

## Memorandum 99-19

### **Condemnation by Privately Owned Public Utility: The Connecticut Approach**

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At its February 1999 meeting, the Commission instructed the staff to develop a statutory approach to telecommunications access to building along the lines of that found in Connecticut General Statutes § 16-2471 (occupied buildings and access to telecommunications providers). The statute should take into account comments we have heard from telecommunications providers and building owners about the specific problems confronting them.

This memorandum further develops the Connecticut approach for telecommunications access to buildings. The memorandum notes, however, that the Connecticut approach is not a complete solution to the problems we have seen in California. The memorandum also addresses problems being experienced by local public entities, as well as the broader question of condemnation of private property for public utility use.

#### CONNECTICUT APPROACH

In a nutshell, the Connecticut statute controls the installation and provision of service by a telecommunications provider to an office building, apartment, or other multiple occupant facility. It requires the owner to permit telecommunications access, without discriminating among providers or tenants. The telecommunications provider must bear the entire expense of the installation and indemnify the owner for any damages. The telecommunications provider must also reasonably compensate the owner for any taking of property associated with the installation of wiring and ancillary facilities. The determination of compensation, or approval of a compensation agreement, is subject to the control of the Connecticut Department of Public Utilities Control, which is required to adopt regulations governing the matter. The department's compensation determination is subject to judicial review.

The regulations that have been adopted by the Connecticut Department of Public Utilities Control flesh out the statute. They seek to facilitate agreements between the parties, and provide for assistance to the parties in reaching an

agreement. The regulations appear to provide a complete and efficient scheme. They are set out at Exhibit pp. 5-9.

The Connecticut telecommunications access statute is drawn from an earlier Connecticut statute providing for mandatory cable television access. That statute has withstood constitutional challenge in state and federal courts on First, Fifth, and Fourteenth Amendment grounds. The statute would also appear to be consistent with the Telecommunications Act of 1996, which provides (47 USCA § 253(a)-(b)):

**(a) In general**

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

**(b) State regulatory authority**

Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 of this section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

ADAPTATION OF CONNECTICUT APPROACH FOR CALIFORNIA

A staff draft of the Connecticut approach, adapted for California drafting conventions and terminology, and incorporating suggestions made by participants in the Commission's deliberations, is attached as Exhibit pp. 1-4. There are several aspects of this draft worth noting.

**The draft is limited to telecommunications issues.** All the problems with public utility condemnation we have heard to date have been in the telecommunications area. However, the staff would anticipate that as deregulation proceeds in other industries, problems will begin to surface there as well. Addressing telecommunications issues specifically, as we do here, leaves the broader concerns to be dealt with elsewhere.

**The draft addresses only access to buildings.** The Building Owners and Managers Association has been most vocal to date about their problems, but there are others who are concerned as well. Specifically, cities have expressed concern about condemnation of city property and disruption of city streets for rights of way by multiple telecommunications competitors. The Connecticut

statute does not address this matter. If we pursue the approach of the Connecticut statute, we may need to supplement it with provisions addressed to the problems of local public entities. This matter is elaborated below.

**The draft covers long distance as well as local carriers.** The Connecticut statute is limited to intrastate telecommunications service. We have broadened this in our draft.

**The draft would address the issue of multiple service providers seeking access to the same building.** This provision fills a major gap in the Connecticut statute; perhaps there are not as many licensed telephone corporations in Connecticut as there are in California. The draft instructs the Public Utilities Commission to draft regulations to control access by multiple service providers and require sharing of telecommunications wiring and facilities. See proposed Section 7914 (Exhibit p. 3).

**The draft would require the Public Utilities Commission to adopt a dispute resolution mechanism for circumstances where the parties are unable to reach an access agreement.** The Connecticut statute fails to do this. The regulations adopted to implement the Connecticut statute provide a dispute resolution mechanism where the parties are unable to agree on the amount of compensation. See Exhibit p. 8. A similar procedure would be appropriate where the parties are unable to agree that the telephone corporation has satisfied the conditions that entitle it to access.

**The draft requires the Public Utilities Commission to superintend payment of compensation.** This is the approach of the Connecticut statute, and we have preserved it here. Nonetheless, the staff has doubts about it. While this approach may be feasible in a state the size of Connecticut, we question whether the Public Utilities Commission has the resources to perform this task in California, given the size of the state and the number of licensed telecommunications competitors. The fact that any compensation determination of the Public Utilities Commission is subject to judicial review saves the constitutionality of this scheme.

