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HOUSE BILL NO. 2196

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 31, 2017)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, relating to wireless communications infrastructure.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, as follows:

Article 7.2.

Zoning for Wireless Communications Infrastructure.

§ 15.2-2316.3. Definitions.

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

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Distributed antenna system" means a network that distributes radio frequency (RF) signals and consisting of (i) remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmissions and receptions; (ii) a high capacity signal transport medium that is connected to a central communications hub site; and (iii) radio transceivers located at the hub site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure.

"Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such higher limits as established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including but not limited to: (i) equipment

60 associated with wireless services, such as private, broadcast, and public safety services, as well as
61 unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio
62 transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and
63 comparable equipment, regardless of technological configuration.

64 "Wireless infrastructure provider" means any person that builds or installs transmission equipment,
65 wireless facilities, or wireless support structures, but that is not a wireless services provider.

66 "Wireless services" means (i) "personal wireless services"; (ii) "personal wireless service facilities"
67 as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
68 § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any
69 other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless
70 facilities.

71 "Wireless services provider" means a provider of wireless services.

72 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
73 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
74 of supporting wireless facilities. "Wireless support structure" does not include any telephone or
75 electrical utility pole or any tower used for the distribution or transmission of electrical service.

76 **§ 15.2-2316.4. Zoning; small cell facilities.**

77 A. A locality shall not require that a special exception, special use permit, or variance be obtained
78 for any small cell facility installed by a wireless services provider or wireless infrastructure provider on
79 an existing structure, provided that the wireless services provider or wireless infrastructure provider (i)
80 has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies
81 the locality in which the permitting process occurs.

82 B. Localities may require administrative review for the issuance of any required zoning permits for
83 the installation of a small cell facility by a wireless services provider or wireless infrastructure provider
84 on an existing structure. Localities shall permit an applicant to submit up to 50 permit requests on a
85 single application. In addition:

86 1. A locality shall approve or disapprove the application within 60 days. Any disapproval must be in
87 writing and accompanied by an explanation for the disapproval. The application shall be deemed
88 approved if the locality fails to act within 60 days.

89 2. A locality may prescribe and charge a reasonable fee not exceeding \$150 for processing an
90 application.

91 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

92 4. The locality may disapprove of a proposed location or installation of a small cell facility only for
93 the following reasons:

94 a. Material potential interference with other pre-existing communications facilities, or future
95 communications facilities that have already been designed and planned for a specific location or that
96 have been reserved for future public safety communications facilities;

97 b. The public safety or other critical public service needs; and

98 c. Only in the case of an installation on or in publicly owned or publicly controlled property,
99 aesthetic impact or the absence of all required approvals from all departments, authorities, and agencies
100 with jurisdiction over such property.

101 5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting,
102 any conditions that otherwise address potential visual or aesthetic effects resulting from the placement
103 of small cell facilities.

104 6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
105 removal of abandoned wireless support structures or wireless facilities.

106 C. Notwithstanding anything to the contrary in this section, the following work involving small cell
107 facilities shall be exempt from locality-imposed permitting requirements and fees: (i) routine
108 maintenance; (ii) the replacement of small cell facilities with small cell facilities that are substantially
109 similar in size, weight, and height, or smaller, and that have the same or less wind loading and
110 structural loading; and (iii) the installation, placement, maintenance, or replacement of micro-wireless
111 facilities that are suspended on cables or lines that are strung between existing utility poles in
112 compliance with national safety codes.

113 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

114 A. A locality shall approve or disapprove of a zoning application for the construction of a new
115 wireless support structure within 150 days. Such application shall be deemed approved if the locality
116 fails to act within 150 days.

117 B. A locality shall approve or disapprove of a zoning application for the co-location of any wireless
118 facility that is not a small cell facility within 60 days. Such application shall be deemed approved if the
119 locality fails to act within 60 days.

120 C. Any disapproval of an application under this section must be (i) in writing, (ii) supported by
121 substantial record evidence contained in a written record publicly released within 10 days following the

122 denial, (iii) accompanied by an explanation for the disapproval and an explanation of what the
123 applicant must do to cure the disapproval, and (iv) nondiscriminatory. An applicant adversely affected
124 by the denial may file an appeal with 30 days following delivery of the written record to the applicant.

