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SENATE BILL NO. 857

Offered January 17, 2018

A BILL to amend and reenact § 56-468.1 of the Code of Virginia, relating to Public Rights-of-Way Use Fees; high-speed Internet access.

Patron—Chafin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-468.1 of the Code of Virginia is amended and reenacted as follows:

§ 56-468.1. (Contingent expiration date) Public Rights-of-Way Use Fee.

A. As used in this article:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multistation telecommunications services will incur a Public Rights-of-Way Use Fee on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched network. ISDN Primary Rate Interface services will be charged five Public Rights-of-Way Use Fees for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications service provider shall be charged one fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service.

"Cable operator" and "cable system" have the same meanings as contained in subsection A of § 15.2-2108.1:1.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"ISDN Primary Rate Interface" means digital communications service containing 24 bearer channels, each of which is a full 64,000 bits-per-second.

"Locality" has the same meaning as contained in § 15.2-102.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"New installation of telecommunications facilities" or "new installation" includes the construction of new pole lines and new conduit systems, and the burying of new cables in existing public rights-of-way. New installation does not include adding new cables to existing pole lines and conduit systems.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Provider of local telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange telephone service and any other person who provides local telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service to the public for a fee and any other person who provides local or long distance telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the centerline mileage of highways and streets which are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319 and the highways and streets maintained and operated by counties which have withdrawn or elect to withdraw from the secondary

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system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to return.

"Subscriber" means a person who receives video programming, as defined in 47 U.S.C. § 522(20), distributed by a cable operator, as defined in subsection A of § 15.2-2108.1:1, and does not further distribute it.

B. 1. Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a provider of telecommunications service by the Commonwealth Transportation Board or a locality in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, may impose the Public Rights-of-Way Use Fee on the ultimate end-users of local telecommunications service only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow providers of telecommunications services and cable operators to use their electric poles or electric conduits in exchange for payment of a fee.

2. The Public Rights-of-Way Use Fee established by this section is hereby imposed on all cable operators that use the public rights-of-way.

C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department of Transportation (VDOT), based on the calculations described in subsection D of this section. In no year shall the amount of the fee be less than $0.50 per access line per month.

D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the number of public highway miles in the Commonwealth by a highway mileage rate (as defined in subsection E of this section), and by adding the number of feet of new installations in the Commonwealth (multiplied by $1 per foot), and dividing this sum by the total number of access lines in the Commonwealth. The monthly rate shall be this annual rate divided by 12.

E. The annual multiplier per mile is $425 per mile beginning July 1, 2001 and thereafter.

F. The data used for the calculation in subsection D shall be based on the following information and schedule: (i) all providers of telecommunications services shall remit to VDOT by December 1 of each year data indicating the number of feet of new installations made during the one-year period ending September 30 of that year, which shall be auditable by affected localities, and the number of access lines as of September 30 of that year, which shall be auditable by affected localities; and (ii) the public highway mileage from the most recently published VDOT report. By the following January 15, VDOT shall calculate the Public Rights-of-Way Use Fee to be used in the fiscal year beginning the next ensuing July 1 and report it to all affected localities and providers of local telecommunications services.

G. A provider of local telecommunications service shall collect the Public Rights-of-Way Use Fee on a per access line basis and the cable operator shall collect the Public Rights-of-Way Use Fee on a per subscriber basis by adding the fee to each ultimate end user's monthly bill for local telecommunications service or cable service. A company providing both local telecommunications service and cable service to the same ultimate end user may collect only one Public Rights-of-Way Use Fee from that ultimate end user based on (i) the local telecommunications service if the locality in which the ultimate end user resides has imposed a Public Rights-of-Way Use Fee on local telecommunications service or (ii) cable service if the locality in which the subscriber resides has not imposed a Public Rights-of-Way Use Fee on local telecommunications service. The Public Rights-of-Way Use Fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local telecommunications service and cable service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local telecommunications service provider or cable operator, the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality, VDOT, or the Department of Taxation, as may be applicable. If any ultimate end user or subscriber refuses to pay the Public Rights-of-Way Use Fee, the local telecommunications service provider or cable operator shall notify the locality, VDOT, or the Department of Taxation, as appropriate. All fees collected in accordance with the provisions of this section shall be deemed to be held in trust by the local telecommunications service provider and the cable operator until remitted to the locality, VDOT, or the Department of Taxation, as applicable.

H. Within two months after the end of each calendar quarter, each provider of local telecommunications service shall remit the amount of Public Rights-of-Way Use Fees it has billed to ultimate end users during such preceding quarter, as follows:

1. The provider of local telecommunications service shall remit directly to the applicable locality all Public Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by VDOT; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return, provided, however, that such counties shall use a minimum of 10% of

the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. *If less than 70 percent of the homes in any county, city, or town described in clause (i), (ii), or (iii) have access to high-speed Internet services, then such county, city, or town that has adopted an ordinance to impose Public Rights-of-Way Use Fees shall use a minimum of 50 percent of the fees it receives for the deployment or expansion of high-speed broadband services in the locality.* Any city currently subject to § 15.2-3530 shall use a minimum of 90% of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each provider of local telecommunications service to VDOT. VDOT shall allocate ~~the~~ ~~total~~ *50 percent of the* amount received from providers to the construction improvement program of the secondary system of state highways. Within such allocation to the secondary system, VDOT shall apportion the amounts so received among the several counties, other than those described in clause (iii) of subdivision 1, on the basis of population, with each county being credited a share of the total equal to the proportion that its population bears to the total population of all such counties. For purposes of this section the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and apportionment of Public Rights-of-Way Use Fees shall be in addition to, and not in lieu of, any other allocation of funds to such secondary system and apportionment to counties thereof provided by law. *VDOT shall allocate the other 50 percent of the amount received from providers evenly among the several counties in which less than 70 percent of the homes in each such county have access to high-speed Internet services. Such counties shall use such fund for the deployment or expansion of high-speed broadband services.*

I. The Public Rights-of-Way Use Fee billed by a cable operator shall be remitted to the Department of Taxation for deposit into the Communication Sales and Use Tax Trust Fund by the twentieth day of the month following the billing of the fee.

J. Any locality with a franchise agreement, ordinance implementing a franchise agreement or other form of consent allowing the use of the public rights-of-way by a provider of local telecommunications service, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge on a provider of local telecommunications service in effect as of February 1, 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional rights-of-way management practices that do not comply with §§ 56-458 C and 56-462 C. The Public Rights-of-Way Use Fee shall not be imposed in any such locality.

Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all affected providers of local telecommunications service no later than March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such locality to the registered agent of the affected provider or providers of local telecommunications service.