**The draft would require that the telephone corporation “reasonably compensate” the owner for any taking of property associated with the installation of wiring and ancillary facilities for the provision of service.** This provision is found in the Connecticut statute, but it raises a question — is it intended to provide greater compensation than the “just compensation” that would be required in an eminent domain proceeding? A telephone corporation may not provide less than just compensation within the meaning of the

Constitution, so arguably the statutory “reasonably compensate” provision requires something more. Regulations defining the required compensation along the lines adopted in Connecticut are appropriate here.

**The draft would apply a civil penalty to any party that violates a Public Utilities Commission order under the statute.** The Connecticut statute limits civil penalties to a violation by a property owner, but fails to apply them to a violation by a telecommunications provider.

#### ALTERNATE APPROACHES

We continue to monitor pending legislation that has been introduced to address this issue. The Commission has decided meanwhile to continue to work on the problem, but not to make a recommendation to the Legislature until the Legislature has acted on the pending legislation.

#### **AB 651 (Wright)**

Legislation introduced by Assembly Member Wright would take the opposite of the Connecticut approach. It would preclude Public Utilities Commission intervention in an agreement between a telecommunications company and property owner:

##### **Public Utilities Code § 710**

710. (a) Notwithstanding any other provision of law, the commission may not adopt any order or make any decision that interferes with the ability of an owner of private property to freely negotiate the terms and conditions of any agreement with a telecommunications service provider to allow access to the property of that owner. Any order or decision of the commission, in effect on the effective date of this section, in conflict with this subdivision is null and void.

(b) Any owner of private property who receives a financial benefit as a result of the terms and conditions of an agreement with a telecommunications service provider to allow access to the property of that owner, and who thereby qualifies as a facilities-based provider, as determined by the commission, shall have tariff schedules on file with the commission.

(c) Any owner of private property who enters into an agreement with a telecommunications provider to allow access to the property of that owner shall disclose to prospective tenants of the property the terms and conditions of that agreement.

This bill has been referred to the Assembly Utilities and Commerce Committee for hearing.

**SB 177 (Peace)**

Legislation introduced by Senator Peace would add Section 625 to the Public Utilities Code to provide simply that “A public utility that offers competitive services may not condemn any property for the purpose of competing with other entities in the offering of those competitive services.”

This bill has been referred to the Senate Judiciary Committee for hearing.

**ACQUISITION OF LOCAL PUBLIC ENTITY PROPERTY**

The issues with property acquisition by competitive telecommunications companies are not limited to privately owned buildings. Problems with acquisition of public property for telecommunications lines and facilities have also surfaced. These problems would not be solved by a Connecticut-like statute.

**Rights of Way**

At least one public entity has brought to our attention ongoing problems with telecommunications providers seeking to acquire easements in city streets for their telephone lines.

Generally, property devoted to public use may only be taken for a more necessary public use, and a public entity’s use of property is more necessary than a private person’s use. Code Civ. Proc. § 1240.650. This rule does not preclude use of a public right of way by a telephone service provider, which may construct its line along and upon any public road or highway. Public Utilities Code Section 7901 provides:

7901. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

This authority is much broader than it appears on the surface, since a “telephone line” is defined to include “all conduits, ducts, poles, wires, cables, instruments,

and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.” Pub. Util. Code § 233.

Until recently, a consequence of this state franchise granted to telecommunications companies was a loss of control by local governments over construction in their streets. The telephone company’s natural eagerness to build clashed with the city’s desire to minimize public inconvenience. While the state franchise is convenient for telephone companies, it is inconvenient for the public, which suffers congestion and traffic disruptions.

In the past, telephone companies sometimes took the position that a city had no right to control construction. The lack of statutory clarity caused frequent disputes. Among the complaints of the cities were the inability to plan maintenance programs, protect public safety, minimize public inconvenience, and ensure adherence to sound construction practices. Cities were further concerned that multiple street cuts caused by uncoordinated construction shortened the life of the streets, causing increased taxpayer costs.

Competition in the telecommunication markets has exacerbated these problems. The opening of telephone markets to competition has created new competitors who seek to exercise their state franchise rights. To obtain a competitive advantage, a telephone company needs to excavate more quickly and secretly.

