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SENATE BILL NO. 1282

Offered January 11, 2017

Prefiled January 10, 2017

A *BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, relating to wireless communications infrastructure.*

Patron—McDougle

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3 through 15.2-2316.7, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.32, as follows:

*Article 7.2.**Zoning for Wireless Communications Infrastructure.***§ 15.2-2316.3. Definitions.**

As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Collocation" has a corresponding meaning.

"Department" means the Department of Transportation.

"Distributed antenna system" means a network that distributes radio frequency (RF) signals and consisting of (i) remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmissions and receptions; (ii) a high capacity signal transport medium that is connected to a central communications hub site; and, (iii) radio transceivers located at the hub site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to collocate equipment on that structure. The term includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such higher limits as established by the Federal Communication Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications

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59 between user equipment and a communications network, including but not limited to: (a) equipment
60 associated with wireless services such as private, broadcast and public safety services, as well as
61 unlicensed wireless services and fixed wireless services such as microwave backhaul; and (b) radio
62 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable
63 equipment, regardless of technological configuration.

64 "Wireless Infrastructure Provider" means any person that builds or installs transmission equipment,
65 wireless facilities or wireless support structures, but that is not a wireless services provider.

66 "Wireless Services" means "personal wireless services"; "personal wireless service facilities" as
67 defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
68 § 332(d), provided to personal mobile communication devices through wireless facilities; and any other
69 fixed or mobile wireless service provided using wireless facilities.

70 "Wireless services provider" means a provider of wireless services.

71 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
72 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
73 of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or
74 any tower used for the distribution of transmission or electrical service.

75 **§ 15.2-2316.4. Zoning; small cell facilities.**

76 A. A locality shall not require that a special exception, special use permit, or variance be obtained
77 for any small cell facility installed by a wireless service provider or wireless infrastructure provider on
78 an existing structure, provided that the wireless service provider or wireless infrastructure provider (i)
79 has permission from the owner of the structure to collocate equipment on that structure, and (ii) notifies
80 the locality in which the permitting process occurs.

81 B. Localities may require administrative review for the issuance of any required zoning permits for
82 the installation of a small cell facility by a wireless service provider or wireless infrastructure provider
83 on an existing structure. Localities shall permit an applicant to submit multiple permit requests on a
84 single application.

85 1. A locality shall approve or disapprove the application within 60 days. Any disapproval must be in
86 writing and accompanied by an explanation for the disapproval. The application shall be deemed
87 approved if the locality fails to act within 60 days.

88 2. A locality may prescribe and charge a reasonable fee not exceeding \$150 for processing an
89 application.

90 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

91 4. The locality only may disapprove of a proposed location or installation of a small cell facility for
92 the following reasons:

93 a. Material potential interference with other pre-existing communications facilities, or future
94 communications facilities that have already been designed and planned for a specific location or that
95 have been reserved for future public safety communications facilities,

96 b. The public safety or other critical public service needs, and

97 c. Only in the case of an installation on or in locality-owned property, aesthetic impact, or the
98 absence of all necessary approvals from all necessary departments, authorities, and agencies with
99 jurisdiction over such property.

100 5. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
101 removal of abandoned wireless support structures or wireless facilities.

102 **§ 15.2-2316.5. Zoning; construction or placing of other new wireless infrastructure.**

103 A.1. A locality shall approve or disapprove of a zoning application for the construction of a new
104 wireless support structure within 150 days. Such application shall be deemed approved if the locality
105 fails to act within 150 days.

106 2. A locality shall approve or disapprove of a zoning application for the collocation of any wireless
107 facility that is not a small cell facility within 60 days. Such application shall be deemed approved if the
108 locality fails to act within 60 days.

109 B. Any disapproval of an application under this section must be (i) in writing, (ii) supported by
110 substantial record evidence contained in a written record publicly released contemporaneously with the
111 denial, (iii) accompanied by an explanation for the disapproval and an explanation of what the
112 applicant must do to cure the disapproval, and (iv) nondiscriminatory.

113 C. A locality may charge a reasonable fee for each application submitted pursuant to this chapter;
114 such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is
115 less.

