

SENATE BILL NO. 713

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on February 5, 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 to attach new or upgraded facilities to a pole owned or controlled by a public utility.

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

28 "Public utility" has the same meaning ascribed thereto in § 56-232 but shall not include any utility
29 that is regulated pursuant to 47 U.S.C. § 224.

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

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

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

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

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

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

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

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

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

68 1. a. A public utility shall review a new attacher's attachment request for completeness before
69 reviewing the request on its merits. A new attacher's attachment request is considered complete if it
70 provides the public utility with the information necessary under its procedures, as specified in a master
71 service agreement or in requirements that are available in writing publicly at the time of submission of the
72 request, to begin to survey the affected poles.

73 (1) A public utility shall determine within 15 business days after receipt of a new attacher's
74 attachment request whether the request is complete and notify the attacher of that decision. If the public
75 utility does not respond within 15 business days after receipt of the request, or if the public utility rejects
76 the request as incomplete but fails to specify any reasons in its response, then the request is deemed
77 complete. If the public utility timely notifies the new attacher that its attachment request is not complete,
78 then it shall specify all reasons for finding it incomplete.

79 (2) Any resubmitted request need only address the public utility's reasons for finding the request
80 incomplete and shall be deemed complete within seven business days after its resubmission, unless the
81 public utility specifies to the new attacher which reasons were not addressed and how the resubmitted
82 request did not sufficiently address the reasons. The new attacher may follow the resubmission procedure
83 in this subdivision (2) as many times as it chooses so long as in each case it makes a bona fide attempt to
84 correct the reasons identified by the public utility, and in each case the deadline set forth in this paragraph
85 shall apply to the public utility's review.

86 b. A public utility shall respond to the new attacher either by granting access or, consistent with
87 subsection D, denying access within 55 days of receipt of a complete request to attach facilities to its
88 public utility poles, or within 75 days in the case of larger orders as described in subdivision 5. A public
89 utility shall not deny the new attacher pole access based on a preexisting violation not caused by any prior
90 attachments of the new attacher.

91 c. (1) A public utility shall complete a survey of poles for which access has been requested within
92 55 days of receipt of a complete request to attach facilities to its public utility poles, or within 75 days in
93 the case of larger orders as described in subdivision 5.

94 (2) A public utility shall permit the new attacher and any existing attachers on the affected poles
95 to be present for any field inspection conducted as part of the public utility's survey. A public utility shall
96 use commercially reasonable efforts to provide the affected attachers with advance notice of not less than
97 five business days of any field inspection as part of the survey and shall provide the date, time, and location
98 of the survey, and name of the contractor performing the survey.

99 2. Where a new attacher's request for access is not denied, a public utility shall present to a new
100 attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all
101 necessary rearrangement within 20 days of providing the response required by subdivision 1. Where a
102 pole-by-pole estimate is requested and the public utility incurs fixed costs that are not reasonably
103 calculable on a pole-by-pole basis, the public utility may present charges on a per-job basis rather than
104 present a pole-by-pole estimate for those fixed cost charges. The public utility shall provide documentation

105 that is sufficient to determine the basis of all estimated charges, including any projected material, labor,
106 and other related costs that form the basis of its estimate.

107 a. A public utility may withdraw an outstanding estimate of charges to perform rearrangement
108 work beginning 30 days after the estimate is presented.

109 b. A new attacher may accept a valid estimate and make payment any time after receipt of an
110 estimate, except it shall not accept after the estimate is withdrawn.

111 c. After the public utility completes rearrangement, if the final cost of the work differs from the
112 estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual
113 rearrangement charges incurred, on a pole-by-pole basis where requested, to accommodate the new
114 attacher's attachment. Where a pole-by-pole estimate is requested and the public utility incurs fixed costs
115 that are not reasonably calculable on a pole-by-pole basis, the public utility may present charges on a per-
116 job basis rather than present a pole-by-pole invoice for those fixed cost charges. The public utility shall
117 provide documentation that is sufficient to determine the basis of all estimated charges, including any
118 projected material, labor, and other related costs that form the basis of its estimate.

119 d. A public utility shall not charge a new attacher to bring poles, attachments, or third-party
120 equipment into compliance with current published safety, reliability, and pole owner construction
121 standards or guidelines if such poles, attachments, or third-party equipment were out of compliance
122 because of work performed by a party other than the new attacher prior to the new attachment.

123 3. Upon receipt of payment specified in subdivision 2 b, a public utility shall notify immediately
124 and in writing all known entities with existing attachments that may be affected by the rearrangement.

125 a. The notice shall:

126 (1) Specify where and what rearrangement will be performed.

127 (2) Set a date for completion of rearrangement that is no later than 40 days after notification is
128 sent, or up to 95 days in the case of larger orders, as described in subdivision 5.

129 (3) State that any entity with an existing attachment may modify the attachment consistent with
130 the specified rearrangement before the date set for completion.

131 (4) State the name, telephone number, and email address of a person to contact for more
132 information about the rearrangement procedure.

