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HOUSE BILL NO. 1752

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 56-1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-16.3, relating to public utilities; fiber optic broadband lines crossing railroads.

Patrons—Head, Brewer, Austin, Ballard, Edmunds, Gooditis, Jenkins, Kilgore, Krizek, LaRock, Maldonado, Marshall, McGuire, O'Quinn, Orrock, Rasoul, Scott, D.L., Sewell, Sullivan, Wachsmann, Ware, Willett, Wright and Wyatt

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That § 56-1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-16.3 as follows:

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Broadband service provider" means (i) an entity that provides broadband service through the utilization of a fiber optic broadband line, coaxial cable, or other wireline system or (ii) a Phase I or Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1, or a cooperative, as defined in § 56-231.15, that provides middle-mile infrastructure to Internet service providers in areas of the Commonwealth unserved by broadband.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

"Electric vehicle charging service" means the replenishment of the battery of a plug-in electric motor vehicle, which replenishment occurs by plugging the motor vehicle into an electric power source in order to charge or recharge its battery.

"Fiber optic broadband line" means (i) a fiber optic cable consisting of one or more thin flexible fibers with a glass core through which light signals can transmit data as pulses, a coaxial cable, or other wireline system of technology used for broadband distribution, or (ii) the middle-mile infrastructure to Internet service providers in areas of the Commonwealth unserved by broadband.

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at specified rates and charges. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Mail" includes electronic mail and other forms of electronic communication when the customer has requested or authorized electronic bill delivery or other electronic communications.

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations.

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57 "Plug-in electric motor vehicle" means an on-road motor vehicle that draws propulsion using a
58 traction battery that has at least four kilowatt hours of capacity, uses an external source of electric
59 energy to charge or recharge the battery, has a gross vehicle weight of not more than 14,000 pounds,
60 and meets any applicable emissions standards.

61 "Public service corporation" or "public service company" includes gas, pipeline, electric light, heat,
62 power and water supply companies, sewer companies, telephone companies, and all persons authorized
63 to transport passengers or property as a common carrier. "Public service corporation" or "public service
64 company" shall not include (i) a municipal corporation, other political subdivision or public institution
65 owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to
66 provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service
67 corporation or public service company and subject to the authority of the Commission with respect only
68 to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any
69 company described in subdivision (b)(10) of § 56-265.1.

70 "Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other
71 motive power, except when otherwise specifically designated.

72 "Railroad company" includes any company, trustee or other person ~~owning, leasing or operating that~~
73 ~~owns, leases, or operates~~ a railroad or ~~owns or leases the land upon which a railroad is operated.~~

74 "Rate" means rate charged for any service rendered or to be rendered.

75 "Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

76 "Regulated operating revenue" includes only revenue from services not found to be competitive.

77 "*Standard cumulative crossing fee*" means a one-time payment, in lieu of any license, application,
78 risk, or occupancy fees, to reimburse the railroad company for any and all direct and indirect expenses
79 incurred by the railroad company as a result of the construction and installation of a fiber optic
80 broadband line. Such fee shall include any personnel costs such as administrative or engineering
81 reviews of a crossing notice or flagging operation.

82 "Transportation company" includes any railroad company, any company transporting express by
83 railroad, and any ship or boat company.

84 "Virginia limited liability company" has the same meaning ascribed to "limited liability company" in
85 § 13.1-1002. A foreign limited liability company, as that term is defined in § 13.1-1002, may become a
86 Virginia limited liability company, even though also being a limited liability company organized under
87 laws other than the laws of the Commonwealth, by filing articles of organization that meet the
88 requirements of §§ 13.1-1003 and 13.1-1011 and include (i) the name of the foreign limited liability
89 company immediately prior to the filing of the articles of organization; (ii) the date on which and the
90 jurisdiction in which the foreign limited liability company was first formed, organized, created or
91 otherwise came into being; and (iii) the jurisdiction that constituted the seat, siege social, or principal
92 place of business or central administration of the foreign limited liability company, or any equivalent
93 thereto under applicable law, immediately prior to the filing of the articles of organization. With respect
94 to a foreign limited liability company that is also organized as a Virginia limited liability company, the
95 terms and conditions of its organization as a Virginia limited liability company shall be approved in the
96 manner provided for by the document, instrument, agreement or other writing, as the case may be,
97 governing the internal affairs of the foreign limited liability company in the conduct of its business or
98 by applicable law other than the law of the Commonwealth, as appropriate.

99 "Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time,
100 two-way voice communications that originate or terminate from the user's location using Internet
101 protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This
102 definition includes any such service that permits users generally to receive calls that originate on the
103 public switched telephone network and to terminate calls to the public switched telephone network.

