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HOUSE BILL NO. 958

Offered January 22, 1996

A BILL to amend and reenact §§ 56-1, 56-235.5, 56-265.4:4 and 56-481.2 of the Code of Virginia, relating to public service companies; definitions; basic local exchange telephone service.

Patron—Robinson

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-1, 56-235.5, 56-265.4:4 and 56-481.2 of the Code of Virginia are amended and reenacted as follows:

§ 56-1. Definitions.

Whenever used in any chapter under this title, the following terms, words and phrases shall have the meaning and shall include what is specified in this section, unless the contrary plainly appears, that is to say:

The words "~~the~~ Commission" ~~shall mean~~ means the State Corporation Commission.

The word "~~corporation~~" "*Corporation*" or "company" ~~shall include~~ 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.

The words " ~~interexchange~~ *Interexchange* telephone service" ~~shall mean~~ means telephone service between points in two or more exchanges, which is not classified as local exchange telephone service.

The words " ~~local~~ *Local* exchange telephone service" ~~shall mean~~ 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 rates and charges specified in local exchange tariffs filed with the Commission.

"*Basic local exchange telephone service*" means a subset of local exchange telephone service consisting of (i) a single dial tone link for two-way switched voice communications, (ii) the actual switching of the dial tone link in the local service area, (iii) touch tone capability, (iv) a white pages directory listing, (v) access to the following: 700/900 blocking; local directory assistance service; emergency ("911") service; end user access to interexchange telephone companies for purposes of completing interexchange voice calls; the telecommunications relay service established pursuant to Article 5 of Chapter 15 (§ 56-484.4 et seq.) of this title, and (vi) service connection charges associated with the services under this definition.

The word "~~person~~" ~~shall include~~ "*Person*" includes individuals, partnerships and corporations.

The words " ~~public~~ *Public* service corporation" or "public service company" ~~shall include~~ 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, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

The word "~~railroad~~" ~~shall include~~ "*Railroad*" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

The words " ~~railroad~~ *Railroad* company" ~~shall include~~ includes any company, trustee or other person owning, leasing or operating a railroad.

The word "~~rate~~" "*Rate*" ~~shall be considered to mean~~ means "rate charged for any service rendered or to be rendered."

The words "~~rate~~ *Rate*," "charge" and "regulation" ~~shall include~~ includes joint rates, joint charges and joint regulations, respectively.

The words "~~transportation~~ *Transportation* company" ~~shall include~~ includes any railroad company, any company transporting express by railroad, and any ship or boat company.

§ 56-235.5. Telephone regulatory alternatives.

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

B. In regulating telephone services of any telephone company, and notwithstanding any provision of

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60 law to the contrary, the Commission, after giving notice and an opportunity for hearing, may replace the
61 ratemaking methodology set forth in § 56-235.2 with any alternative form of regulation which: (i)
62 protects the affordability of basic local exchange telephone service, as such service is defined by the
63 Commission § 56-1; (ii) reasonably assures the continuation of quality local exchange telephone service;
64 (iii) will not unreasonably prejudice or disadvantage any class of telephone company customers or other
65 providers of competitive services; and (iv) is in the public interest. Alternatives may differ among
66 telephone companies and may include, but are not limited to, the use of price regulation, ranges of
67 authorized returns, categories of services, price indexing or other alternative forms of regulation. A
68 hearing under this section shall include the right to present evidence and be heard. Prior to any hearing
69 under this section, the Commission shall provide parties an opportunity to conduct discovery.

70 C. Any telephone company or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19
71 (§ 56-531 et seq.) of this title may apply to the Commission at any time to obtain an alternative form of
72 regulation. The Commission shall approve the application if it finds, after notice to all affected parties
73 and hearing, that the proposal meets the standards for an alternative form of regulation set forth in
74 subsection B.

75 1. A Commission order, including appropriate findings of fact and conclusions of law, denying or
76 approving, with or without modification, an application for an alternative form of regulation shall be
77 entered no more than ninety days from the filing of the application, except that the Commission, upon
78 notice to all parties in interest, may extend that period in additional thirty-day increments not to exceed
79 an additional ninety days in all.

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

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

94 E. The Commission shall have the authority, after notice to all affected parties and hearing, to
95 determine whether any telephone service of a telephone company is subject to competition and to
96 provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified regulation
97 determined by the Commission to be in the public interest for such competitive services.

98 F. The Commission may determine telephone services of any telephone company to be competitive
99 when it finds competition or the potential for competition in the market place is or can be an effective
100 regulator of the price of those services. In determining whether competition effectively regulates the
101 prices of services, the Commission may consider: (i) the ease of market entry, (ii) the presence of other
102 providers reasonably meeting the needs of consumers, and (iii) other factors the Commission considers
103 relevant. Notwithstanding any other provisions of this subsection, all services classified as actually
104 competitive services under the provisions of the Experimental Plan adopted by the Commission in Case
105 No. PUC880035 in its final order of December 15, 1988, and remaining so classified as of the effective
106 date of this section, shall be considered to be competitive services.

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

111 H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C
112 above, or determines that a service is competitive pursuant to subsections E and F above, the
113 Commission shall adopt safeguards to protect consumers and competitive markets. At a minimum these
114 safeguards must assure that there is no cross subsidization of competitive services by monopoly services.

115 § 56-265.4:4. Certificate to operate as a telephone utility.

116 A. No certificate shall be granted to an applicant proposing to furnish local exchange telephone
117 service in the territory of another certificate holder unless and until it shall be proved to the satisfaction
118 of the Commission that the service rendered by such certificate holder in such territory is inadequate to
119 the requirements of the public necessity and convenience. If the Commission shall be of the opinion that
120 the service rendered by the existing certificate holder in such territory is in any respect inadequate to the
121 requirements of the public necessity and convenience, that certificate holder shall be given reasonable

time and opportunity to remedy the inadequacy before any certificate shall be granted to an applicant proposing to operate in that territory.

B. The Commission may, however, grant certificates to competing telephone companies 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. Any company so certificated shall not be allowed to offer services within local market areas as defined by the State Corporation Commission or in local access and transport areas as established under federal court order until January 1, 1986.

C. 1. Effective January 1, 1996, after notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the Commission may, however, grant certificates to applicants proposing to furnish local exchange telephone service in the service territory of another certificate holder. 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 § 56-1, 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.

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

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

§ 56-481.2. Rates, charges and regulations for local exchange telephone services provided by new entrants.

If, under subsection C of § 56-265.4:4, a certificate of public convenience and necessity is issued to a new entrant to provide local exchange telephone service, the Commission shall at the same time adopt a form of regulation for the new entrant's local exchange services and, upon application pursuant to § 56-235.5, for the incumbent local exchange telephone company, that does not regulate the earnings of either. In approving the form of regulation of the new entrant's local exchange services, the Commission shall do so in a manner that is equitable to the new entrant and the incumbent local exchange telephone company and in the public interest. In determining the appropriate form of regulation for the new entrant, the Commission shall: (i) consider whether the form of regulation reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission § 56-1, 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 incumbent local exchange telephone company, and is in the public interest. In approving the appropriate form of regulation for the new entrant, the Commission may take such action as it deems appropriate in the public interest, with due consideration being given to the competitiveness of the services, including deregulation and detariffing the services. Nothing in this section shall be construed to deprive the Commission of its power to modify the form of regulation, after notice and an opportunity for hearing, if it finds that competition or the potential for competition no longer effectively regulates the price of a service. Except as provided for in this section and in subsection C of § 56-265.4:4, no other provision of law relating to the regulation of rates, charges, and regulation of local exchange telephone services shall apply to the provision of such services by new entrants.