116 **§ 15.2-2316.6. Zoning approval process.**

117 When considering a zoning permit application under § 15.2-2316.5, a locality shall not:

118 1. Require an applicant to submit information about, or evaluate an applicant's business decisions
119 with respect to its designed service, customer demand for service, or quality of its service to or from a
120 particular area or site;

2. Require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. A locality may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

3. Dictate the type of wireless facilities, infrastructure, or technology to be used by the applicant, including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure; provided that an authority may consider the height of the wireless support structure or wireless facilities in its zoning review, if the height of the structure, facilities or structure with attached facilities exceeds 50 feet above ground level, so long as the authority does not unreasonably discriminate between the applicant and other wireless service providers, providers of telecommunications services and nonpublic providers of cable television and electric services.

4. Require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This section shall not preclude a locality from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

5. Impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the locality imposes similar requirements on other permits for other types of commercial development or land uses and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility;

6. Discriminate or create a preference on the basis of the ownership, including ownership by the locality, of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications;

7. Impose any unreasonable requirements or obligations regarding the presentation or appearance of facilities, including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening, or landscaping of facilities;

8. Impose any requirements that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided, or operated by a locality, in whole or in part, or by any entity in which a locality has a competitive, economic, financial, governance, or other interest;

9. Condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by a locality or by any other entity, to be placed at or collocated with the applicant's wireless support structure;

10. Impose a setback or fall zone requirement for a wireless support structure that is larger than a setback or fall zone area that is imposed on other types of commercial structures of a similar size;

11. Limit the duration of the approval of an application, except that construction of the approved structure or facilities shall commence within two years of final approval, and diligently pursued to completion; or

12. Require an applicant to perform services unrelated to an application, including restoration work on any surface not disturbed by the applicant.

§ 15.2-2316.7. Moratorium prohibited.

A locality shall not adopt a moratorium on considering zoning applications submitted by wireless service providers or wireless infrastructure providers.

CHAPTER 15.1.

WIRELESS COMMUNICATIONS INFRASTRUCTURE.

§ 56-484.26. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Collocate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within or on the surface adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Collocation" has a corresponding meaning.

"Department" means the Department of Transportation.

"Districtwide permit" means a permit granted by the Department to a wireless services provider or wireless infrastructure provider that allows the permittee to use the rights-of-way under the Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited access right-of-way without obtaining a single use permit for each occurrence. The central office permit manager shall be responsible for the issuance of all districtwide permits. The Department may authorize

182 districtwide permits covering multiple districts.

183 "Existing structure" means any structure that is installed or approved for installation at the time a
184 wireless services provider or wireless infrastructure provider provides notice to a locality or the
185 Department of an agreement with the owner of the structure to collocate equipment on that structure.
186 The term includes any structure that is currently supporting, designed to support, or capable of
187 supporting the attachment of wireless facilities, including, but not limited to, towers, buildings, utility
188 poles, light poles, flag poles, signs, and water towers.

189 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each
190 antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an
191 antenna that has exposed elements, the antenna and all of its exposed elements could fit within an
192 imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated
193 with the facility is cumulatively no more than 28 cubic feet in volume, or facilities comprised of such
194 higher limits as established by the Federal Communication Commission. The following types of
195 associated equipment are not included in the calculation of equipment volume: electric meter,
196 concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems,
197 grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the
198 connection of power and other services.

199 "Utility pole" means a structure owned, operated, or owned and operated by a public utility, local
200 government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or
201 wires for communications, cable television, or electricity.

202 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support
203 structure, originally constructed for use as a reservoir or facility to store or deliver water.

204 "Wireless facility" means equipment at a fixed location that enables wireless communications
205 between user equipment and a communications network, including but not limited to: (i) equipment
206 associated with wireless services such as private, broadcast, and public safety services, as well as
207 unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio
208 transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable
209 equipment, regardless of technological configuration.

210 "Wireless infrastructure provider" means any person, including a person authorized to provide
211 telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,
212 or wireless support structures, but that is not a wireless services provider.

213 "Wireless services" means (i) "personal wireless services"; (ii) "personal wireless service facilities"
214 as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C.
215 § 332(d), provided to personal mobile communication devices through wireless facilities; and (iii) any
216 other fixed or mobile wireless service provided using wireless facilities.

