

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 916

An Act to amend and reenact § 15.2-1500 of the Code of Virginia; to amend the Code of Virginia by adding in Article 5 of Chapter 15 of Title 56 sections numbered 56-484.12, 56-484.13 and 56-484.14; and to repeal the second enactment of Chapter 906 of the Acts of Assembly of 1998, relating to local telecommunications services.

[H 2277]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1500 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 5 of Chapter 15 of Title 56 sections numbered 56-484.12, 56-484.13 and 56-484.14 as follows:

§ 15.2-1500. Organization of local government.

A. Every locality shall provide for all the governmental functions of the locality, including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.

B. Notwithstanding any other provision of law, general or special, no locality shall establish any department, office, board, commission, agency or other governmental division or entity which has authority to offer telecommunications equipment, infrastructure, other than pole or tower attachments including antennas or conduit occupancy, or services, other than intragovernmental radio dispatch or paging systems shared by adjoining localities, for sale or lease to any person or entity other than (i) such locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities or (ii) an adjoining locality's departments, offices, boards, commissions, agencies or other governmental divisions or entities, so long as any charges for such telecommunications equipment, infrastructure and services do not exceed the cost to the providing locality of providing such equipment, infrastructure or services. However, any town which is located adjacent to Exit 17 on Interstate 81 and which offered telecommunications services to the public on January 1, 1998, is hereby authorized to continue to offer such telecommunications services, but shall not acquire by eminent domain the facilities or other property of any telephone company or cable operator. Any locality may sell any telecommunications infrastructure, including related equipment, which such locality had constructed prior to September 1, 1998, and such locality may receive from the purchaser or purchasers, as full or partial consideration for the sale of such infrastructure, communications services to be used solely for internal use of the locality. Any locality which sells such infrastructure, including related equipment, may, at its option, exclude the incumbent local exchange carrier from the bid or other sale process.

C. Notwithstanding the provisions of subsection B, a locality, electric commission or board, industrial development authority, or economic development authority, may lease dark fiber pursuant to § 56-484.12. For purposes of this section, "dark fiber" means fiber optic cable which is not lighted by lasers or other electronic equipment. The price for such lease may include reasonable provisions for the recovery of the cost of the network and installation of additional fiber and related facilities to complete the lessor's network but shall not be related to the revenue or profit of the lessee. The lessor may recover costs of constructing such leased network and any extensions or improvements thereto; however, such lessor may not profit from the leasing of such facilities. The lease may require the lessee to make additional investments in the lessee's facilities based on such factors as the number of customers, market share, the lessee's revenue or the lessee's profit. Any such extension or improvements constructed by a lessee shall remain the property of the lessee; however, the lessee may be required to provide dedicated use to the lessor for the lessor's own internal purposes for the life of the fiber. The locality, electric commission or board, industrial development authority, or economic development authority, shall not be involved in the promotion or marketing of the lessee as the provider of the services.

§ 56-484.12. Leases by localities, electric commission or board, industrial development authorities, or economic development authorities of dark fiber.

Notwithstanding the provisions of § 15.2-1500, a county, city, town, electric commission or board, industrial development authority, or economic development authority may lease on nondiscriminatory terms, for a term not to exceed ten years, dark fiber, as that term is defined in subsection C of § 15.2-1500, to one or more certificated local exchange telephone companies and to not-for-profit educational schools and institutions, hospitals, health clinics and medical facilities for use in serving their not-for-profit purposes. Any such lease must specify the qualifying telecommunications service to be offered by the lessee and the geographic area in which that service will be offered. For purposes of this section, a "qualifying telecommunications service" is a telecommunications service, which shall

include but is not limited to, high-speed data service and Internet access service, of general application to be offered by the lessee which is not otherwise generally and competitively available in the geographic area in which the service will be offered by an entity other than an entity leasing from the county, city, town, electric commission or board, industrial development authority, or economic development authority. Such lessee shall not be prohibited from offering authorized telecommunications services in addition to the qualifying telecommunications service over the leased facilities. No such lease shall be effective unless, prior to entering into such lease: (i) the proposed lessee petitions the State Corporation Commission to approve such lease of the dark fiber and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the lease or fails to approve or disapprove the lease within sixty days after notice. The sixty-day period may be extended by Commission order for a period not to exceed an additional sixty days. The lease shall be deemed approved if the Commission fails to act within sixty days after notice or any extended period ordered by the Commission.

§ 56-484.13. Factors for approval.

The State Corporation Commission shall find that it is in the public interest to approve the lease of dark fiber as specified in § 56-484.12 unless it shall be demonstrated to the Commission and found that, within the geographic area to be served by the lease: (i) the lease will not promote the provision of competitive communications service within the geographic area; (ii) the lease will not enhance economic development; (iii) the qualifying telecommunications service specified in its lease as provided for in § 56-484.12 is readily and generally available from three or more nonaffiliated certificated local exchange companies, not including any lessee; (iv) the lease is not in compliance with the requirements of § 56-484.12; or (v) the lease will not benefit consumers. The factor stated in clause (iii) shall not apply to leases of dark fiber filed for approval within five years of the Commission's approval of the first lease of dark fiber by that county, city, town, electric commission or board, industrial development authority, or economic development authority.

§ 56-484.14. Availability of service by lessee.

Any lessee which has a lease approved by the Commission shall continue to offer and make generally and competitively available the qualifying telecommunications service specified in its lease as provided for in § 56-484.12. Lease approval may be revoked by the Commission upon a finding that the requirements of this section are not being met.

2. That the second enactment of Chapter 906 of the Acts of Assembly of 1998 is repealed.