125 D. A locality may charge a reasonable fee for each application submitted pursuant to this section;
126 such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is
127 less.

128 **§ 15.2-2316.6. Zoning approval process.**

129 When considering a zoning permit application under § 15.2-2316.5, a locality shall not:

130 1. Require an applicant to submit information about, or evaluate an applicant's business decisions
131 with respect to, its designed service, customer demand for service, or quality of its service to or from a
132 particular area or site;

133 2. Require information that concerns the specific need for the wireless support structure, including if
134 the service to be provided from the wireless support structure is to add additional wireless coverage or
135 additional wireless capacity. A locality may not require proprietary, confidential, or other business
136 information to justify the need for the new wireless support structure, including propagation maps and
137 telecommunications traffic studies;

138 3. Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant,
139 including, but not limited to, requiring an applicant to construct a distributed antenna system or small
140 cell facility in lieu of constructing a new wireless support structure, provided that a locality may
141 consider the height of the wireless support structure or wireless facilities in its zoning review if the
142 height of the structure, facilities, or structure with attached facilities exceeds 50 feet above ground level,
143 so long as the locality does not unreasonably discriminate between the applicant and other wireless
144 services providers, providers of telecommunications services, and nonpublic providers of cable television
145 and electric services;

146 4. Require the removal of existing wireless support structures or wireless facilities, wherever located,
147 as a condition for approval of an application. This section shall not preclude a locality from adopting
148 reasonable rules with respect to the removal of abandoned wireless support structures or wireless
149 facilities;

150 5. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type
151 of financial surety, to ensure that abandoned or unused facilities can be removed unless the locality
152 imposes similar requirements on other permits for other types of commercial development or land uses
153 and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the
154 facility;

155 6. Discriminate or create a preference on the basis of the ownership, including ownership by the
156 locality, of any property, structure, base station, or wireless support structure when promulgating rules
157 or procedures for siting wireless facilities or for evaluating applications;

158 7. Impose any unreasonable requirements or obligations regarding the presentation or appearance of
159 facilities, including, but not limited to, those relating to any kinds of materials used and those relating
160 to arranging, screening, or landscaping of facilities;

161 8. Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities,
162 networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in
163 which a locality has a competitive, economic, financial, governance, or other interest;

164 9. Condition or require the approval of an application on the basis of the applicant's agreement to
165 permit any wireless facilities provided or operated, in whole or in part, by a locality or by any other
166 entity, to be placed at or co-located with the applicant's wireless support structure;

167 10. Impose a setback or fall zone requirement for a wireless support structure that is larger than a
168 setback or fall zone area that is imposed on other types of structures of a similar size, including utility
169 poles;

170 11. Limit the duration of the approval of an application, except that construction of the approved
171 structure or facilities shall commence within two years of final approval and be diligently pursued to
172 completion; or

173 12. Require an applicant to perform services unrelated to an application, including restoration work
174 on any surface not disturbed by the applicant.

175 **§ 15.2-2316.7. Moratorium prohibited.**

176 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless
177 services providers or wireless infrastructure providers.

178 CHAPTER 15.1.

179 WIRELESS COMMUNICATIONS INFRASTRUCTURE.

180 **§ 56-484.26. Definitions.**

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

182 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals

183 *used in the provision of any type of wireless communications services.*

184 *"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,*
185 *under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support*
186 *structure. "Co-location" has a corresponding meaning.*

187 *"Department" means the Department of Transportation.*

188 *"Districtwide permit" means a permit granted by the Department to a wireless services provider or*
189 *wireless infrastructure provider that allows the permittee to use the rights-of-way under the*
190 *Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the*
191 *Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform*
192 *multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited*
193 *access right-of-way without obtaining a single use permit for each occurrence. The central office permit*
194 *manager shall be responsible for the issuance of all districtwide permits. The Department may authorize*
195 *districtwide permits covering multiple districts.*

196 *"Existing structure" means any structure that is installed or approved for installation at the time a*
197 *wireless services provider or wireless infrastructure provider provides notice to a locality or the*
198 *Department of an agreement with the owner of the structure to co-locate equipment on that structure.*