217 "Wireless services provider" means a provider of wireless services.

218 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
219 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
220 of supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or
221 any tower used for the distribution of transmission or electrical service.

222 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
223 **infrastructure providers; generally.**

224 A. No locality or the Department shall impose on wireless services providers or wireless
225 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,
226 including, but not limited to the permitting process, the zoning process, notice, time and location of
227 excavations and repair work, enforcement of the statewide building code, and inspections, which are (i)
228 unfair or unreasonable or (ii) any greater than those imposed on the following users of its public
229 rights-of-way: all providers of telecommunications services and nonpublic providers of cable television,
230 electric, natural gas, water and sanitary sewer services.

231 B. No locality or the Department shall impose any fees on a wireless services provider or wireless
232 infrastructure provider for the use of public rights-of-way except in the manner prescribed in 56-484.30.

233 C. No locality or the Department shall require a wireless services provider or wireless infrastructure
234 provider to provide in-kind services or physical assets as a condition of consent to use public
235 rights-of-way or easements, or in lieu of the Wireless Support Structure Public Rights-of-Way Use Fee.
236 This shall not limit the ability of localities, their authorities or commissions which provide utility
237 services, or the Department to enter into voluntary pole attachment, tower occupancy, conduit
238 occupancy or conduit construction agreements with wireless services providers or wireless infrastructure
239 providers.

240 D. No locality or the Department shall adopt a moratorium on considering requests for access to the
241 rights-of-way from wireless service providers or wireless infrastructure providers.

242 **§ 56-484.28. Access to public rights-of-way under the jurisdiction of the Department for the**
243 **installation and maintenance of small cell facilities on existing structures.**

A. Upon application by a wireless services provider or wireless infrastructure provider, the Department shall issue a district-wide permit granting access to public rights-of-way under its jurisdiction to install and maintain small cell facilities on existing structures in the rights-of-way, provided that the wireless service provider or wireless infrastructure provider (i) has permission from the owner of the structure to collocate equipment on that structure, and (ii) provides notice of the agreement and collocation to the Department. The Department shall issue the district-wide permit within 30 days after receipt of the notice. The district-wide permit shall be deemed granted if not issued within 30 days after receipt of the notice by the Department. The district-wide permit issued for the original installation allows the permittee to repair, replace, or perform routine maintenance operations to small cell facilities once installed.

B. The Department may require a separate single use permit to allow a wireless services provider or wireless infrastructure provider to install and maintain small cell facilities on an existing structure when such activity requires (i) working within the highway travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; or (iii) placement on limited access rights-of-way. The Department shall approve or disapprove the requested single use permit within 60 days. Any disapproval must be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the Department in writing for a period not to exceed an additional 30 days. The single use permit request shall be deemed approved if the Department fails to act within the initial 60 days or an extended 30 day period.

C. The Department shall not impose any fee for the use of the right-of-way on a wireless service provider or wireless infrastructure provider to attach or collocate small cell facilities on an existing structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not to exceed \$150 for processing an application for a district-wide or single use permit.

§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities on existing structures.

A. Upon application by a wireless services provider or wireless infrastructure provider, a locality may issue a permit granting access to the public rights-of-way under its jurisdiction to install and maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way in the locality for the purpose of installing small cell facilities on existing structures, provided that the wireless service provider or wireless infrastructure provider (i) has permission from the owner of the structure to collocate equipment on that structure, and (ii) provides notice of the agreement and collocation to the locality. The locality shall approve or disapprove any such requested permit within 60 days of receipt of the application. Any disapproval must be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30 day period.

B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, on a wireless services provider or wireless infrastructure provider to attach or collocate small cell facilities on an existing structure in the right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$150 for processing a permit application under subsection A.

§ 56-484.30. Access to public right-of-way to construct new wireless support structures.

A. Public right-of-way permits or agreements for the construction of wireless support structures shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring permittees to relocate wireless support structures when relocation is necessary due to a transportation project or material change to the right-of-way, so long as all users of the right-of-way are required to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the Department or a locality for such relocation, as long as the Department or a locality provides the permittee with a minimum of 180 days advance written notice to comply with such relocation, unless circumstances beyond the control of the Department or the locality require a shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation that is caused by the transportation project and shall not bear any cost related to private benefit or where the permittee was on private right-of-way. In the event the locality or the Department bears any of the cost of the relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation and the Department or a locality shall have no obligation to collect such funds. If relocation is deemed necessary, the Department or locality must work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation.

