

HOUSE BILL 474

C5

9lr1090

By: **Delegates Krimm and Mautz**

Introduced and read first time: February 1, 2019

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Joint Use of Utility and Telecommunications Infrastructure**

3 FOR the purpose of authorizing the initiation of a certain proceeding regarding the joint
4 use of certain infrastructure under certain circumstances; authorizing the Public
5 Service Commission to order a joint use entity to allow certain joint use of certain
6 infrastructure under certain terms and under certain circumstances; clarifying the
7 jurisdiction of the Commission over certain entities; requiring the Commission to
8 adopt certain regulations; defining certain terms; and generally relating to the joint
9 use of utility and telecommunications infrastructure.

10 BY adding to

11 Article – Public Utilities

12 Section 8–701 through 8–704 to be under the new subtitle “Subtitle 7. Joint Use of
13 Utility and Telecommunications Infrastructure”

14 Annotated Code of Maryland

15 (2010 Replacement Volume and 2018 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Public Utilities**

19 **SUBTITLE 7. JOINT USE OF UTILITY AND TELECOMMUNICATIONS**
20 **INFRASTRUCTURE.**

21 **8–701.**

22 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) “DARK FIBER PROVIDER” MEANS A PERSON, OR THE PERSON’S**
2 **LESSEES, TRUSTEES, RECEIVERS, OR TRUSTEES APPOINTED BY ANY COURT, THAT**
3 **OWNS, CONTROLS, OPERATES, OR MANAGES FEDERALLY SUPPORTED DARK FIBER**
4 **THAT:**

5 **(1) OFFERS FEDERALLY SUPPORTED DARK FIBER ON AN**
6 **OPEN-ACCESS BASIS WITHOUT UNREASONABLE DISCRIMINATION AS CONFIRMED IN**
7 **A SCHEDULE OF RATES, TERMS, AND CONDITIONS FILED FOR INFORMATIONAL**
8 **PURPOSES WITH THE COMMISSION;**

9 **(2) IS REQUIRED TO CONDUCT BUSINESS UNDER RESTRICTIONS**
10 **ESTABLISHED AND ENFORCED BY THE FEDERAL GOVERNMENT UNDER TITLE VI OF**
11 **THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 AND TO GRANT**
12 **SECURITY INTERESTS TO THE FEDERAL GOVERNMENT UNDER THAT ACT; AND**

13 **(3) DOES NOT TRANSMIT COMMUNICATIONS FOR COMPENSATION IN**
14 **THE STATE.**

15 **(C) (1) “FEDERALLY SUPPORTED DARK FIBER” MEANS ONE OR MORE**
16 **STRANDS WITHIN A BUNDLE OF FIBER-OPTIC CABLE THROUGH WHICH AN**
17 **ASSOCIATED LIGHT COMMUNICATION TRANSMISSION IS NECESSARY TO PROVIDE**
18 **COMMUNICATIONS SERVICE.**

19 **(2) “FEDERALLY SUPPORTED DARK FIBER” DOES NOT INCLUDE THE**
20 **ELECTRONIC EQUIPMENT REQUIRED TO RENDER THE FIBER CAPABLE OF**
21 **TRANSMITTING COMMUNICATIONS, IF THE CONSTRUCTION OF THE FIBER IS**
22 **FINANCED WHOLLY OR PARTLY WITH FUNDS PROVIDED BY A GRANT AWARDED**
23 **BEFORE JANUARY 1, 2010, BY THE UNITED STATES DEPARTMENT OF COMMERCE,**
24 **NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION UNDER**
25 **THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

26 **(D) “INFORMATION SERVICE PROVIDER” HAS THE MEANING STATED IN 47**
27 **U.S.C. § 153(24).**

28 **(E) “JOINT USE ENTITY” MEANS AN ELECTRIC COMPANY, A GAS COMPANY,**
29 **A TELEPHONE COMPANY, A WATER COMPANY, A DARK FIBER PROVIDER, A CABLE**
30 **TELEVISION SYSTEM, AN UNLIT FIBER PROVIDER, A TELECOMMUNICATIONS**
31 **SERVICE PROVIDER, OR AN INFORMATION SERVICE PROVIDER.**

32 **(F) “TELECOMMUNICATIONS SERVICE PROVIDER” MEANS A PROVIDER OF A**
33 **TELECOMMUNICATIONS SERVICE UNDER 47 U.S.C. § 153(53).**

1 **(G) (1) “UNLIT FIBER PROVIDER” MEANS A PROVIDER OF FIBER**
2 **CONSISTING OF ONE OR MORE STRANDS WITHIN A BUNDLE OF FIBER–OPTIC CABLE**
3 **THROUGH WHICH AN ASSOCIATED LIGHT SIGNAL OR LIGHT COMMUNICATION**
4 **TRANSMISSION IS NECESSARY TO PROVIDE COMMUNICATIONS SERVICE.**

