

15103189D

HOUSE BILL NO. 2325

Offered January 22, 2015

A *BILL to amend and reenact § 56-466.1 of the Code of Virginia, relating to attachments to a public utility's poles by broadband service providers.*

Patrons—Minchew; Senator: Vogel

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; access by broadband service providers.

A. As used in this section:

"Broadband service provider" means any person that provides information services, as such term is defined in subdivision 24 of 47 U.S.C. § 153, to consumers through authenticated access to, or presence on, the Internet by means of a switched or dedicated telecommunications channel upon which the provider provides transit routing of Internet protocol packets for and on behalf of the consumer. "Broadband service provider" includes a person that offers a content-neutral broadband service and that does not offer its own voice or video services.

"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, *broadband service provider*, 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, *provided that it shall include any electric cooperative.*

"Rearrangement" means work performed at the request of a telecommunications service provider, *broadband 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, *broadband 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, *broadband service provider*, or cable television system to a public utility, both the public utility and the telecommunications service provider, *broadband 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, *broadband service provider*, or cable television system.

C. ~~After entering into a contract~~ Each public utility shall provide each telecommunications service provider, *broadband service provider*, and cable television system with neutral and nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it, for the purpose of facilitating expansion of broadband service by broadband service providers to residents, farms, and businesses in the Commonwealth. The Commission is authorized to determine just and reasonable rates, terms, conditions, and costs for attachments to its poles by any telecommunications service provider, *broadband 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

INTRODUCED

HB2325

59 construct and maintain the attachment, if the parties cannot reach agreement pursuant to subsection B,
60 or if either party asserts that the rates, terms, conditions, or costs applicable to an agreement are not
61 just and reasonable as defined in 42 U.S.C. § 224(d). Any party that seeks pole attachments or has
62 existing pole attachments on public utility poles, or any public utility owning a pole occupied by pole
63 attachments of a telecommunications service provider, broadband service provider, or a cable television
64 system, may seek a determination from the Commission as to just and reasonable rates, terms,
65 conditions, and costs. The terms, conditions, and costs to be determined by the Commission shall
66 include, without limitation, rearrangement and make-ready costs, pole replacement costs, and all other
67 costs incidental to pole attachments and maintenance, replacement, and inspection of poles or pole
68 attachments, together with time deadlines for any pole attachment to ensure rapid deployment of
69 broadband and other communications services and all other terms and conditions associated with pole
70 attachment requests. A rate is just and reasonable if it assures a public utility the recovery of not less
71 than the additional costs of providing pole attachments, nor more than an amount determined by
72 multiplying the percentage of the total usable space, or the percentage of the total duct or conduit
73 capacity, that is occupied by the pole attachment by the sum of the operating expenses and actual
74 capital costs of the public utility attributable to the entire pole, duct, conduit, or right-of-way. Upon
75 compliance with such just and reasonable rates, terms, conditions, and costs, whether established by
76 agreement or by the Commission, a public utility shall permit the attachment of any wire, cable, facility,
77 or apparatus to its poles or pedestals, or the placement of any wire, cable, facility, or apparatus in
78 conduit or duct space owned or controlled by it, by such telecommunications service provider,
79 broadband service provider, or cable television system, provided that the attachment does not interfere,
80 obstruct, or delay the service and operation of the public utility or create a safety hazard.

81 D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service
82 may deny access by a telecommunications service provider, broadband service provider, or cable
83 television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in
84 whole or in part, by such public utility, provided such denial is made on a nondiscriminatory basis on
85 grounds of insufficient capacity or reasons of safety, reliability, or generally applicable engineering
86 principles.

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

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

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

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

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

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

110 5. The Commission is authorized to develop, if necessary, rules and regulations, including a
111 definition of good faith negotiations, to implement this section. In implementing the provisions of this
112 section that incorporate terms and concepts used or defined in 47 U.S.C. § 224, the Commission shall
113 rely on interpretations of such terms and concepts by the Federal Communications Commission and by
114 the federal judiciary.