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HOUSE BILL NO. 1191

Offered January 18, 2012

A *BILL to amend and reenact § 56-466.1 of the Code of Virginia, relating to attachments by cable television systems on cooperatives' poles; assessments.*

Patron—Merricks

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.

"Cooperative" means a utility consumer services cooperative formed under or subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1.

"Negotiate in good faith" means, with respect to negotiations between a cooperative and a cable television system, that, at a minimum, a party has attempted, reasonably and with honest intent, to address its issue or issues with the other party by fully describing its position and the justification for that position, in writing with supporting documentation, communicated through its appropriate staff by direct teleconference or in person meeting with the appropriate staff of the other party at least three times over the course of six weeks or reasonably attempted to do so, communicated through its chief executive officer by direct teleconference or in person meeting with the chief executive officer of the other party at least once over the course of two weeks or reasonably attempted three times to do so, and communicated through its legal counsel by direct teleconference or in person meeting with the legal counsel of the other party at least once over the course of two weeks or reasonably attempted three times to do so.

"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.

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

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59 may deny access by a telecommunications service provider or cable television system to any pole, duct,
60 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,
61 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
62 of safety, reliability, or generally applicable engineering principles.

63 E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

64 F. *Subject to subsections C and D, a cable television system and a cooperative shall negotiate in*
65 *good faith to resolve any issue relating to:*

66 1. *The rates, terms, and conditions of a mutually agreeable contract for attachments to the*
67 *cooperative's poles by the cable television system pursuant to subsection B, or the rates, terms, and*
68 *conditions of a renewal of such an agreement that is due to expire or be terminated pursuant to its own*
69 *terms;*

70 2. *Unauthorized attachments;*

71 3. *Attachments that violate any electric industry safety or technical codes that are applicable to such*
72 *attachments, including, without limitation, the National Electric Safety Code, Virginia Department of*
73 *Transportation road crossing clearance requirements, and other relevant safety codes and requirements,*
74 *technical specifications, guying requirements, and electric service interruption;*

75 4. *Overlashing;*

76 5. *Requirements for cable television systems to promptly move or remove attachments from*
77 *decommissioned poles; and*

78 6. *A cable television system's failure to make payment pursuant to any applicable contract for*
79 *attachments to the cooperative's poles by the cable television system.*

80 *If such an issue cannot be resolved, upon the petition of any cable television system or cooperative*
81 *that has negotiated in good faith to resolve such issue, the Commission shall adjudicate the issue in*
82 *accordance with the Commission's Rules of Practice and Procedure. The Commission shall adjudicate*
83 *such proceedings within 120 days of the filing of the petition. In adjudicating such an issue, the*
84 *Commission shall ensure that the cooperative is compensated by the cable television system for all*
85 *make-ready costs; any other incremental costs arising from the attachment; a fully allocated share of*
86 *the cooperative's just and reasonable costs of erecting, owning, operating, and maintaining each affected*
87 *pole; a fully allocated share of the full costs of right-of-way maintenance; a reasonable return on the*
88 *cooperative's investment related to the foregoing; and just and reasonable annual cost adjusters for*
89 *inflation and other annual increasing cost factors.*

90 G. *On or before July 1, 2012, and annually thereafter, every cable television system shall pay an*
91 *annual fee to the Commission equal to \$1.00 for each attachment it has on a cooperative's pole in the*
92 *Commonwealth. By July 1, 2013, the Commission shall establish:*

93 1. *Appropriate safety, planning, and operating policies and procedures to be required of cable*
94 *television systems that have attachments on cooperative poles in the Commonwealth; and*

95 2. *Effective and appropriate mechanisms to ensure that cable television systems that have*
96 *attachments on cooperative's poles in the Commonwealth obtain all necessary approvals from*
97 *appropriate government entities and landowners for such attachments.*

98 *No less frequently than every 36 months, each cooperative that has cable television system*
99 *attachments on its poles shall make or cause to be made a physical survey of all such attachments on*
100 *its system. The cost of such survey shall be allocated on a pro rata basis among all of the cable*
101 *television systems with attachments on such cooperative's poles. On or before May 1, 2013, and*
102 *annually thereafter, every cooperative that has cable television system attachments on its poles shall*
103 *report the number of each cable television system's attachments to the Commission.*

104 H. *Notwithstanding the provisions of subsection F, and regardless of whether or not a contract*
105 *exists, to the extent any cable television system attachment interferes with, obstructs, or delays the*
106 *service or operations of a cooperative or creates a safety hazard, the cooperative is authorized to take*
107 *immediate action to remedy the situation, including removing the attachment, at the cable television*
108 *system's expense.*