199 *"Existing structure" includes any structure that is currently supporting, designed to support, or capable*
200 *of supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility*
201 *poles, light poles, flag poles, signs, and water towers.*

202 *"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in*
203 *length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer*
204 *than 11 inches.*

205 *"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each*
206 *antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an*
207 *antenna that has exposed elements, the antenna and all of its exposed elements could fit within an*
208 *imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with*
209 *the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such higher*
210 *limits as established by the Federal Communications Commission. The following types of associated*
211 *equipment are not included in the calculation of equipment volume: electric meter, concealment,*
212 *telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding*
213 *equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power*
214 *and other services.*

215 *"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local*
216 *government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or*
217 *wires for communications, cable television, or electricity.*

218 *"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support*
219 *structure, originally constructed for use as a reservoir or facility to store or deliver water.*

220 *"Wireless facility" means equipment at a fixed location that enables wireless services between user*
221 *equipment and a communications network, including but not limited to: (i) equipment associated with*
222 *wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless*
223 *services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas,*
224 *coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless*
225 *of technological configuration.*

226 *"Wireless infrastructure provider" means any person, including a person authorized to provide*
227 *telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,*
228 *or wireless support structures, but that is not a wireless services provider.*

229 *"Wireless services" means (i) "personal wireless services"; (ii) "personal wireless service facilities"*
230 *as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.*
231 *§ 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any*
232 *other fixed or mobile wireless service, using licensed or unlicensed spectrum, provided using wireless*
233 *facilities.*

234 *"Wireless services provider" means a provider of wireless services.*

235 *"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed*
236 *or self-supporting, or suitable existing structure or alternative structure designed to support or capable*
237 *of supporting wireless facilities. "Wireless support structure" does not include any telephone or*
238 *electrical utility pole or any tower used for the distribution or transmission of electrical service.*

239 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
240 **infrastructure providers; generally.**

241 *A. No locality or the Department shall impose on wireless services providers or wireless*
242 *infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,*
243 *including, but not limited to, the permitting process, the zoning process, notice, time and location of*
244 *excavations and repair work, enforcement of the statewide building code, and inspections, which are (i)*

245 *unfair or unreasonable or (ii) any greater than those imposed on the following users of its public*
246 *rights-of-way: all providers of telecommunications services and nonpublic providers of cable television,*
247 *electric, natural gas, water, and sanitary sewer services.*

248 *B. No locality or the Department shall impose any fees on a wireless services provider or wireless*
249 *infrastructure provider for the use of public rights-of-way except in the manner prescribed in*
250 *§ 56-484.30.*

251 *C. No locality or the Department shall require a wireless services provider or wireless infrastructure*
252 *provider to provide in-kind services or physical assets as a condition of consent to use public*
253 *rights-of-way or easements, or in lieu of the Wireless Support Structure Public Rights-of-Way Use Fee*
254 *established in § 56-484.30. This shall not limit the ability of localities, their authorities or commissions*
255 *that provide utility services, or the Department to enter into voluntary pole attachment, tower*
256 *occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or*
257 *wireless infrastructure providers.*

258 *D. No locality or the Department shall adopt a moratorium on considering requests for access to the*
259 *public rights-of-way from wireless services providers or wireless infrastructure providers.*

260 **§ 56-484.28. Access to public rights-of-way under the jurisdiction of the Department for the**
261 **installation and maintenance of small cell facilities on existing structures.**

262 *A. Upon application by a wireless services provider or wireless infrastructure provider, the*
263 *Department shall issue a districtwide permit granting access to public rights-of-way under its*
264 *jurisdiction to install and maintain small cell facilities on existing structures in the rights-of-way. The*
265 *application shall include a copy of the agreement under which the applicant has permission from the*
266 *owner of the structure to the co-location of equipment on that structure. If the application is received on*
267 *or after September 1, 2017, (i) the Department shall issue the districtwide permit within 30 days after*
268 *receipt of the application and (ii) the districtwide permit shall be deemed granted if not issued within 30*
269 *days after receipt of the application. A districtwide permit issued for the original installation shall allow*
270 *the permittee to repair, replace, or perform routine maintenance operations to small cell facilities once*
271 *installed.*

