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SENATE BILL NO. 986

Offered January 19, 1999

A BILL to amend and reenact §§ 56-458 and 56-462 of the Code of Virginia and to repeal § 56-481.1 of the Code of Virginia and the second enactments of Chapters 742 and 758 of the 1998 Acts of the General Assembly, relating to public service companies; use of public rights-of-way; Public Rights-of-Way Use Fees; costs of relocating telecommunication facilities in public rights-of-way.

Patrons—Hawkins, Bolling, Couric, Hanger, Holland, Lucas, Martin, Marye, Newman, Potts, Reynolds, Schrock, Trumbo and Watkins; Delegates: Byron, Cantor, Clement, Cox, Drake, Griffith, Putney and Wilkins

Referred to Committee on Commerce and Labor

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 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

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60 such poles or in such conduits solely for their internal communications needs. The fee waiver is for the
61 occupancy fees only and does not cover any relocation, rearrangement or other make-ready costs.

62 § 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of
63 streets, etc., and construction thereon.

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

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

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

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

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

113 2. That § 56-481.1 of the Code of Virginia and the second enactments of Chapters 742 and 758 of
114 the 1998 Acts of the General Assembly are repealed.