

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 738

An Act to amend and reenact §§ 56-1, 56-88.1, 56-234, 56-235.1, 56-236, 56-237 through 56-238, 56-240, 56-241, 56-247.1, 56-248, 56-248.1, 56-249.2, 56-481.1, and 56-482.1 of the Code of Virginia and to repeal § 56-265.4:3, Article 2 (§§ 56-469 through 56-477) of Chapter 15 of Title 56, and §§ 56-478.1 and 56-481 of the Code of Virginia, relating to the regulation of telecommunications services.

[H 2367]

Approved March 28, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-1, 56-88.1, 56-234, 56-235.1, 56-236, 56-237 through 56-238, 56-240, 56-241, 56-247.1, 56-248, 56-248.1, 56-249.2, 56-481.1, and 56-482.1 of the Code of Virginia are amended and reenacted as follows:

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at *specified* rates and charges ~~specified in local exchange tariffs filed with the Commission~~. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Mail" *includes electronic mail and other forms of electronic communication when the customer has requested or authorized electronic bill delivery or other electronic communications.*

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations.

"Public service corporation" or "public service company" includes gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, ~~telegraph companies~~, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include (i) a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any company described in subdivision (b)(10) of § 56-265.1.

"Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

"Railroad company" includes any company, trustee or other person owning, leasing or operating a railroad.

"Rate" means rate charged for any service rendered or to be rendered.

"Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

"Regulated operating revenue" includes only revenue from services not found to be competitive.

"Transportation company" includes any railroad company, any company transporting express by railroad, and any ship or boat company.

"Virginia limited liability company" means (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, (ii) any entity that has become a limited liability company pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or pursuant to conversion or domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. With respect to an organization or domestication pursuant to clause (iii), the terms and conditions of a domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate, and the provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company so domesticated or organized.

"Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This definition includes any such service that permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

§ 56-88.1. Acquisition or disposition of control of a public utility.

A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of ~~(i)~~ a:

1. A public utility within the meaning of this chapter ~~or~~ ~~(ii)~~ a telephone company, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90; or

2. A telephone company, or all of the assets thereof, without the prior approval of the Commission. *In determining whether to grant approval, the Commission shall consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring control of or all of the assets of the telephone company.*

The Commission shall, after the filing of a completed application, approve or disapprove the requested acquisition or disposition within ~~sixty~~ 60 days. The ~~sixty-day~~ 60-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within ~~sixty~~ 60 days or any extended period ordered by the Commission.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

C. For purposes of this section, "control" means (i) the acquisition of ~~twenty-five~~ 25 percent or more of the voting stock or (ii) the actual exercise of any substantial influence over the policies and actions of any public utility or telephone company.

D. This section shall not apply to any company engaged in the business of generating electricity whose rates and services are not regulated by the State Corporation Commission.

§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.

A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. *Notwithstanding any other provision of law:*

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or

terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

B. It shall be ~~their~~ the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any municipal corporation or to the state or federal government. The provisions hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any such proceeding.

C. The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.

§ 56-235.1. Conservation of energy and capital resources.

*It shall be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service and it may further provide for the dissemination of information to the public, either through the Commission staff or through a public utility, in order to promote public understanding and cooperation in achieving effective conservation of such resources; provided, however, that nothing in this section shall be construed to authorize the adoption of any rate or charge which is clearly not cost-based or which is in the nature of a penalty for otherwise permissible use of utility services. *This section shall not apply to telephone companies.**

§ 56-236. Public utilities required to file schedules of rates and charges; rules and regulations; when detariffing of telephone services to be permitted.

~~Every~~ A. Unless the Commission determines otherwise, every public utility shall be required to file with the Commission and to keep open to public inspection schedules showing rates and charges, either for itself, or joint rates and charges between itself and any other public utility. Every public utility shall file with, and as a part of, such schedules, copies of all rules and regulations that in any manner affect the rates charged or to be charged.

B. The Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for (i) any retail telephone service classified by the Commission to be competitive and (ii) any other retail telephone service not found by the Commission prior to January 1, 2011, to be a basic local exchange telephone service.

C. As of July 1, 2013, the Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for any or all retail telephone services.

§ 56-237. How changes in rates effected; notice required; changes to be indicated on schedules.

No change shall be made in any schedule ~~required to be~~ filed pursuant to ~~the preceding section~~ (§ 56-236), including schedules of joint rates, except after ~~thirty~~ 30 days' notice to the Commission, in such manner as the Commission may require, and to the public, in such manner as prescribed in § 56-237.1, and all such changed rates, tolls, charges, rules, and regulations shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof not less than ~~thirty~~ 30 days prior to the time the same are to take effect; provided, that the Commission may, in particular cases, authorize or prescribe a less time in which changes may be made; and provided further that, in the case of water companies, the notice to the public shall set forth the proposed rates and charges.