272 *B. The Department may require a separate single use permit to allow a wireless services provider or*
273 *wireless infrastructure provider to install and maintain small cell facilities on an existing structure when*
274 *such activity requires (i) working within the highway travel lane or requiring closure of a highway*
275 *travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited*
276 *access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the*
277 *protection of public infrastructure or the operation thereof. Upon application by a wireless services*
278 *provider or wireless infrastructure provider, the Department may issue a single use permit granting*
279 *access to install and maintain small cell facilities in such circumstances. If the application is received*
280 *on or after September 1, 2017, (a) the Department shall approve or disapprove the application within*
281 *60 days after receipt of the application, which 60-day period may be extended by the Department in*
282 *writing for a period not to exceed an additional 30 days; and (b) the application shall be deemed*
283 *approved if the Department fails to approve or disapprove the application within the initial 60 days and*
284 *any extension thereof. Any disapproval of an application for a single use permit shall be in writing and*
285 *accompanied by an explanation of the reasons for the disapproval.*

286 *C. The Department shall not impose any fee for the use of the right-of-way on a wireless services*
287 *provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing*
288 *structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not*
289 *to exceed \$150 for processing an application for a districtwide or single use permit.*

290 *D. The Department shall not impose any fee, or require a single use permit for (i) routine*
291 *maintenance of small cell facilities; (ii) the replacement of small cell facilities with small cell facilities*
292 *that are substantially similar in size, weight, and height, or smaller, and that have the same or less*
293 *wind loading and structural loading; or (iii) the installation, placement, maintenance, or replacement of*
294 *micro-wireless facilities that are suspended on cables or lines that are strung between existing utility*
295 *poles in compliance with national safety codes.*

296 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
297 **on existing structures.**

298 *A. Upon application by a wireless services provider or wireless infrastructure provider, a locality*
299 *may issue a permit granting access to the public rights-of-way under its jurisdiction to install and*
300 *maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way*
301 *in the locality for the purpose of installing small cell facilities on existing structures, provided that the*
302 *wireless services provider or wireless infrastructure provider (i) has permission from the owner of the*
303 *structure to co-locate equipment on that structure and (ii) provides notice of the agreement and*
304 *co-location to the locality. The locality shall approve or disapprove any such requested permit within 60*
305 *days of receipt of the application. Any disapproval must be in writing and accompanied by an*

306 explanation for the disapproval. The 60-day period may be extended by the locality in writing for a
307 period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality
308 fails to act within the initial 60 days or an extended 30-day period. No such permit shall be required
309 for providers of telecommunications services and nonpublic providers of cable television, electric,
310 natural gas, water, and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully
311 occupying the public rights-of-way under the locality's jurisdiction.

312 B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,
313 site plan, and comprehensive plan fees of general application, on a wireless services provider or
314 wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the
315 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$150 for
316 processing a permit application under subsection A.

317 C. Localities shall not impose any fee or require any application or permit for (i) routine
318 maintenance of small cell facilities; (ii) the replacement of small cell facilities with small cell facilities
319 that are substantially similar in size, weight, and height, or smaller, and that have the same or less
320 wind loading and structural loading; or (iii) the installation, placement, maintenance, or replacement of
321 micro-wireless facilities that are suspended on cables or lines that are strung between existing utility
322 poles in compliance with national safety codes.

323 **§ 56-484.30. Access to public right-of-way to construct new wireless support structures.**

324 A. Public right-of-way permits or agreements for the construction of wireless support structures shall
325 be for an initial term of at least 10 years, with at least three options for renewal for terms of five years,
326 subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is
327 intended to prohibit the Department or localities from requiring permittees to relocate wireless support
328 structures when relocation is necessary due to a transportation project or material change to the
329 right-of-way, so long as all users of the right-of-way are required to relocate. Such relocation shall be
330 completed as soon as reasonably possible within the time set forth in any written request by the
331 Department or a locality for such relocation, as long as the Department or a locality provides the
332 permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless
333 circumstances beyond the control of the Department or the locality require a shorter period of advance
334 notice. The permittee shall bear only the proportional cost of the relocation that is caused by the
335 transportation project and shall not bear any cost related to private benefit or where the permittee was
336 on private right-of-way. In the event the locality or the Department bears any of the cost of the
337 relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for
338 such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds
339 for the cost of such relocation, and the Department or a locality shall have no obligation to collect such
340 funds. If relocation is deemed necessary, the Department or locality shall work cooperatively with the
341 permittee to minimize any negative impact to the wireless signal caused by the relocation. There may be
342 emergencies when relocation is required to commence in an expedited manner, and in such situations
343 the permittee and the locality or Department shall work diligently to accomplish such emergency
344 relocation.