5 **(2) “UNLIT FIBER PROVIDER” DOES NOT INCLUDE THE ELECTRONIC**
6 **EQUIPMENT NECESSARY TO RENDER THE FIBER CAPABLE OF TRANSMITTING**
7 **COMMUNICATIONS.**

8 **8–702.**

9 **A JOINT USE ENTITY THAT IS NOT OTHERWISE SUBJECT TO THE JURISDICTION**
10 **OF THE COMMISSION IS SUBJECT TO THE JURISDICTION OF THE COMMISSION ONLY**
11 **FOR THE PURPOSE OF MATTERS RELATING TO THE USE OF POLES, CONDUITS,**
12 **DUCTS, OR RIGHTS–OF–WAY UNDER THIS SUBTITLE.**

13 **8–703.**

14 **(A) ON A COMPLAINT BY A JOINT USE ENTITY, OR ON MOTION BY THE**
15 **COMMISSION, THE COMMISSION MAY OPEN A PROCEEDING TO:**

16 **(1) DETERMINE WHETHER TO REQUIRE JOINT USE OF POLES,**
17 **CONDUITS, DUCTS, OR RIGHTS–OF–WAY; AND**

18 **(2) PRESCRIBE REASONABLE COMPENSATION AND REASONABLE**
19 **TERMS AND CONDITIONS FOR JOINT USE.**

20 **(B) AFTER A HEARING, THE COMMISSION MAY ORDER A JOINT USE ENTITY**
21 **TO ALLOW JOINT USE OF POLES, CONDUITS, DUCTS, OR RIGHTS–OF–WAY, AND**
22 **PRESCRIBE REASONABLE COMPENSATION AND REASONABLE TERMS AND**
23 **CONDITIONS FOR JOINT USE, IF THE COMMISSION FINDS THAT:**

24 **(1) THE INTEREST OF THE PUBLIC, INCLUDING THE INTERESTS OF**
25 **THE CUSTOMERS OF THE AFFECTED JOINT USE ENTITIES, REQUIRES A JOINT USE**
26 **ENTITY TO PROVIDE NONDISCRIMINATORY ACCESS TO ANY POLES, CONDUITS,**
27 **DUCTS, OR RIGHTS–OF–WAY OWNED OR CONTROLLED BY ANOTHER JOINT USE**
28 **ENTITY;**

29 **(2) JOINT USE WILL NOT RESULT IN IRREPARABLE INJURY TO THE**
30 **OWNER OR OTHER USERS OF THE POLES, DUCTS, CONDUITS, OR RIGHTS–OF–WAY OR**
31 **ANY SUBSTANTIAL DETRIMENT TO SERVICE;**

1 **(3) THE JOINT USE ENTITIES FAILED TO AGREE TO THE USE OR**
2 **COMPENSATION FOR THE USE OF THE POLES, CONDUITS, DUCTS, OR**
3 **RIGHTS-OF-WAY; AND**

4 **(4) THE JOINT USE ENTITY SEEKING ACCESS TO THE POLES,**
5 **CONDUITS, DUCTS, OR RIGHTS-OF-WAY HAS THE TECHNICAL AND FINANCIAL**
6 **CAPABILITIES TO FULFILL THE OBLIGATIONS THE ENTITY WOULD ASSUME**
7 **RELATING TO JOINT USE.**

8 **8-704.**

9 **(A) THE COMMISSION SHALL ADOPT REGULATIONS GOVERNING THE**
10 **RESOLUTION OF POLE ATTACHMENT DISPUTES AND THE RATES, TERMS, AND**
11 **CONDITIONS OF JOINT USE.**

12 **(B) THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION**
13 **SHALL:**

14 **(1) PROMOTE COMPETITION AND ENSURE SAFE,**
15 **NONDISCRIMINATORY ACCESS ON JUST AND REASONABLE TERMS;**

16 **(2) INCLUDE A PROCESS TO ENSURE THAT A NEW JOINT USE ENTITY**
17 **THAT SEEKS ACCESS TO POLES, CONDUITS, DUCTS, OR RIGHTS-OF-WAY HAS THE**
18 **TECHNICAL AND FINANCIAL CAPABILITIES TO FULFILL THE OBLIGATIONS THE**
19 **ENTITY WOULD ASSUME RELATING TO JOINT USE; AND**

20 **(3) IN ESTABLISHING RATES, CONSIDER VARIOUS FORMULAS,**
21 **INCLUDING THE FORMULA ADOPTED BY THE FEDERAL COMMUNICATIONS**
22 **COMMISSION UNDER 47 C.F.R. PART 1, SUBPART J.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2019.