§ 56-237.1. Notification of intent to seek rate change in schedules required to be filed under § 56-236.

*A. Every public utility which indicates upon existing *required* schedules, or upon new schedules*

required to be filed in lieu thereof, changes in rates, tolls, charges, rules and regulations, shall cause to have published, once a week for four successive weeks, in one or more newspapers in circulation in its franchise area and approved by the Commission, a notice of its intention to change its rates, tolls, charges, rules and regulations. The last such publication shall appear no less than ~~thirty~~ 30 days prior to the time any changed rates, tolls, charges, rules and regulations shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

B. Every public utility which indicates upon existing *required* schedules, or upon new schedules *required to be* filed in lieu thereof, changes in rates, tolls, charges, rules and regulations, shall mail to each of its customers, along with its periodic invoice, bill or other statement advising the customer of its charges, a notice of its intention to change its rates, tolls, charges, rules and regulations. This notice shall be mailed no less than ~~thirty~~ 30 days prior to the time any such changed rate, toll, charge, rule and regulation shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

C. The Commission may dispense with either or both of the requirements contained in ~~paragraphs subsections A and B of this section,~~ if either or both such requirements ~~is~~ *are* not necessary to provide adequate notice to all of the public utilities' customers. The Commission may prescribe additional requirements for notification to a public utility's customers of its intention to change its rates, tolls, charges, rules and regulations.

§ 56-237.2. Public hearings on protests or objections to rate changes.

Whenever pursuant to § 56-237 there shall be filed with the Commission any schedule *required to be filed under* § 56-236 stating a change of rate, toll or charge and a protest or objection thereto is filed by or on behalf of the lesser of 150 or five percent (5%) of the customers or consumers or other persons subject to such rate, toll or charge, the Commission shall upon reasonable notice conduct a public hearing concerning the lawfulness of the proposed rate, toll or charge. At any such hearing involving a change of *such* rate, toll or charge, the burden of proof shall be upon the applicant therefor to demonstrate that the proposed change is just and reasonable. The Commission shall prescribe all necessary rules and regulations for the conduct of such hearing, which rules shall afford ample opportunity for participation or representation by persons affected by such change.

§ 56-238. Suspension of proposed rates, etc.; investigation; effectiveness of rates pending investigation and subject to bond; fixing reasonable rates, etc.

The Commission, either upon complaint or on its own motion, may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations *for schedules required to be filed under* § 56-236 of any public utility except an investor-owned electric public utility for a period not exceeding 150 days from the date of filing, and the Commission shall suspend the enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, during which times the Commission shall investigate the reasonableness or justice of ~~the~~ *such* proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable. The Commission's final order in such a proceeding involving an investor-owned electric public utility that is filed after January 1, 2010, shall be entered not more than nine months after the date of filing, at which time the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. Notice of the suspension of any *such* proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September 1, 1980. This section shall not apply to proceedings conducted pursuant to § 56-245 or 56-249.6.

§ 56-240. Proposed rates, etc., or changes thereof, not suspended effective subject to later change by Commission; refund or credit; appeal; investor-owned public utilities required to show increase complies with § 56-235.2.

Unless the Commission so suspends such schedule of rates, tolls, charges, rules and regulations, or changes thereof, *that are required to be filed under* § 56-236, the same shall go into effect as originally filed by any public utility as defined in § 56-232, upon the date specified in the schedule subject, however, to the power of the Commission, upon investigation thereafter, to fix and order substituted therefor such rate or rates, tolls, charges, rules, or regulations, as shall be just and reasonable, as provided in §§ 56-235 and 56-247. The Commission may thereupon, in its discretion, order such public

utility to refund or give credit promptly to the parties entitled thereto any portion or all of the charges originally filed by the public utility which may have been collected or received in excess of those charges finally fixed and ordered substituted therefor by the Commission. Rates of any utility found to be operating in violation of § 56-265.3 may be deemed subject to refund by the Commission, on its own motion, as of the date of the Commission's order finding that the utility was operating in violation of § 56-265.3. Such rates shall then be interim in nature and subject to refund until such time as the Commission has determined the appropriateness of the rates. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission.

From any action of the Commission in prescribing rates, refunds, credits, tolls, charges, rules and regulations or changes thereof, *that are required to be filed under § 56-236*, an appeal may be taken by the corporation whose rates, refunds, credits, tolls, charges, rules and regulations or changes thereof are affected, or by the Commonwealth, or by any person deeming himself aggrieved by such action.

