

SENATE BILL NO. 713

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on _____)

(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.

"Communications space" means the lower usable space on a utility pole that is typically reserved for low-voltage communications equipment.

"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.

27 "Pole attachment" means any attachment by a cable television system or provider of
28 telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled
29 by a public utility.

30 "Public utility" has the same meaning ascribed thereto in § 56-232, provided that "public utility"
31 does not include any utility regulated pursuant to 47 U.S.C. § 224.

32 "Rearrangement" means work ~~performed~~ necessitated solely by and at the request of a
33 telecommunications service provider or cable television system to, on, or in an existing pole, duct, conduit,
34 right-of-way, or similar facility owned or controlled by a public utility that is necessary to make such pole,
35 duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include
36 replacement, necessitated solely by and at the request of a telecommunications service provider or cable
37 television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole,
38 duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity
39 and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole
40 attachment.

41 "Telecommunications service provider" means any public service corporation or public service
42 company that holds a certificate of public convenience and necessity to furnish local exchange telephone
43 service or interexchange telephone service.

44 B. Upon request by a telecommunications service provider or cable television system to a public
45 utility, both the public utility and the telecommunications service provider or cable television system shall
46 negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's
47 poles by the telecommunications service provider or cable television system. The terms of such contract
48 shall comply with the requirements of this section.

49 C. After entering into a contract for attachments to its poles by any telecommunications service
50 provider or cable television system, a public utility shall permit, upon reasonable terms and conditions
51 and the payment of just and reasonable annual charges and the reasonable, actual cost of any required
52 rearrangement, the attachment of any wire, cable, facility, or apparatus to its poles or pedestals, or the
53 placement of any wire, cable, facility, or apparatus in conduit or duct space owned or controlled by it, by

54 such telecommunications service provider or cable television system that is authorized by law, to construct
55 and maintain the attachment, provided that the attachment does not interfere, obstruct, or delay the service
56 and operation of the public utility or create a safety hazard.

57 D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service
58 may deny access by a telecommunications service provider or cable television system to any pole, duct,
59 conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility,
60 provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons
61 of safety, reliability, or generally applicable engineering principles. Insufficient capacity shall not exist if
62 a rearrangement can be accomplished consistent with current national electrical safety standards or the
63 national electrical safety standards in effect at the time such pole line or other part was constructed.

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

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

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

70 1. a. A public utility shall review a new attacher's attachment request for completeness before
71 evaluating the merits of such request. A new attacher's attachment request shall be considered complete if
72 such request provides the public utility with the information necessary, according to such public utility's
73 procedures as specified in a master services agreement or in requirements made publicly available by such
74 public utility at the time such request is submitted, for such public utility to begin to survey the relevant
75 poles.

76 (1) A public utility shall determine within 15 business days after receiving a new attacher's
77 attachment request whether such request is complete and shall notify such new attacher of such
78 determination and, if such request is determined to be incomplete, the reasons for such determination. If
79 such public utility does not respond within 15 business days after the receipt of such request, or if such

80 public utility rejects such request as incomplete without specifying the reasons for such determination,
81 then such request shall be deemed complete for the purposes of this section.

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

91 b. A public utility shall respond to a new attacher's complete attachment request either by (i)
92 granting access; (ii) consistent with subsection D, denying access within 55 days after the receipt of such
93 request; or (iii) in the case of a larger order as described in subdivision 5, denying access within 75 days
94 after the receipt of such request. A public utility may not deny a new attacher pole access based on a
95 preexisting violation not caused by any prior attachments of such new attacher.

96 c. (1) Within 55 days of receiving a complete attachment request, or within 75 days after such
97 receipt in the case of a larger order as described in subdivision 5, a public utility shall complete a survey
98 of the relevant poles.

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

105 2. If a new attacher's request for access is not denied, a public utility shall present to such new
106 attacher a detailed, itemized estimate, on a pole-by-pole basis, if requested, of charges to perform all

107 necessary rearrangement within 20 days after providing the response required by subdivision 1. If the new
108 attacher requests an estimate on such pole-by-pole basis and the public utility expects to incur fixed costs
109 that are not reasonably calculated on a pole-by-pole basis, such public utility may present an estimate on
110 a per-job basis rather than on a pole-by-pole basis for such fixed costs. The public utility shall provide
111 documentation sufficient to describe the basis of all estimated charges, including any projected material,
112 labor, and other related costs that form the basis of such estimate.