In response to these concerns, the Legislature in 1995 enacted legislation (authored by Senator Peace) to provide the cities with some control over their streets. While respecting the continuing state interest in the widespread deployment of advanced communications networks, the legislation is intended to bolster the cities’ abilities with regard to construction management and to send a message to telephone companies that cities have authority to manage their construction, without jeopardizing the telephone companies’ state franchise. Public Utilities Code Section 7901.1 provides:

7901.1. (a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner.

(c) Nothing in this section shall add to or subtract from any existing authority with respect to the imposition of fees by municipalities.

Because this legislation is of recent vintage and is designed to address the very problem at issue here, and because any defects in the legislation have not been documented, the staff recommends against further revision of the statute at this time.

### **Public Property**

In February, news stories appeared that GTE Wireless has filed an eminent domain proceeding to acquire four parking spaces in the San Francisco Airport short-term parking garage for placement of additional telecommunications equipment. In a deregulated competitive economy, where does this end? The city is concerned that “although four spots at the airport might not seem like a lot, other utility companies are bound to follow GTE’s lead, gobbling up parking spots and other public property.”

Condemnation of public property is constrained by the “more necessary public use” doctrine. Under this doctrine, property appropriated to public use (such as municipally-owned airport property) cannot be taken by eminent domain except for a more necessary public use. Code of Civil Procedure Section 1240.610 provides:

1240.610. Any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire for that use property appropriated to public use if the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated. Where property is sought to be acquired pursuant to this section, the complaint, and the resolution of necessity if one is required, shall refer specifically to this section.

Is use by a telecommunications company more necessary than use by a local public entity? The eminent domain law answers this question directly, and the answer is no: “Where property has been appropriated to public use by a public entity, the use thereof by the public entity is a more necessary use than any use to which such property might be put by any person other than a public entity.” Code Civ. Proc. § 1240.650(a). (It should be noted, however, that condemnation

may be available to the telecommunications company for a use that is compatible with the public use under authority of Code of Civil Procedure Section 1240.510.)

In the staff's opinion, the current statutory scheme adequately addresses the matter.

#### ACQUISITION OF PRIVATELY-OWNED PROPERTY

A more serious issue, in the staff's opinion, is condemnation of private property by a telecommunications company. Let us suppose that, instead of attempting to condemn a public parking facility for placement of its wireless communications equipment, a telecommunications company were to seek to condemn space in a private parking facility adjacent to the airport. The "more necessary public use" doctrine would not apply in this situation.

Historically, this sort of condemnation would have been seen as perfectly appropriate, since development of an integrated telecommunications network is a matter of vital statewide interest and the infrastructure must be developed. It is for this reason that privately owned public utilities have been granted condemnation authority.

But with deregulation and competition in the telecommunications industry, and 150-plus authorized local telecommunications service providers out to establish their businesses and infrastructures, the public policy considerations are shifting. In the current era, is it still necessary for the state to confer the eminent domain tool on a company seeking a competitive business advantage? This question is addressed in Senator Peace's SB 177, which would prohibit use of eminent domain by a public utility for competitive purposes.

The Commission's tentative recommendation on this matter, circulated for comment last year, would have taken a less draconian approach. It would have made clear the authority of the Public Utilities Commission to regulate and restrain exercise of condemnation power by privately owned public utilities, as appropriate. This approach was opposed by utility companies (which thought it went too far) and property owners (who thought it did not go far enough), but supported by the Public Utilities Commission (which thought it struck the right balance). In the staff's opinion, the proposal is nothing more than a clarification in this specific context of the PUC's plenary authority to control activities of privately owned public utilities.



Other possible middle-ground approaches to the issue of condemnation of private property by public utility companies that have merit, in the staff's opinion, include:

- Require adoption of a resolution of necessity by the Public Utilities Commission as a prerequisite to condemnation by a public utility.
- Require a balancing of hardships between the parties by the eminent domain court as a condition of the right of a public utility to take.
- Impose a burden of proof of public necessity by clear and convincing evidence in the eminent domain court as a condition of the right of a public utility to take.

These approaches are all developed further in Memorandum 99-6, which was considered by the Commission at its February 1999 meeting. A draft of the control-by-PUC approach, with refinements to address technical and jurisdictional issues that have been raised concerning it, is set out below.

