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HOUSE BILL NO. 800
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute--Delegate Herring)

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.

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

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

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

51 C. After entering into a contract for attachments to its poles by any telecommunications service
52 provider or cable television system, a public utility shall permit, upon reasonable terms and conditions
53 and the payment of just and reasonable annual charges and the reasonable, actual cost of any required
54 rearrangement, the attachment of any wire, cable, facility₂ or apparatus to its poles or pedestals, or the
55 placement of any wire, cable, facility₂ or apparatus in conduit or duct space owned or controlled by it, by
56 such telecommunications service provider or cable television system that is authorized by law₇ to construct
57 and maintain the attachment, provided that the attachment does not interfere, obstruct₂ or delay the service
58 and operation of the public utility or create a safety hazard.

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

69 E. This section shall not apply to any pole attachments or any public utility regulated pursuant to
70 47 U.S.C. § 224.

71 F. A public utility not regulated pursuant to 47 U.S.C. § 224 shall establish and adhere to pole
72 attachment practices and procedures that comply with the requirements of this section.

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

76 1. a. A public utility shall review a new attacher's attachment request for completeness before
77 reviewing such request on its merits. A new attacher's attachment request shall be considered complete

78 for the purposes of this subdivision if such request provides the public utility with the information
79 necessary, according to such public utility's procedures as specified in a master services agreement or in
80 requirements made publicly available by such public utility at the time such request is submitted, for such
81 public utility to begin to survey the affected poles.

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

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

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

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

102 (2) A public utility shall permit the new attacher and any existing attachers to the affected poles to
103 be present for any field inspection conducted as part of such public utility's survey pursuant to subdivision

104 (1). A public utility shall use commercially reasonable efforts to provide such new and existing attachers

105 at least five business days' advance notice of such field inspection and shall provide in such notice the
106 time, date, and location of such survey and the name of the contractor performing such survey, if
107 applicable. Any attacher attending such field inspection shall do so at its own risk and 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 new
111 attacher requests an estimate on such pole-by-pole basis and the public utility incurs fixed costs that are
112 not reasonably calculable on a pole-by-pole basis, such public utility may present charges on a per-job
113 basis rather than on a pole-by-pole basis for such fixed cost charges. The public utility shall provide
114 documentation sufficient to determine the basis of all estimated charges, including any projected material,
115 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
117 work beginning 30 days after the estimate is presented. A new attacher may accept a valid estimate and
118 pay 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
120 the 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
122 attachment. If the new attacher requests an invoice on such pole-by-pole basis and the public utility incurs
123 fixed costs that are not reasonably calculable on a pole-by-pole basis, such public utility may present
124 charges on a per-job basis rather than on a pole-by-pole basis for such fixed cost charges. The public utility
125 shall provide documentation sufficient to determine the basis of all charges, including material, labor, and
126 other related costs that form the basis of such estimate.

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

130 a. Specify the details and location of such rearrangement;

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

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

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

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

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

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

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

154 6. If the pole attachment request of a telecommunications service provider or cable television
155 system would cause the aggregate number of attachments or attachment requests by all attachers to exceed
156 the lesser of 300 poles per month or 0.5 percent of the total poles owned by a public utility in any given
157 month, then such public utility shall promptly notify such new attacher and shall negotiate in good faith

158 to contract with a mutually agreed upon third-party entity to perform all necessary work that such public
159 utility would otherwise perform, within a reasonable timeframe and in accordance with the cost allocation
160 principles set forth in this section. In negotiating for a reasonable timeframe for the performance of work,
161 the parties involved shall use their best efforts to comply with the timeframes established in subdivisions
162 1, 2, and 3. All work performed by a contracted entity under this subdivision shall be subject to the
163 oversight of the public utility, which may only assess the new attacher for the actual, reasonable costs of
164 such oversight.

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

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

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

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

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

191 4. The Commission shall resolve disputes (i) involving pole access, including the allocation of
192 rearrangement costs, within 90 days and (ii) concerning all other matters arising under this section within
193 120 days;

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

196 ~~5-~~6. The Commission is authorized to develop, if necessary, rules and regulations, including a
197 definition of good faith negotiations, to implement this section.

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

207 **3. That any telecommunications service provider or cable television system that receives state or**
208 **federal funding for infrastructure development in the Commonwealth shall coordinate with any**
209 **public utility in the Commonwealth impacted by such funding receipt during any application**

210 process and shall promptly notify any such impacted public utility of such funding receipt within
211 30 days after such funding receipt.

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

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