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SENATE BILL NO. 713

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 12, 2024)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact § 56-466.1 of the Code of Virginia, relating to public service companies; pole attachments; cable television systems and telecommunications service providers.

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.

"Existing attacher" means any entity with equipment on a utility pole.

"National electrical safety standards" means standards provided in the National Electrical Safety Code.

"New attacher" means a cable television system or telecommunications service provider requesting a new pole attachment.

"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 but shall not include any utility that is regulated pursuant to 47 U.S.C. § 224.

"Rearrangement" means work ~~performed~~ necessitated solely by and 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, necessitated solely by and 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.

"Red-tagged pole" means a pole owned or controlled by a public utility that (i) is designated for replacement for any reason unrelated to a lack of capacity to accommodate a new attacher's request for attachment or (ii) would have needed to be replaced at the time of replacement even if the new attachment was not made.

"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. *The terms of such contract shall comply with the requirements of this section.*

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 just and reasonable annual charges and the reasonable, actual 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,

60 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,
61 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
62 of safety, reliability, or generally applicable engineering principles. *Insufficient capacity shall not exist if*
63 *a rearrangement can be accomplished consistent with prevailing electric safety and utility standards as*
64 *determined by the Commission. In making such determination, the Commission shall consider national*
65 *electrical safety standards, the public interest relating to expanding broadband access in the*
66 *Commonwealth, the impact to ratepayers, and other relevant considerations as determined by the*
67 *Commission.*

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

69 F. A public utility shall establish and adhere to pole attachment practices and procedures that
70 comply with the requirements of this section.

71 G. In processing requests for access to a public utility's poles, such public utility shall adhere to the
72 following practices and shall incorporate the following provisions into its terms and conditions
73 governing pole attachments:

74 1. a. A public utility shall review a new attacher's attachment request for completeness before
75 reviewing such request on its merits. A new attacher's attachment request shall be considered complete
76 for the purposes of this subdivision if such request provides the public utility with the information
77 necessary, according to such public utility's procedures as specified in a master services agreement or
78 in requirements made publicly available by such public utility at the time such request is submitted, for
79 such public utility to begin to survey the affected poles.

80 (1) A public utility shall determine within 15 business days after receiving a new attacher's
81 attachment request whether such request is complete for the purposes of subdivision a and shall notify
82 such new attacher of such determination and, if such request is determined to be incomplete, the
83 reasons for such determination. If such public utility does not respond within 15 business days after the
84 receipt of such request, or if such public utility rejects such request as incomplete without specifying the
85 reasons for such determination, then such request shall be deemed complete for the purposes of
86 subdivision a.

87 (2) A new attacher's attachment request that was previously determined to be incomplete may be
88 resubmitted, and such resubmission shall only be required to address the reasons for such determination
89 specified by the public utility. Such resubmitted request shall be deemed complete for the purposes of
90 subdivision a within seven business days after its resubmission unless the public utility notifies the new
91 attacher of unaddressed reasons that such resubmission remains incomplete and how such resubmission
92 fails to address such reasons. A new attacher may repeat the resubmission procedure described in this
93 subdivision (2) as necessary until the attachment request is determined to be complete for the purposes
94 of subdivision a so long as such new attacher makes a bona fide attempt with each resubmission to
95 correct the attachment request according to the reasons for such determination of incompleteness.

96 b. A public utility shall respond to a new attacher's complete attachment request either by (i)
97 granting access or (ii) consistent with subsection D, denying access within 75 days after the receipt of
98 such request.

99 c. (1) Within 75 days of receiving a complete attachment request, a public utility shall complete a
100 survey of the affected poles.

101 (2) A public utility shall permit the new attacher and any existing attachers to the affected poles to
102 be present for any field inspection conducted as part of such public utility's survey pursuant to
103 subdivision (1). A public utility shall use commercially reasonable efforts to provide such new and
104 existing attachers at least five business days' advance notice of such field inspection and shall provide
105 in such notice the time, date, and location of such survey and the name of the contractor performing
106 such survey, if applicable. Any attacher attending such field inspection shall do so at its own risk and
107 expense.

108 2. If a new attacher's request for access is not denied, a public utility shall present to such new
109 attacher a detailed, itemized estimate, on a pole-by-pole basis, if requested, of charges to perform all
110 necessary rearrangement within 20 days after providing the response required by subdivision 1. If the
111 new attacher requests an estimate on such pole-by-pole basis and the public utility incurs fixed costs
112 that are not reasonably calculable on a pole-by-pole basis, such public utility may present charges on a
113 per-job basis rather than on a pole-by-pole basis for such fixed cost charges. The public utility shall
114 provide documentation sufficient to determine the basis of all estimated charges, including any projected
115 material, labor, and other related costs that form the basis of such estimate.

116 a. A public utility may withdraw an outstanding estimate of charges to perform rearrangement work
117 beginning 30 days after the estimate is presented. A new attacher may accept a valid estimate and pay
118 such charges at any time after receiving such estimate except if such estimate is withdrawn.