133 b. Once a public utility provides the notices described in this section, it then shall provide the new
134 attacher with a copy of the notices and the existing attachers' contact information and address where the
135 public utility sent the notices. The new attacher shall be responsible for coordinating with existing
136 attachers to encourage their completion of rearrangement by the dates set forth by the public utility in
137 subdivision a (2).

138 4. A public utility shall complete its rearrangement by the same dates set for existing attachers in
139 subdivision 3 a (2).

140 5. For the purposes of compliance with the time periods in this section:

141 a. A public utility shall apply the timeline described in subdivisions 1, 2, and 3 to all requests for
142 attachment up to the lesser of 300 poles or 0.5 percent of the public utility's poles in the Commonwealth.

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

145 c. A public utility may add 55 days to the rearrangement periods described in subdivision 3 to
146 larger orders up to the lesser of 3,000 poles or five percent of the public utility's poles in the
147 Commonwealth.

148 d. A public utility shall negotiate in good faith the timing of all requests for attachment larger than
149 the lesser of 3,000 poles or five percent of the public utility's poles in the Commonwealth.

150 e. A public utility may treat multiple requests from a single new attacher as one request when the
151 requests are filed within 30 days of one another.

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

155 b. A public utility may deviate from the time limits specified in this section during performance of
156 rearrangement for good and sufficient cause that renders it infeasible for the public utility to complete
157 rearrangement within the time limits specified in this section. A public utility that so deviates shall

158 immediately notify, in writing, the new attacher and affected existing attachers and shall identify the
159 affected poles and include a detailed explanation of the reason for the deviation and a new completion
160 date. The public utility shall deviate from the time limits specified in this section for a period no longer
161 than necessary to complete rearrangement on the affected poles and shall resume rearrangement without
162 discrimination when it returns to routine operations. A public utility shall not delay completion of
163 rearrangement because of a preexisting violation on an affected pole not caused by the new attacher.

164 7. If the total number of pole attachments in a telecommunications service provider's or cable
165 television system's request would cause the aggregate number of poles attached to by all attachers to
166 increase by more than 0.5 percent in any given month, then the public utility shall promptly notify the
167 telecommunications service provider or cable television system and shall negotiate in good faith to
168 contract a mutually agreed upon third-party entity to perform all necessary work that the public utility
169 would otherwise perform, within a reasonable timeframe, and in accordance with the cost allocation
170 principles set forth in this section. A public utility shall, upon request, provide to a telecommunications
171 service provider or cable television system the aggregate number of the public utility's poles attached to
172 by all new and existing attachers during the relevant time period. In negotiating for a reasonable time
173 frame for the performance of work, the parties shall use best efforts to comply with the timeframes
174 established in subdivisions 1, 2, and 3. All work performed by a contracted entity under this section shall
175 be subject to the oversight of the public utility which may only assess the telecommunications service
176 provider or cable television system for the actual, reasonable costs of such oversight.

177 H. The costs of a rearrangement shall be borne by all parties that obtain access to the facility as a
178 result of the rearrangement and by all parties that directly benefit from the rearrangement. Each party
179 described in the preceding sentence shall share proportionately in the cost of the rearrangement. A party
180 with a preexisting attachment to a rearranged facility shall be deemed to directly benefit from a
181 rearrangement if, after receiving notification of such rearrangement as provided in this section, it adds to
182 or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole,
183 conduit, duct, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its
184 attachment if such rearrangement or replacement is necessitated solely as a result of an additional

185 attachment or the rearrangement of an existing attachment sought by another party. If a party makes an
186 attachment to the facility after the completion of the rearrangement, such party shall share proportionately
187 in the cost of the rearrangement if such rearrangement rendered possible the added attachment.

188 I. The Commission is authorized to enforce the requirements of this section and to determine just
189 and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for
190 attachments to electric cooperative poles by telecommunications service providers or cable television
191 systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon;
192 however, the Commission shall not determine rates or terms and conditions for any existing agreement
193 until it expires or is terminated pursuant to its own terms. The terms of an expired or terminated agreement
194 shall continue to govern while good faith negotiations or Commission review pursuant to this section are
195 pending. ~~Such Commission~~ determinations shall be made in accordance with the following:

196 1. Just and reasonable pole attachment rates and terms and conditions of service to be determined
197 by the Commission shall include, without limitation, rearrangement and make-ready costs, pole
198 replacement costs, and all other costs directly related to pole attachments and maintenance, replacement,
199 and inspection of poles or pole attachments, and right of way maintenance essential to pole attachments,
200 provided however, that cost recovery for rearrangement, make-ready, and pole replacement ~~shall be~~
201 addressed in terms and conditions, ~~and~~ shall not also be included in annual rental rates;

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

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

209 4. The Commission shall resolve disputes (i) involving pole access, including the allocation of
210 rearrangement costs, within 120 days and (ii) concerning all other matters arising under this section within
211 180 days;

