

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday, the 22nd day of May, 2025.

Present: Powell, Kelsey, McCullough, Chafin, and Mann, JJ., and Millette and Mims, S.JJ.

CSX TRANSPORTATION, INC., APPELLANT,

against Record No. 240872
 SCC Case No. PUR-2024-00066

STATE CORPORATION COMMISSION, ET AL., APPELLEES.

UPON AN APPEAL FROM A
JUDGMENT RENDERED BY THE
STATE CORPORATION COMMISSION.

CSX Transportation, Inc. (“CSXT”) challenges the constitutionality of Code § 56-16.3, a statute that permits broadband service providers to install fiber optic cables across railroad property. Among other arguments, CSXT contends that the application of Code § 56-16.3 in this case violates Article I, Section 11 of the Constitution of Virginia by permitting a private party to take railroad property for a nonpublic use.

The Court addressed the same argument in *Norfolk Southern Railway Company v. State Corporation Commission*, ___ Va. ___ (2025) (this day decided). In that case, the Court held that Code § 56-16.3 violates Article I, Section 11 of the Constitution of Virginia when it is applied to permit a private, for-profit broadband service provider to install fiber optic cables across railroad property. *See Norfolk S. Ry. Co.*, ___ Va. at ___. Such an application of the statute authorizes a taking by a private party for a nonpublic use. *See id.*

The operative facts of this case are indistinguishable from *Norfolk Southern*. In this case, CSXT challenges similar proposed railroad crossings by the same private broadband service provider, Cox Communications Hampton Roads, LLC. The rationale set forth in *Norfolk Southern* applies with equal force in the present case. For this reason,* the Court reverses the

* The Court’s judgment is based solely on the interplay between the present application of Code § 56-16.3 and Article I, Section 11 of the Constitution of Virginia. The Court expresses no opinion concerning CSXT’s additional arguments, which are based on the application of federal law.

judgment of the State Corporation Commission (the “Commission”) and remands the matter to the Commission for entry of judgment in favor of CSXT.

This order shall be certified to the State Corporation Commission.

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Mme L. J. P.

Clerk