113 a. A public utility may withdraw an outstanding estimate of charges to perform rearrangement
114 work beginning 30 days after the estimate is presented. A new attacher may pay such charges at any time
115 after receiving such estimate except if such estimate is withdrawn.

116 b. After a public utility completes rearrangement work, if the cost of the work performed differs
117 from the estimate, such public utility shall provide the new attacher a detailed, itemized final invoice of
118 the actual rearrangement charges incurred, on a pole-by-pole basis, if requested, to accommodate the new
119 attachment. If the new attacher requests an invoice on such pole-by-pole basis and the public utility incurs
120 fixed costs that are not reasonably calculated on a pole-by-pole basis, such public utility may present
121 charges on a per-job basis rather than on a pole-by-pole basis for such fixed costs. The public utility shall
122 provide documentation sufficient to describe the basis of all charges, including material, labor, and other
123 related costs incurred.

124 c. No public utility shall charge a new attacher to bring poles, attachments, or third-party
125 equipment into compliance with current published safety, reliability, or pole owner construction standards
126 or guidelines if such poles, attachments, or third-party equipment are out of compliance due to work
127 performed by a party other than the new attacher prior to the new attachment.

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

130 a. For attachments occurring within the communications space, such notice shall:

131 (1) Specify the details and location of such rearrangement;

132 (2) Set a completion date for such rearrangement that is no later than 40 days after such notice is
133 sent, or in the case of larger orders as described in subdivision 5, no later than 95 days after such notice is
134 sent;

135 (3) Provide that any existing attacher may modify the attachment consistent with the specified
136 rearrangement before the date of such rearrangement; and

137 (4) Provide the name, telephone number, and email address of a contact person for more
138 information about the rearrangement procedure.

139 b. For attachments occurring above the communications space, such notice shall:

140 (1) Specify the details and location of such rearrangement;

141 (2) Set a completion date for such rearrangement that is no later than 115 days after such notice is
142 sent, or in the case of larger orders as described in subdivision 5, no later than 170 days after such notice
143 is sent;

144 (3) Provide that any existing attacher may modify the attachment consistent with the specified
145 rearrangement before the date of such rearrangement;

146 (4) Provide the name, telephone number, and email address of a contact person for more
147 information about the rearrangement procedure; and

148 (5) Provide that such public utility may assert its right to 15 additional days to complete such
149 rearrangement.

150 c. Upon providing the notice described in subdivision 3, a public utility shall provide the new
151 attacher with a copy of any such notice, the contact information of any existing attachers, and any address
152 to which such public utility sent such notice. The new attacher shall be responsible for coordinating with
153 existing attachers to encourage the completion of any attachment modifications by the completion date
154 specified in the notice.

155 4. A public utility shall complete any rearrangement occurring within the communications space
156 by the completion date provided in the notice described in subdivision 3 a (2) and shall complete any
157 rearrangement occurring above the communications space by the completion date provided in the notice

158 described in subdivision 3 b (2) or, if such public utility asserts its right to 15 additional days, by 15 days
159 after such completion date.

160 5. For purposes of compliance with the time limits in this subsection:

161 a. A public utility shall apply the timeline described in subdivisions 1 through 3 to all requests for
162 attachment up to the lesser of 300 poles or 0.5 percent of such public utility's poles in the Commonwealth.

163 b. A public utility may add 20 days to the survey period described in subdivision 1 to larger orders
164 up to the lesser of 3,000 poles or 5 percent of such public utility's poles in the Commonwealth.

165 c. A public utility may add 55 days to the rearrangement periods described in subdivision 3 to
166 larger orders up to the lesser of 3,000 poles or 5 percent of such public utility's poles in the
167 Commonwealth.

168 d. A public utility shall negotiate in good faith the timing of all requested attachments that are
169 larger than the lesser of 3,000 poles or 5 percent of such public utility's poles in the Commonwealth.

170 e. A public utility may treat multiple requests from a single new attacher as one request if such
171 requests are filed within 30 days of one another.

172 6. a. A public utility may deviate from the time periods specified in this subsection before offering
173 an estimate of charges if the parties involved have no agreement specifying the rates, terms, and conditions
174 of attachment.