No *such* rate increase shall go into effect under the provisions of this section for an investor-owned gas, telephone or electric public utility unless such public utility has filed with its schedule information and data designed to show that any increase complies with the just and reasonable requirements of § 56-235.2, and unless based thereon the Commission finds a reasonable probability that the increase will be justified upon full investigation and hearing. The Commission is authorized to promulgate any rules necessary to implement this provision.

§ 56-241. Rates of telephone companies.

The power of the Commission over the rates of telephone companies shall be as defined (i) by this chapter ~~and § 56-481~~ or (ii) by § 56-481.1.

§ 56-247.1. Commission to require public utilities to follow certain procedures.

A. The Commission shall require that public utilities adhere to the following procedures *for services not found to be competitive*:

A 1. Every public utility shall provide its residential customers one full billing period to pay for one month's local or basic services, before initiating any proceeding against a residential customer for nonpayment of local service.

B 2. Pay the residential customer a fair rate of interest as determined by the Commission on money deposited and return the deposit with the interest after not more than one year of satisfactory credit has been established.

C 3. Every public utility shall establish customer complaint procedures which will insure prompt and effective handling of all customer inquiries, service requests and complaints. Such procedure shall be approved by the Commission before its implementation and it shall be distributed to its residential customers.

D 4. No electric or gas utility shall terminate a customer's service without 10 days' notice by mail to the customer.

E 5. No public utility shall terminate the residential service of a customer for such customer's nonpayment of basic nonresidential services as defined by its terms and conditions on file with the Virginia State Corporation Commission.

F 6. Any electric utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may install and operate, upon a customer's request and pursuant to an appropriate tariff for any type or classification of service, a prepaid metering equipment and system that is configured to terminate electric service immediately and automatically when the customer has incurred charges for electric service equal to the customer's prepayments for such service. ~~Subsections A Subdivisions 1, B 2, D 4, and E 5 shall not apply to services provided pursuant to electric service provided on a prepaid basis by a prepaid metering equipment and system pursuant to this subsection.~~ Such tariffs shall be filed with the Commission for its review and determination that the tariff is not contrary to the public interest.

B. *Any and all Commission rules and regulations concerning the denial of telephone service for nonpayment of such service shall not apply to services found to be competitive.*

§ 56-248. Commission to prescribe standard units of products or service.

The Commission shall ascertain and prescribe for each kind of public utility suitable standard commercial units of products or service. *This section shall not apply to telephone companies.*

§ 56-248.1. Commission to monitor fuel prices and utility fuel purchases; fuel price index.

The Commission shall monitor all fuel purchases, transportation costs, and contracts for such purchases of a utility to ascertain that all feasible economies are being utilized.

In addition, the Commission shall establish a fuel price index in order to compare the prices paid for the various types of fuel by Virginia utilities with the average price of the various types of fuel paid by other public utilities at comparable geographic locations in the market. *This section shall not apply to telephone companies.*

§ 56-249.2. Certain records to be maintained.

All public utilities doing business in ~~this State~~ the Commonwealth that file a rate of return statement shall, on and after January 1, 1977, or the beginning of the next fiscal year of the public utility after such date, maintain all records necessary to prepare and submit annually a rate of return statement reflecting that part of its total business under regulation of the Commission.

§ 56-481.1. Rates, charges, and regulations for interexchange telephone service.

If under Chapter 10.1 (§ 56-265.1 et seq.) ~~of this title~~ a certificate of public convenience and necessity is issued to a telephone company to provide interexchange service, the Commission may, if it determines that such service will be provided on a competitive basis, approve rates, charges, and regulations as it may deem appropriate for the telephone company furnishing the competitive service, provided such rates, charges, and regulations are nondiscriminatory and in the public interest. In making such determination, the Commission may consider (i) the number of companies providing the service; (ii) the geographic availability of the service from other companies; (iii) the quality of service available from other companies; and (iv) any other factors the Commission considers relevant to the public interest. The Commission is authorized to promulgate any rules necessary to implement this provision; provided that any such rules so promulgated shall be uniformly applicable to all telephone companies that are subject to the provisions of this section. *The Commission shall permit the detariffing of interexchange service.*

§ 56-482.1. Reports required of interexchange telephone companies.

Each interexchange telephone company shall provide to the Commission in a timely manner any report or information concerning its usage of local exchange telephone services and facilities required under the effective access charge tariffs or schedules of a local exchange telephone company. The Commission shall prescribe rules and regulations to effectuate the purpose of this section. *The requirement to provide any reports pursuant to such rules and regulations, other than reports required by the Commission to calculate the special revenue tax imposed under § 58.1-2660, shall expire on December 31 of each year unless extended by an order of the Commission issued after notice and an opportunity for a hearing.*

2. That § 56-265.4:3, Article 2 (§§ 56-469 through 56-477) of Chapter 15 of Title 56, and §§ 56-478.1 and 56-481 of the Code of Virginia are repealed.