119 b. After a public utility completes rearrangement, if the cost of the work performed differs from the
120 estimate, such public utility shall provide the new attacher a detailed, itemized final invoice of the
121 actual rearrangement charges incurred, on a pole-by-pole basis, if requested, to accommodate the new

attachment. If the new attacher requests an invoice on such pole-by-pole basis and the public utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, such public utility may present charges on a per-job basis rather than on a pole-by-pole basis for such fixed cost charges. The public utility shall provide documentation sufficient to determine the basis of all charges, including material, labor, and other related costs that form the basis of such estimate.

3. Upon a public utility's receipt of payment pursuant to subdivision 2 a, such public utility shall immediately notify in writing all known existing attachers that may be affected by such rearrangement. Such notice shall:

a. Specify the details and location of such rearrangement;

b. Set a completion date for such rearrangement that is no later than 95 days after such notice is sent;

c. Provide that any entity with an existing attachment may modify such attachment consistent with the specified rearrangement before the date of such rearrangement; and

d. Provide the name, telephone number, and email address of a contact person for more information about the rearrangement procedure.

Upon providing such notice, a public utility shall provide the new attacher with a copy of any such notice, the contact information of any existing attachers, and any address to which such public utility sent such notice. The new attacher shall be responsible for coordinating with existing attachers to encourage the completion of rearrangement by the completion date specified in such notice.

4. A public utility shall complete any rearrangement by the completion date provided in the notice described in subdivision 3.

5. a. A public utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties involved have no agreement specifying the rates, terms, and conditions of attachment.

b. A public utility may deviate from the time limits specified in this subsection during performance of a rearrangement for good and sufficient cause, as defined by the Commission, that renders it unfeasible for such public utility to complete rearrangement within such time limits. A public utility making such deviation shall immediately notify in writing the new attacher and affected existing attachers, and such notice shall identify the affected poles and include a detailed explanation of the reason for such deviation and a new completion date. No such deviation shall occur for a period longer than necessary to complete rearrangement of the affected poles, and such public utility shall resume rearrangement without discrimination upon returning to routine operations.

6. If the pole attachment request of a telecommunications service provider or cable television system would cause the aggregate number of attachments or attachment requests by all attachers to exceed the lesser of 300 poles per month or 0.5 percent of the total poles owned by a public utility in any given month, then such public utility shall promptly notify such new attacher and shall negotiate in good faith to contract with a mutually agreed upon third-party entity to perform all necessary work that such public utility would otherwise perform, within a reasonable timeframe and in accordance with the cost allocation principles set forth in this section. In negotiating for a reasonable timeframe for the performance of work, the parties involved shall use their best efforts to comply with the timeframes established in subdivisions 1, 2, and 3. All work performed by a contracted entity under this subdivision shall be subject to the oversight of the public utility, which may only assess the new attacher for the actual, reasonable costs of such oversight.

7. Notwithstanding any other provision of law, a public utility subject to this section shall not apportion to a telecommunications service provider or cable television system the cost of replacing a red-tagged pole, provided that such public utility may apportion to a telecommunications service provider or cable television system the incremental cost of a taller or stronger pole that is necessitated solely by the new facilities of such telecommunications service provider or cable television system.

H. The Commission is authorized to enforce the requirements of this section and 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:

1. Just and reasonable pole attachment rates and terms and conditions of service to be determined by the Commission shall include, without limitation, rearrangement and make-ready costs, pole replacement costs, and all other costs directly related to pole attachments and maintenance, replacement, and inspection of poles or pole attachments, and right of way maintenance essential to pole attachments, provided, however, that cost recovery for rearrangement, make-ready, and pole replacement shall be

addressed in terms and conditions, and shall not *also* be included in annual rental rates;

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

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

4. *The Commission shall resolve disputes (i) involving pole access, including the allocation of rearrangement costs, within 90 days and (ii) concerning all other matters arising under this section within 120 days;*

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

~~5.~~ 6. The Commission is authorized to develop, if necessary, rules and regulations, including a definition of good faith negotiations, to implement this section.

2. That in administrating the Virginia Telecommunication Initiative (VATI) and the federal Broadband Equity, Access, and Deployment (BEAD) Program in the Commonwealth, the Department of Housing and Community Development is directed to submit annually on or before December 1 of 2024 through 2028 a report to the Governor, the General Assembly, and the State Corporation Commission on the progress of broadband expansion projects across the Commonwealth funded through VATI and BEAD. Such report shall assess (i) the fiber mileage constructed, (ii) the locations passed, (iii) the timelines for remaining contracted projects, (iv) the amount of grant funding expended, and (v) the number of projects extended and the rationale for such extensions.

3. That any telecommunications service provider or cable television system that receives state or federal funding for infrastructure development in the Commonwealth shall coordinate with any public utility in the Commonwealth impacted by such funding receipt during any application process and shall promptly notify any such impacted public utility of such funding receipt within 30 days after such funding receipt.

4. That the requirements of § 56-466.1 of the Code of Virginia, as amended by this act, shall apply only to requests for pole access in the Commonwealth submitted by a telecommunications service provider or cable television system on or after July 1, 2024, and no provision of this act shall invalidate or impair any contract or agreement entered into prior to July 1, 2024.