

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 758

An Act to amend and reenact §§ 56-458 and 56-462 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 15 of Title 56 sections numbered 56-468.1 and 56-468.2, relating to public service companies; use of public rights-of-way; Public Rights-of-Way Use Fee; costs of relocating telecommunication facilities in public rights-of-way.

[H 957]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-458 and 56-462 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 15 of Title 56 sections numbered 56-468.1 and 56-468.2 as follows:

§ 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same.

A. Every telegraph company and every telephone company incorporated by this or any other state, or by the United States, may construct, maintain and operate its line along and parallel to any of the railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues and alleys in any of the counties, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within this Commonwealth, for the erection of poles and wires, or cables, or the laying of underground conduits, portions of which they may lease, rent, or hire to other like companies; provided, however, that if the road or street be in the State Highway System or the secondary system of state highways, the consent of the board of supervisors or other governing authority of any county shall not be necessary, but a permit for such occupation and use shall first be obtained from the Commonwealth Transportation Board.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; provided, however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.

C. No locality or the Commonwealth Transportation Board shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within forty-five days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth Transportation Board shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Commonwealth Transportation Board to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection I of § 56-468.1, or the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees charged by certificated providers of telecommunications services for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Commonwealth Transportation Board continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only and does not cover any relocation, rearrangement or other make-ready costs.

§ 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of

streets, etc., and construction thereon.

A. No incorporated city or town shall grant to any such telegraph or telephone corporation the right to erect its poles, wires, or cables, or to lay its conduits upon or beneath its parks, streets, avenues, or alleys until such company shall have first obtained, in the manner prescribed by the laws of this Commonwealth, the franchise to occupy the same. ~~Notwithstanding the provisions of this chapter the corporate authorities of~~ Any city or town may impose upon any such corporation any terms and conditions ~~inconsistent~~ *consistent* herewith ~~or~~ *and* supplemental hereto, as to the occupation and use of its parks, streets, avenues, and alleys, ~~and as to the construction and use of its parks, streets, avenues, and alleys,~~ and as to the construction and maintenance of the ~~works~~ *facilities* of such company along, over, or under the same, ~~that the corporate authorities city or town may deem expedient and proper; and.~~ The Commonwealth Transportation Board may also impose upon any such company any terms, rules, regulations, requirements, restrictions and conditions ~~inconsistent~~ *consistent* herewith ~~or~~ *and* supplemental hereto, as to the occupation and use of roads and streets in either state highway system, and as to the construction, operation or maintenance of the works along, over, or under the same, which the Board may deem expedient and proper, but not in conflict, in incorporated cities and towns, with any vested contractual rights of any such company with such city or town.

B. *No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.*

C. *No locality or the Commonwealth Transportation Board shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.*

D. *Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within forty-five days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.*

E. *No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth Transportation Board shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Commonwealth Transportation Board to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection I of § 56-468.1, or the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Commonwealth Transportation Board continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only and does not cover any relocation, rearrangement or other make-ready costs.*

§ 56-468.1. 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 common lines connecting the customer premises to the end office switch. 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 used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service lines.

"Certificated provider of telecommunications service" means a public service corporation holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service.

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

"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.

"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 State Highway System as defined in § 33.1-25, the secondary system of highways as defined in § 33.1-67, the highways of those cities and certain towns defined in § 33.1-41.1 and the highways and streets maintained and operated by counties which have withdrawn or elect 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 which have not elected to return.

B. 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 certificated provider of telecommunications service by the Commonwealth Transportation Board 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 only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow certificated providers of telecommunications services to use their electric poles or electric conduits in exchange for payment of a fee.

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 fifty cents 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 one dollar 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 twelve.

E. The annual multiplier per mile is \$250 from July 1, 1998, through June 30, 1999; \$300 per mile for the year July 1, 1999, through June 30, 2000; \$350 per mile for the year July 1, 2000, through June 30, 2001; and \$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 certificated 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 certificated providers of local exchange telephone services.

G. A certificated provider of local exchange telephone service shall collect the Public Rights-of-Way Use Fee on a per access line basis by adding the fee to each ultimate end user's monthly bill for local exchange telephone 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 exchange telephone service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local exchange service provider, the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality or VDOT. If any ultimate end user refuses to pay the Public Rights-of-Way Use Fee, the local exchange service provider shall notify the locality or VDOT, as appropriate. After the consumer pays the Public Rights-of-Way Use Fee to the local exchange service provider, such fee collected shall be deemed to be held in trust by the local exchange service provider until remitted to the locality or VDOT.

H. Within two months after the end of each calendar quarter, each certificated provider of local exchange telephone 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 certificated provider of local exchange telephone 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 ten percent of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to § 15.2-3530 shall use a minimum of ninety percent 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 certificated provider of local exchange telephone service to VDOT. VDOT shall allocate the total amount received from certificated 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.

1. 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, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge 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 certificated providers of local exchange telephone 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 certificated provider of local exchange telephone service. For localities adopting the Public Rights-of-Way Use Fee by ordinance in 1998, collection of the fee shall begin on the first day of the month occurring ninety days after receipt of notice as required by this subsection.

§ 56-468.2. Reimbursement for relocation costs.

A. After July 1, 1998, certificated providers of telecommunications services shall receive reimbursement for eligible relocation costs incurred at the direction of a locality that imposes by ordinance the Public Rights-of-Way Use Fee or the Department of Transportation for new installations as defined in § 56-468.1 in any public rights-of-way in accordance with §§ 56-458 and 56-462 on the basis of age and according to the following schedule. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the State Highway System or the secondary system of state highways:

1. For the first three years after the completion of the installation, the certificated provider of telecommunications service shall be reimbursed 100 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way.

2. For the fourth through sixth year after the completion of the installation, the certificated provider of telecommunications service shall be reimbursed fifty percent of the eligible cost for the relocation of facilities installed in the public rights-of-way.

3. Beginning in the seventh year, the certificated provider of telecommunications service shall be responsible for the cost of relocating facilities installed in the public rights-of-way.

Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the State Highway System or the secondary system of state highways.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of Public Rights-of-Way Use Fees received by that locality either directly or through its secondary road fund apportionment in the preceding fiscal year. For facilities relocated in 1998 and 1999 at the direction of the locality or the Commonwealth Transportation Board, this limit on relocation reimbursement shall be the estimated annualized fees to be collected in that locality in 1998 for 1998 relocations and in 1999 for 1999 relocations. If the relocation reimbursement limit will be exhausted on a relocation project where two or more certificated providers of telecommunications service are eligible for relocation reimbursement, then the moneys available under the cap shall be shared by those eligible providers by prorating the reimbursement based on the reimbursement to which each provider would be entitled absent the limit.

2. That the provisions of this act shall not apply to any county having the county manager form of government.