345 B. Notwithstanding any other provisions of law, there is hereby established an annual Wireless
346 Support Structure Public Rights-of-Way Use Fee to replace any and all fees of general application,
347 except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise
348 chargeable to wireless services providers and wireless infrastructure providers for access to the public
349 rights-of-way by the Department and localities to construct new wireless support structures. The amount
350 of the Wireless Support Structure Public Rights-of-Way Use Fee shall be:

- 351 1. \$1,000 for any wireless support structure at or below 60 feet;
- 352 2. \$3,000 for any wireless support structure above 60 feet; and
- 353 3. \$1 per square foot for any other equipment, shelter, or equipment constructed on the ground.

354 The fee amount specified herein shall be adjusted every five years, as of January 1 of that year, in
355 an amount equal to the annual increases for that five-year period in the United States Average
356 Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor
357 Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

358 C. No later than June 30 of each year, the wireless services provider or wireless infrastructure
359 provider shall remit directly to the applicable locality all Wireless Support Structure Public
360 Rights-of-Way Use Fees for wireless support structures in (i) cities; (ii) towns whose public streets and
361 roads are not maintained by the Department; and (iii) any county that has withdrawn or elects to
362 withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of
363 the Acts of Assembly of 1932 and that has elected not to return. The Wireless Support Structure Public
364 Rights-of-Way Use Fees applicable in all other counties shall be remitted by each wireless services
365 provider and wireless infrastructure provider to the Department. Wireless Support Structure Public
366 Rights-of-Way Fees paid to the Department pursuant to this chapter shall be deposited in the Highway
367 Maintenance and Operating Fund established pursuant to § 33.2-1530.

368 **§ 56-484.31. Attachment of small cell facilities on government-owned structures.**

369 A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless
 370 infrastructure provider to attach small cell facilities to government-owned structures, both the
 371 government entity and the wireless services or wireless infrastructure provider shall negotiate in good
 372 faith to arrive at a mutually agreeable contract terms and conditions.

373 B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based,
 374 nondiscriminatory, competitively neutral, and comply with all applicable state and federal laws.

375 C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for
 376 video, communications, or electric service, the parties shall comply with the process for make-ready
 377 work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government
 378 entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole
 379 to support the requested co-location shall include pole replacement if necessary.

380 D. For utility poles owned by a locality or the Commonwealth that do no support aerial cables used
 381 for video, communications, or electric service, the government entity owning or controlling the utility
 382 pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to
 383 support the requested co-location, including pole replacement, if necessary, within 60 days after receipt
 384 of a complete application. Make-ready work, including any pole replacement, shall be completed within
 385 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless
 386 infrastructure provider.

387 E. The government entity owning or controlling the utility pole shall not require more make-ready
 388 work than required to meet applicable codes or industry standards. Charges for make-ready work,
 389 including any pole replacement, shall not exceed actual costs or the amount charged to other wireless
 390 services providers, providers of telecommunications services, and nonpublic providers of cable television
 391 and electric services for similar work and shall not include consultants' fees or expenses.

392 F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole
 393 shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or
 394 wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the
 395 appropriateness of the rate, the government entity owning or controlling the utility pole shall have the
 396 burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs
 397 incurred for use of space on the utility pole for such period.

398 **§ 56-484.32. Access to public property other than rights-of-way.**

399 Localities and the Department shall permit wireless services providers and wireless infrastructure
 400 providers access to public property outside of the rights-of-way on a nondiscriminatory basis to the
 401 extent it is allowed for providers of telecommunications services and nonpublic providers of cable
 402 television, electric, natural gas, water, and sanitary sewer services.