WEST VIRGINIA CODE: §31G-4-4

§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.

(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

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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.

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