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HOUSE BILL NO. 2325

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 3, 2015)

(Patron Prior to Substitute—Delegate Minchew)

A BILL to amend the Code of Virginia by adding a section numbered 56-466.2, relating to attachments to a public utility's poles by broadband service providers.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-466.2 as follows:

§ 56-466.2. Pole attachments; access by broadband service providers.

A. As used in this section:

"Broadband service provider" means any person that (i) 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; (ii) offers only advanced electronic communications services (commonly known as broadband) without content services; and (iii) operates primarily in areas of the Commonwealth that have been determined by the Director of the Office of Telework Promotion and Broadband Assistance, pursuant to subdivision B 4 of § 2.2-225.1, to be unserved with respect to affordable, accessible broadband service. "Broadband service provider" does not include any telecommunications service provider or cable television system, as such terms are defined in subsection A of § 56-466.1.

"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 broadband service provider 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" includes replacement, at the request of a broadband service provider, 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.

B. Upon request by a broadband service provider to a public utility, both the public utility and the broadband service provider shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the broadband service provider.

C. Each public utility shall provide each broadband service provider 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 the public utility's poles by any broadband service provider if the public utility and broadband service provider cannot reach agreement pursuant to subsection B, or if either the public utility or the broadband service provider asserts that the rates, terms, conditions, or costs applicable to an agreement are not just and reasonable as defined in 42 U.S.C. § 224(d). Any broadband service provider that seeks pole attachments or has existing pole attachments on public utility poles, or any public utility owning a pole occupied by pole attachments of a broadband service provider, may seek a determination from the Commission as to just and reasonable rates, terms, conditions, and costs. The terms, conditions, and costs to be determined by the Commission shall include, without limitation, rearrangement and make-ready costs, pole replacement costs, and all other costs incidental to pole attachments and maintenance, replacement, and inspection of poles or pole attachments, together with time deadlines for any pole attachment to ensure rapid deployment of broadband and related services and all other terms and conditions associated with pole attachment requests. A rate is just and reasonable if it assures a public utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, that is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the

60 public utility attributable to the entire pole, duct, conduit, or right-of-way. Upon compliance with such
61 just and reasonable rates, terms, conditions, and costs, whether established by agreement or by the
62 Commission, a public utility shall permit the attachment of any wire, cable, facility, or apparatus to its
63 poles or pedestals, or the placement of any wire, cable, facility, or apparatus in conduit or duct space
64 owned or controlled by it, by such broadband service provider, provided that the attachment does not
65 interfere, obstruct, or delay the service and operation of the public utility or create a safety hazard.

66 D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service
67 may deny access by a broadband service provider to any pole, duct, conduit, right-of-way, or similar
68 facility owned or controlled, in whole or in part, by such public utility, provided such denial is made on
69 a nondiscriminatory basis on grounds of insufficient capacity or reasons of safety, reliability, or
70 generally applicable engineering principles.

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

72 F. The Commission may develop and utilize alternative forms of dispute resolution for purposes of
73 addressing disputes (i) arising under this section and (ii) falling within the scope of the Commission's
74 authority established under this section.

75 G. The Commission is authorized to assess reasonable application fees to recover appropriate
76 Commission costs of proceedings arising under this section.

77 H. In implementing the provisions of this section that incorporate terms and concepts used or defined
78 in 47 U.S.C. § 224, the Commission shall rely on interpretations of such terms and concepts by the
79 Federal Communications Commission and by the federal judiciary.