448 *and denominations and of such terms and maturities, may be in registered, book entry, or bearer form*
449 *either as to principal or interest or both, may be payable in such installments and at such time or times,*
450 *may be payable at such place or places whether within or without the Commonwealth, may bear interest*
451 *at such rate or rates, may be payable at such time or times, and at such place or places, may be*
452 *evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be*
453 *provided and specified by the Board of Directors in authorizing each particular bond issue including*
454 *any designation of an agent or officer of the Authority to establish such provisions under guidelines*
455 *established by the Authority.*

456 *If deemed advisable by the Board of Directors, there may be retained in the proceedings under*
457 *which any bonds of the Authority are authorized to be issued an option to redeem all or any part*
458 *thereof as may be specified in such proceedings, at such price or prices and after such notice or notices*
459 *and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited*
460 *on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any*
461 *right or option to redeem any bonds except as may be provided in the proceedings under which they*
462 *shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and*
463 *from time to time as may be determined by the Board of Directors of the Authority to be most*
464 *advantageous, and the Authority may pay all costs, premiums and commissions that its Board of*
465 *Directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the*
466 *Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing*
467 *other bonds in connection with the same facility or any other facility, but the proceedings whereunder*
468 *any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for*
469 *any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be*
470 *refunded by the Authority by the issuance of its refunding bonds in such amount as the Board of*
471 *Directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the*
472 *bonds so to be refunded, together with any unpaid interest thereon and any costs, including insurance*
473 *costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may*
474 *be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either*
475 *by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds*
476 *to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby.*

477 *All bonds shall be signed on behalf of the Authority by the chairman or vice-chairman of the*
478 *Authority, or shall bear the facsimile signature of such officer, and shall bear the official seal of the*
479 *Authority, or a facsimile thereof shall be impressed or imprinted thereon and shall be attested to by the*
480 *manual or facsimile signature of the secretary (or the secretary-treasurer) or assistant secretary (or*
481 *assistant secretary-treasurer) of the Authority. Any coupons attached thereto shall bear the signature or*
482 *facsimile signature of such chairman. In case any officer whose signature or a facsimile of whose*
483 *signature appears on any bonds or coupons shall cease to be such officer before the delivery of such*
484 *bonds, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as*
485 *if such officer had remained in office until such delivery. When the signatures of both the chairman or*
486 *the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the*
487 *assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or*
488 *other authenticating agent approved by the Authority.*

489 *If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be*

less than the cost of the Authority facilities or infrastructure for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the Authority facilities or infrastructure for which such bonds shall have been issued.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau, or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things that are specifically required by this chapter.

All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ 8.1A-101 et seq.), subject only to provisions respecting registration of the bonds.

The interest income from and any profit made on the sale of the obligations issued under the provisions of this Act shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof.

§ 15.2-7216. Credit of Commonwealth and political subdivisions not pledged.

Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth of Virginia, or any political subdivision thereof other than the Authority, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall state on their face that neither the Commonwealth of Virginia nor any political subdivisions thereof, nor the Authority, are obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and money pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds, the redemption premium, if any, thereon, or the interest thereon or other costs incident thereto.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the Authority and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall be available to the Authority.

Bonds issued pursuant to the provisions of this Act shall not constitute indebtedness within the meaning of any debt limitation or restriction.

§ 15.2-7217. Directors and persons executing bonds not liable thereon.

Neither the Board of Directors nor any person executing the bonds shall be liable personally on the Authority's bonds by reasons of the issuance thereof.

§ 15.2-7218. Security for payment of bonds; default.

The principal of and interest on any bonds issued by the Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the Authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of any additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the Authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the Board of Directors shall deem advisable not in conflict with the provisions hereof. Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the Authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the Authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, may be enforced by mandamus, suit, action or proceeding at law or in equity to compel the Authority and the directors, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any trust indenture of the Authority, the appointment of a receiver in equity, or by foreclosure of any such trust indenture, or any one or more of such remedies.

§ 15.2-7219. Bonds as legal investments.

551 All bonds issued under the provisions of this chapter are hereby made securities in which all public
552 officers and public bodies of the Commonwealth and its political subdivisions and all insurance
553 companies, trust companies, banking associations, investment companies, executors, administrators,
554 trustees and other fiduciaries may properly and legally invest funds, including capital, under their
555 control or belonging to them. Such bonds are hereby made securities that may properly and legally be
556 deposited with and received by any state or municipal officer or any agency or political subdivision of
557 the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may
558 hereafter be authorized by law.