104 **56-16.3. Fiber optic broadband lines crossing railroads.**

105 A. If a broadband service provider deems it necessary in the construction of its systems to cross the
106 works of a railroad company, including its tracks, bridges, facilities, and all railroad company rights of
107 way or easements, then the broadband service provider may do so provided that:

108 1. Such crossing shall be (i) located, constructed, and operated so as not to impair, impede, or
109 obstruct, in any material degree, the works and operations of the railroad to be crossed; (ii) supported
110 by permanent and proper structures and fixtures; and (iii) controlled by customary and approved
111 appliances, methods, and regulations to prevent damage to the works of the railroad and ensure the
112 safety of its passengers;

113 2. The broadband service provider shall give the railroad company written notice of the provider's
114 intent to cross the works of such railroad company at least 30 days before the desired crossing date. If
115 the broadband service provider desires to cross at a location where an electric transmission line
116 crossing already exists, then the broadband service provider shall be required to give notice 20 days
117 before the desired crossing date. Such notice shall also be provided to the electric utility servicing the
118 area where the crossing is located. The written notice shall include the standard cumulative crossing fee

described in subsection C and preliminary construction plans that show the location of the crossing, the railroad right-of-way, and the railroad company's tracks, wires, and other improvements that the fiber optic broadband line will cross; and

3. The Commission does not issue a notice of suspension of the work pursuant to subsection D within the applicable notice period described in subdivision 2.

If the requirements of this subsection are met and the standard cumulative crossing fee is paid, the broadband service provider shall be deemed to have received all necessary authorizations and may proceed with the construction and operation of the crossing as specified in the notice of intended crossing.

B. The broadband service provider shall be responsible for all aspects of the implementation of the physical crossing, including construction and installation of the broadband lines and all related equipment, attachments, and infrastructure. The railroad company shall be responsible for flagging operations and other protective measures that it deems appropriate during the period of broadband line construction. The broadband service provider shall be responsible for ensuring that the crossing is constructed and operated in accordance with accepted industry standards, including standards established by the National Electric Safety Code, joint use processes of electric utilities, and railroad engineering requirements.

C. The cost of any such crossing shall be borne by the broadband service provider. A broadband service provider that locates its fiber optic broadband line within a railroad right-of-way shall pay the railroad company for the right to make a crossing of the railroad company's works a one-time standard cumulative crossing fee of \$1,500 for each crossing unless (i) otherwise agreed to by the broadband service provider and the railroad company or (ii) the railroad company has submitted a petition alleging that the crossing will cause undue hardship on the railroad company or create an imminent likelihood of danger to public health or safety and the Commission has issued a subsequent order so stating.

D. If the railroad company asserts that the crossing will cause undue hardship on the railroad company or create the imminent likelihood of danger to public health or safety, then the railroad company may petition the Commission for relief within 15 days from the date the broadband service provider provided notice of the intended crossing. Within 30 days from the date of such notice, the Commission, in its discretion, may, by notice served upon both parties, suspend work on such crossing for a reasonable time, not to exceed 60 days. The Commission may make any necessary findings of fact and determinations related to the existence of undue hardship on the railroad company or the imminent likelihood of danger to public health or safety, as well as any relief to be granted, including any amount to which the railroad company is entitled in excess of the standard cumulative crossing fee prescribed in subsection C. The Commission may, in its discretion, employ expert engineers, to be paid equally by both companies, at a cost not exceeding \$500, to advise the Commission or a representative of the Commission in (i) examining the location, plans, specifications, and descriptions of appliances and the methods proposed to be employed; (ii) hearing any objections and consider any modifications that the railroad company desires to offer; and (iii) within such time as the Commission may determine, rejecting, approving, or modifying such plans and specifications. A determination of the Commission shall be considered a final action that may be appealed as provided in § 12.1-40.

E. If the broadband service provider gives notice to the railroad company to cross a section of track that has been legally abandoned pursuant to an order of a federal or state agency having jurisdiction over the track and is not being used for railroad service, then the railroad company shall notify the broadband service provider that the specified section of track is legally abandoned within 30 days of such notice. If the specified section of track has been legally abandoned, then the railroad company shall not have the opportunity to petition the Commission as described in subsection D, unless the legally abandoned section of track was acquired by the railroad company during the five years prior to issuing a notice of crossing. Notwithstanding the provisions of subsection C, a broadband service provider seeking to cross a legally abandoned section of track shall be subject to a reduced one-time standard cumulative crossing fee of \$500.

F. In the absence of a notice of the suspension of work from the Commission within 30 days after providing written notice to a railroad company of the broadband service provider's intent to cross, and in the absence of the Commission's rejection of any modification of the desired crossing or any pending appeal related thereto, no injunction or order shall be made by any court to stay such proceedings or prohibit a broadband service provider from constructing and operating a crossing pursuant to this section and commencing such work on the desired crossing date.

G. The provisions of this section shall apply notwithstanding any contrary provision of law.