B. Notwithstanding any other provisions of law, there is hereby established an annual Wireless

305 *Support Structure Public Rights-of-Way Use Fee to replace any and all fees of general application,*
306 *except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise*
307 *chargeable to wireless service providers and wireless infrastructure providers for access to the public*
308 *rights-of-way by the Department and localities to construct new wireless support structures. The amount*
309 *of the Wireless Support Structure Public Rights-of-Way Use Fee shall be:*

- 310 1. \$1,000 for any wireless support structure at or below 60 feet;
- 311 2. \$3,000 for any wireless support structure above 60 feet;
- 312 3. \$1 per square foot for any other equipment, shelter, or equipment constructed on the ground.

313 *The fee amount specified herein shall be adjusted every five years, as of January 1 of that year, in*
314 *an amount equal to the annual increases for that five-year period in the United States Average*
315 *Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor*
316 *Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.*

317 *C. No later than June 30th of each year, the wireless services provider or wireless infrastructure*
318 *provider shall remit directly to the applicable locality all Wireless Support Structure Public*
319 *Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained*
320 *by the Department; and (iii) any county that has withdrawn or elects to withdraw from the secondary*
321 *system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932*
322 *and that has elected not to return. The Wireless Support Structure Public Rights-of-Way Use Fees*
323 *applicable in all other counties shall be remitted by each wireless services provider and wireless*
324 *infrastructure provider to the Department. Wireless Support Structure Public Rights-of-Way Fees paid*
325 *to the Department pursuant to this chapter shall be deposited in the Highway Maintenance and*
326 *Operating Fund established pursuant to §33.2-1530.*

327 **§ 56-484.31. Attachment of small cell facilities on government owned structures.**

328 *A. Upon request by a wireless service provider or a wireless infrastructure provider to the*
329 *Commonwealth or a local government, both the government entity and the wireless services or wireless*
330 *infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract for small*
331 *cell facility attachments to government owned structures by the wireless service provider or wireless*
332 *infrastructure provider.*

333 *B. The rates, terms, and conditions for such agreement must be just and reasonable, cost-based,*
334 *nondiscriminatory, competitively neutral, and comply with all applicable state and federal laws.*

335 *C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for*
336 *video, communications, or electric service, the parties shall comply with the process for make-ready*
337 *work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government*
338 *entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole*
339 *to support the requested collocation shall include pole replacement if necessary.*

340 *D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used*
341 *for video, communications, or electric service, the government entity owning or controlling the utility*
342 *pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to*
343 *support the requested collocation, including pole replacement, if necessary, within 60 days after receipt*
344 *of a complete application. Make-ready work, including any pole replacement, shall be completed within*
345 *60 days of written acceptance of the good faith estimate by the wireless service provider or a wireless*
346 *infrastructure provider.*

347 *E. The government entity owning or controlling the utility pole shall not require more make-ready*
348 *work than required to meet applicable codes or industry standards. Charges for make-ready work,*
349 *including any pole replacement, shall not exceed actual costs or the amount charged to other wireless*
350 *service providers, providers of telecommunications services and nonpublic providers of cable television*
351 *and electric services for similar work and shall not include consultants' fees or expenses.*

352 *F. The annual recurring rate to collocate a small cell facility on a government owned utility pole*
353 *shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or*
354 *wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the*
355 *appropriateness of the rate, the government entity owning or controlling the utility pole shall have the*
356 *burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs*
357 *incurred for use of space on the utility pole for such period.*

358 **§ 46-484.32. Access to public property other than rights-of-way.**

359 *Localities and the Department shall permit wireless service providers and wireless infrastructure*
360 *providers access to public property outside of the rights-of-way on a nondiscriminatory basis to the*
361 *extent it is allowed for providers of telecommunications services and nonpublic providers of cable*
362 *television, electric, natural gas, water and sanitary sewer services.*