559 § 15.2-7220. Contracts concerning interest rates and investments.

560 The Authority may enter into any contract that the Board of Directors determines to be necessary or
561 appropriate to place the obligation or investment of the Authority, as represented by the bonds or the
562 investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired
563 by the Authority, which contract may include, without limitation, interest rate swap agreements, future
564 contracts and contracts providing for payments based upon levels of, or changes in, interest rates. These
565 contracts or arrangements may be entered into by the Authority in connection with, or incidental to,
566 entering into or maintaining any (i) agreement that secures bonds or (ii) investment, or contract
567 providing for investment, otherwise authorized by law. These contracts may contain such payment,
568 security, default, remedy and other terms as determined by the Authority. Any money set aside and
569 pledged to secure payments of bonds or any contracts entered into pursuant to this section may be
570 invested in accordance with Chapter 45 of Title 2.2 and may be pledged to and used to service any of
571 the contracts or agreements entered into pursuant to this section.

572 § 15.2-7221. Taxation.

573 The exercise of the powers granted by this Act shall in all respects be presumed to be for the benefit
574 of the public, for the increase of their commerce and for the promotion of their health, safety, welfare,
575 convenience and prosperity, and as the operation and maintenance of any service that the Authority is
576 authorized to provide will constitute the performance of an essential governmental function, the
577 Authority shall not be required to pay any taxes or assessments upon any facilities acquired and
578 constructed by it under the provisions of this Act and the bonds issued under the provisions of this Act,
579 their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times
580 be free and exempt from taxation by the Commonwealth and by any political subdivision thereof.
581 Persons, firms, partnerships, associations, corporations and organizations leasing property of the
582 Authority or doing business on property of the Authority shall be subject to and liable for payment of
583 all applicable taxes of the political subdivision in which such leased property lies or in which business
584 is conducted including but not limited to any leasehold tax on real property and taxes on the sale of
585 utility services and local general retail sales and use taxes, taxes to be paid on licenses in respect to
586 any business, profession, vocation or calling, and taxes upon consumers of gas, electricity, telephone
587 and other public utility services.

588 § 15.2-7222. Sovereign immunity.

589 No provisions of this chapter nor act of an authority, including the procurement of insurance or
590 self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its
591 directors, officers, employees or agents are otherwise entitled.

592 § 15.2-7223. Appropriation by political subdivision.

593 Any political subdivision of the Commonwealth is authorized to provide services, to donate real or
594 personal property, and to make appropriations to the Authority for the acquisition, construction,
595 maintenance and operation of the Authority's facilities. Any such political subdivision is hereby
596 authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public
597 Finance Act of 1991 (§ 15.2-2600 et seq.) or in any applicable municipal charter for the purpose of
598 providing funds to be appropriated to the Authority, and such political subdivisions may enter into
599 contracts obligating such bond proceeds to the Authority.

600 § 15.2-7224. Contracts with political subdivisions.

601 The Authority is authorized to enter into contracts with the Commonwealth, with the states it
602 operates within, with any one or more political subdivisions within and without the Commonwealth, and
603 with any other person or entity for any legal purpose.

604 § 15.2-7225. Application of local ordinances, service charges, and taxes upon leaseholds.

605 Nothing herein contained shall be construed to exempt the Authority's property from any applicable
606 zoning, subdivision, erosion and sediment control and fire prevention codes or from building regulations
607 of a political subdivision in which such property is located, except as otherwise specifically excluded
608 herein. Nor shall anything herein contained exempt the property of the Authority from any service
609 charge authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of
610 Virginia, or exempt any lessee of any of the Authority's property from any tax imposed upon his
611 leasehold interest in such property or upon the receipts derived therefrom.

612 § 15.2-7226. Existing contracts, leases, franchises, etc., not impaired.

No provisions of this act shall relieve, impair or affect any right, duty, liability or obligation arising out of any contract, concession, lease or franchise now in existence, including all contracts entered into by Bristol Virginia Utilities except to the extent that such contract, concession, lease or franchise may permit. Notwithstanding the foregoing provisions of this section, the Authority may renegotiate, renew, extend the term of or otherwise modify at any time any contract, concession, lease or franchise now in existence in such manner and on such terms and conditions as it may deem appropriate, provided that the operator of or under any said contract, concession, lease or franchise consents to such renegotiation, renewal, extension or modification. The Authority shall be obligated for the performance of any contract of Bristol Virginia Utilities now in existence in accordance with its terms, and such contracts shall remain in full force and effect.

