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HOUSE BILL NO. 1439

Offered January 12, 2011

Prefiled November 9, 2010

A BILL to amend and reenact § 56-466.1 of the Code of Virginia, relating to pole attachments by cable television systems and telecommunications service providers.

Patron—Janis

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 56-466.1 of the Code of Virginia is amended and reenacted as follows:**

§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers.

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

"Public utility" has the same meaning ascribed thereto in § 56-232.

"Rearrangement" means work performed at the request of a telecommunications service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

B. Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system. *If a telecommunications service provider or cable television system and an electric cooperative cannot arrive at a mutually agreeable contract for pole attachments to an electric cooperative's facilities, upon petition for relief by the telecommunications service provider or cable television system, the Commission shall establish rates, terms, and conditions for such a contract, consistent with the goal of promoting access to electric cooperative facilities by telecommunications service providers and cable television systems in order to promote broadband connections and deployment throughout the Commonwealth. In establishing such rates, terms, and conditions, the Commission shall utilize the principles established by the Federal Communications Commission in regulations and case law for pole attachments regulated pursuant to 47 U.S.C. § 224, provided that any rate established by the Commission shall not exceed the highest rate for a similar attachment charged by any investor-owned electric utility that provides service in an area adjacent to the service territory of the electric cooperative.*

C. After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions and the payment of reasonable annual charges and the cost of any required rearrangement, the attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such telecommunications service provider or cable television system that is authorized by law, to construct and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the service and operation of the public utility or create a safety hazard.

D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct,

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59 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,
60 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
61 of safety, reliability, or generally applicable engineering principles.
62 E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.