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SENATE BILL NO. 652

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 6, 2012)

(Patron Prior to Substitute—Senator Stanley)

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

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.

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

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

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

F. The Commission is authorized to determine just and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for attachments to electric cooperative poles by telecommunications service providers or cable television systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon; however, the Commission shall not determine rates or terms and conditions for any existing agreement until it expires or is terminated pursuant to its own terms. The terms of an expired or terminated agreement shall continue to govern while good faith negotiations or Commission review pursuant to this section are pending. Such determinations shall be made in accordance with the following:

60 1. Just and reasonable pole attachment rates and terms and conditions of service to be determined
61 by the Commission shall include, without limitation, rearrangement and make-ready costs, pole
62 replacement costs, and all other costs directly related to pole attachments and maintenance,
63 replacement, and inspection of poles or pole attachments, and right of way maintenance essential to
64 pole attachments, provided however, that cost recovery for rearrangement, make-ready and pole
65 replacement shall be addressed in terms and conditions, and shall not be included in annual rental
66 rates;

67 2. In determining pole attachment rates, the Commission shall consider (i) any effect of such rates
68 on the deployment or utilization, or both, of broadband and other telecommunications services, (ii) the
69 interests of electric cooperatives' members, and (iii) the overall public interest;

70 3. The Commission may develop and utilize alternative forms of dispute resolution for purposes of
71 addressing disputes (i) arising under this subsection and (ii) falling within the scope of the
72 Commission's authority established hereunder;

73 4. The Commission is authorized to assess reasonable application fees to recover appropriate
74 Commission costs of proceedings arising under this subsection; and

75 5. The Commission is authorized to develop, if necessary, rules and regulations, including a
76 definition of good faith negotiations, to implement this section.