§ 15.2-7227. Jurisdiction of operations.

The Authority shall have the power to provide each of its respective services in the same areas and political subdivisions in which Bristol Virginia Utilities was authorized to provide such services as of December 31, 2009, and shall be subject to any limitations of area in which each service is provided that were imposed on Bristol Virginia Utilities by general law of the Commonwealth of Virginia, including the Charter granted to the City of Bristol, Virginia, as the same was applicable to Bristol Virginia Utilities as of that date.

§ 15.2-7228. Liberal construction.

Neither this chapter nor anything contained herein is or shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any laws of the Commonwealth, and this chapter is cumulative to any such powers; provided, however, that nothing in the foregoing provision shall be deemed to have expanded the powers of the Authority to provide and operate telecommunication and related services, including without limitation, cable television, Internet and all other services that might be rendered by use of the Authority's fiber optic system, beyond those limitations and restrictions set forth in the general laws of the Commonwealth as existed on December 31, 2009. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws. The provisions of this act are severable, and if any of its provisions shall be invalidated by a court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter unless said partial invalidation makes the continued operation of the Authority economically or operationally inviable, in which case, this chapter shall be deemed invalid as a whole.

§ 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, or any authority created by Chapter 72 (§15.2-7200 et seq.) of Title 15.2 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, or any authority created by Chapter 72 of Title 15.2 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, or any authority created by Chapter 72 (§15.2-7200 et seq.) of Title 15.2 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

674 service territory. A local exchange carrier shall only be considered an incumbent in any certificated
675 service territory in which it was considered an incumbent prior to July 1, 2002, except that the
676 Commission may make changes to a local exchange carrier's incumbent certificated service territory at
677 the request of those incumbent local exchange carriers that are directly involved in a proposed change in
678 the certificated service territory.

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

684 3. The Commission shall (i) promote and seek to assure the provision of competitive services to all
685 classes of customers throughout all geographic areas of the Commonwealth by a variety of service
686 providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so
687 as to encourage competition based on service, quality, and price differences between alternative
688 providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the
689 markets to be served or the services offered by any provider; (iv) determine the form of rate regulation,
690 if any, for the local exchange services to be provided by the applicant and, upon application, the form
691 of rate regulation for the comparable services of the incumbent local exchange telephone company
692 provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure
693 that there is no cross-subsidization of the applicant's competitive local exchange telephone services by
694 any other of its services over which it has a monopoly, whether or not those services are telephone
695 services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue
696 received by a county, city or town for providing telecommunications services shall not be
697 cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas
698 where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized
699 pursuant to subdivision 5 of this subsection.

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

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

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

735 7. Each locality *or authority* that has obtained a certificate pursuant to this section shall provide

nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

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

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

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

11. *Nothing contained herein shall require the Authority created pursuant to Chapter 72 (§ 15.2-7200 et seq.) of Title 15.2, and expressly exempted from obtaining another certificate pursuant to this section by subsection A of § 15.2-7210, to obtain the certificate otherwise required by this section.*

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, *or authority* that has obtained a certificate pursuant to this section.

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

§ 56-580. Transmission and distribution of electric energy.

A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services, to the extent necessary to prevent impairment of competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental

activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1, the Commission shall continue to exercise its existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, ~~or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403, or by an authority created by Chapter 72 (§ 15.2-7200 et seq.) of Title 15.2.~~ Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality, ~~or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403, or that authority created by Chapter 72 of Title 15.2~~ elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.

2. Nothing contained herein shall expand the powers granted to BVU Authority beyond those powers expressed in the Charter of the City of Bristol or granted to BVU by general law as those powers existed on December 31, 2009.

3. Nothing contained herein shall expand the territory in which BVU Authority may provide

859 telecommunication services and cable television services beyond those territorial limits in which
860 BVU was authorized to provide such services on December 31, 2009.
861 4. All the powers granted herein shall be exercised in conformance with the duties, restrictions,
862 and requirements set forth in the Charter of the City of Bristol, the general laws of the
863 Commonwealth, and the applicable regulations of the State Corporation Commission as were in
864 existence on December 31, 2009, and as such special and general laws and regulations may be
865 amended in the future.
866

INTRODUCED

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