175 b. A public utility may deviate from the time limits specified in this subsection during performance
176 of a rearrangement for good and sufficient cause that renders such public utility unable to complete
177 rearrangement within such time limits. A public utility making such deviation shall immediately notify in
178 writing the new attacher and any existing attachers, and such notice shall identify the impacted poles and
179 include a detailed explanation of the reason for such deviation and a new completion date. No such
180 deviation shall occur for a period longer than necessary to complete rearrangement of the impacted poles,
181 and such public utility shall resume rearrangement without discrimination upon returning to routine
182 operations. A public utility shall not delay completion of a rearrangement due to a preexisting violation
183 relating to an impacted pole that is not caused by the new attacher.

184 7. If the total number of pole attachments in a new attacher's request would cause the aggregate
185 number of poles attached to by all attachers to increase by more than 0.5 percent in any given month, then
186 the public utility shall promptly notify such new attacher and shall negotiate in good faith to contract with
187 a mutually agreed upon third-party entity to perform all necessary work within a reasonable timeframe
188 and in accordance with the cost allocation principles set forth in this section. A public utility shall, upon
189 request, provide to a telecommunications service provider or cable television system the aggregate number
190 of the public utility's poles attached to by all new and existing attachers during the relevant time period.
191 In negotiating for a reasonable timeframe for the performance of work, the parties involved shall use their
192 best efforts to comply with the timeframes established in subdivisions 1 through 3. All work performed
193 by a contracted entity under this subdivision shall be subject to the oversight of the public utility, which
194 may only assess the new attacher for the actual, reasonable costs of such oversight.

195 H. The costs of a rearrangement shall be borne by all parties that obtain access to the facility as a
196 result of the rearrangement and by all parties that directly benefit from the rearrangement. Each such party
197 shall share proportionately in the costs of rearrangement. A party with an existing attachment to a
198 rearranged facility shall be considered to directly benefit from a rearrangement if, after receiving
199 notification of such rearrangement as provided in this section, such party adds to or modifies such existing
200 attachment. However, a party with an existing attachment to a pole, conduit, duct, or right-of-way shall
201 not be required to bear any of the costs of rearrangement or replacement if such rearrangement or
202 replacement is necessitated solely as a result of an additional attachment or the rearrangement of an
203 existing attachment sought by another party. If a party makes a new attachment to the facility after the
204 completion of the rearrangement, such party shall share proportionately in the cost of the rearrangement
205 if such rearrangement rendered such new attachment possible.

206 I. The Commission is authorized to enforce the requirements of this section and to determine just
207 and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for
208 attachments to electric cooperative poles by telecommunications service providers or cable television
209 systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon;
210 however, the Commission shall not determine rates or terms and conditions for any existing agreement

211 until it expires or is terminated pursuant to its own terms. The terms of an expired or terminated agreement
212 shall continue to govern while good faith negotiations or Commission review pursuant to this section are
213 pending. Such determinations shall be made in accordance with the following:

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

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

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

227 4. The Commission shall resolve disputes (i) involving pole access, including proposed
228 overlapping and allocation of rearrangement costs, within 120 days and (ii) concerning all other matters
229 arising under this section within 180 days;

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

232 ~~5-6.~~ The Commission is authorized to develop, if necessary, rules and regulations, including a
233 definition of good faith negotiations, to implement this section.

234 **2. That in administrating the Virginia Telecommunication Initiative (VATI) and the federal**
235 **Broadband Equity, Access, and Deployment (BEAD) Program in the Commonwealth, the**
236 **Department of Housing and Community Development is directed to submit annually on or before**
237 **December 1 of 2024 through 2028 a report to the Governor, the General Assembly, and the State**

238 Corporation Commission on the progress of broadband expansion projects across the
239 Commonwealth funded through VATI and BEAD. Such report shall assess (i) the fiber mileage
240 constructed, (ii) the locations passed, (iii) the timelines for remaining contracted projects, (iv) the
241 amount of grant funding expended, and (v) the number of projects extended and the rationale for
242 such extensions.

243 3. That any telecommunications service provider or cable television system that receives state or
244 federal funding for infrastructure development in the Commonwealth shall coordinate with any
245 public utility in the Commonwealth impacted by such funding receipt during any application
246 process and shall promptly notify any such impacted public utility of such funding receipt within
247 30 days after such funding receipt.

248 4. That the requirements of § 56-466.1 of the Code of Virginia, as amended by this act, shall apply
249 only to requests for pole access in the Commonwealth submitted by a telecommunications service
250 provider or cable television system to a public utility not regulated pursuant to 47 U.S.C. § 224 on
251 or after July 1, 2024.

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