WEST virginia legislature

2022 regular session

Introduced

Senate Bill 231

By Senators Tarr, Romano, Lindsay, Baldwin, Plymale, Jeffries, Stollings, and Woelfel

[Introduced January 12, 2022; referred
to the Committee on Economic Development]

A BILL to amend and reenact §31G-4-1 and §31G-4-4 of the Code of West Virginia, 1931, as amended, all relating to broadband connectivity; defining terms; requiring engineering reports on available telecommunication cable space; providing for shared costs for the report; requiring notice from pole owner or manager to telecommunication carriers of available space; and requiring notice to pole owner or manager of intent to use any available space.

*Be it enacted by the Legislature of West Virginia:*

article 4. make-ready pole access.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

~~(1)~~ “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided*, That notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the West Virginia Code of State Rules, variances for the installation and maintenance of broadband service infrastructure on utility poles shall be permitted if these are agreed upon between infrastructure owners.

~~(2)~~ “Attacher” means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line, or facility of any kind to a utility pole in the right of way or its adjacent ground space.

~~(3)~~ “Attachment Application” means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

“Broadband Service” means the same as that term is defined in §31G-1-2 of this code.

“Commission” means the Public Service Commission as set forth in §24-1-1 *et seq.* of this code.

~~(4)~~ “Make Ready Costs” means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines, or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher’s attachment.

“Telecommunications Carrier” means either:

(A) A telecommunication carrier as determined by the Public Service Commission, or

(B) A telecommunication carrier that meets the definition of such with respect to the Federal Communication Commission, as set forth in 47 U.S.C. § 153.

~~(5)~~ “Pole Owner” means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

~~(6)~~ “Pre-Existing Third Party User” means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

“Utility Facility” means the same as that term is defined in §17-2A-17a of this code.

“Utility Poles” of “Poles” means a pole that is used to support electrical, cable television, telephone, and broadband service.

“Wireless Access” means access to and use of a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless communication purposes.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The commission shall adopt the rates, terms, and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.

(c) The commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments; and

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

(d) (1) Notwithstanding subsection (b), the commission shall promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles. The rules shall include provisions that:

(A) Provide for the pole owner to fully recover from the owner of the attachment the costs incurred by the pole owner for the removal and disposal of abandoned cable, conductors, and related facilities;

(B) Address situations where the pole owner is unable to receive full recovery of its removal and disposal costs from the owner of the attachment by instead receiving recovery of its net unrecovered costs from its jurisdictional customers, including other Attachers, in such manner as the commission determines is just and reasonable; and

(C) Allow the pole owner to book or defer these net costs on its accounting books and request recovery to the commission outside of a base rate case proceeding through a surcharge or other rate recovery mechanism.

(D) Require within 30 days a pole owner or manager to make known to the Public Service Commission when a utility pole has been approved for telecommunication fibers to be added and what the additional available capacity is for that pole. Telecommunication carriers will be notified by the commission within 15 days of the available space and the telecommunication carrier who intends to use the pole will share in the cost of the engineering work required. The telecommunication carrier shall be given 30 days to notify the pole owner or manager they will use the pole or poles for connectivity.

(2) Any pole owner, after making reasonable efforts to require the attachment owner to remove abandoned facilities, that proceeds to remove what the pole owner reasonably believes is abandoned cable, conductor, and related facilities, shall be released and held harmless from liability from claims or any related losses claimed by the Attacher or others for the pole owner’s removal work, including any loss of property value, potential business value, salvage value, or any other value of such cable, conductor, and related facilities.

(e) Notwithstanding subsection (b), the commission shall promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles. Should the attached facilities not be transferred in a timely manner from the old pole to the new pole by the owner of the attachments, as determined by the commission, the rules shall address this matter and include the right and mechanism of the pole owner itself to transfer the facilities to the new pole, to remove the old pole, and to recover its costs fully and timely from the owner of the facilities transferred. Any pole owner who transfers facilities from an old pole to a new pole, after reasonable due diligence, shall be released and held harmless from liability for its transfer work, except for acts of negligence or willful misconduct.

NOTE: The purpose of this bill is regarding broadband connectivity; to define terms; to require engineering reports on available telecommunication cable space; to provide for shared costs for the report; to require notice from pole owner or manager to telecommunication carriers of available space; and to require notice to pole owner or manager of intent to use any available space.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.