**Pub. Util. Code § 610 (amended). General provisions**

Section 1. Section 610 of the Public Utilities Code is amended to read:

610. (a) This article applies only to a corporation or person that is a public utility.

(b) The commission may control exercise of the authority provided in this article to the extent and in the manner that it determines is appropriate. An order or decision of the commission under this subdivision:

(1) Supplements, and does not replace, any other constitutional or statutory limitation on exercise of the power of eminent domain, including but not limited to the provisions of Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure.

(2) Is enforceable in an eminent domain proceeding, in addition to any other means provided by law for enforcement of a commission order or decision.

**Comment.** Subdivision (b) is added to Section 610 to make explicit the Public Utilities Commission's authority to control exercise of condemnation power by a privately owned public utility. This provision is an elaboration of existing plenary authority of the Public Utilities Commission, found in such provisions as Sections 701, 702, 761, and 1001, to regulate operations of privately owned public utilities. The amendment is intended to eliminate any argument that the specific grants of condemnation power in this article are exempt from regulation by the Public Utilities Commission.

Nothing in subdivision (b) requires the Public Utilities Commission to control exercise of condemnation power by a privately owned public utility, or gives a property owner the right to object to such exercise before the Public Utilities Commission. The provision merely makes clear the authority of the Public Utilities Commission to act in any way it determines is appropriate, in the circumstances. Examples of actions that may be appropriate in the circumstances may include, for example, (1) establishment of standards that must be satisfied by a privately owned public utility before it may take property by eminent domain, and (2) adoption of a requirement that a privately owned public utility obtain permission from the Public Utilities Commission before exercising condemnation power.

Nothing in subdivision (b) is intended to diminish public use and necessity requirements imposed on every condemnor, including a privately owned public utility. Subdivision (b) allows the Public Utilities Commission to impose additional requirements and restrictions on the right of a privately owned public utility to file a condemnation proceeding, to the extent they appear appropriate in the circumstances. The regulatory authority to limit exercise of condemnation power supplements existing judicial constraints.

A regulation adopted by the Public Utilities Commission under this section has the effect of law and is enforceable in an eminent domain proceeding in the superior court. Thus, for example:

(1) If the Public Utilities Commission requires a utility company to obtain a resolution authorizing condemnation and the company proceeds without obtaining the resolution, the company's failure may be raised as a defense in the eminent domain proceeding. Subdivision (b)(2).

(2) If the Public Utilities Commission prohibits a utility company from condemning except in a case of extreme necessity, lack of extreme necessity is a defense of the property owner cognizable in court. Subdivision (b)(2).

(3) *Pacific Gas & Electric Co. v. Parachini*, 29 Cal. App. 3d 159, 105 Cal. Rptr. 477 (1972), holds that the defendant in an eminent domain proceeding may not oust the court of jurisdiction by the simple act of filing a petition with Public Utilities Commission. The court in *Parachini* did not address the issue whether a Public Utilities Commission restraining order to the utility company, had one been issued, would have bound the court. Under subdivision (b)(2), if the Public Utilities Commission orders a utility company to halt a condemnation proceeding, the order is enforceable in the proceeding, notwithstanding any contrary implication in *Parachini*.

(4) A Public Utilities Commission determination of public use and necessity for a condemnation would not be conclusive on the

court in an eminent domain proceeding. The court retains independent constitutional and statutory jurisdiction to determine public use and necessity. Subdivision (b)(1).

It should be noted that a Public Utilities Commission regulation or action pursuant to this section, while enforceable in an eminent domain proceeding, may be the subject of a direct challenge by writ, declaratory relief, or other appropriate remedy.

To the staff it would make sense, if the Commission decides to pursue the narrow Connecticut approach, to combine it with a general restraint on the unfettered condemnation right of privately owned public utilities. However, it must be acknowledged that the only problems we have heard to date have been in the telecommunications industry, and the narrow approach may be satisfactory for the time being.

#### CONCLUSION

If it appears that the staff adaptation of the Connecticut approach to telecommunications access to buildings is satisfactory, either as drafted or with revisions, we would convert the draft into a revised tentative recommendation and circulate it to interested persons and organizations for comment.

The staff suggests that such a draft be combined with a general but modest constraint on condemnation by a privately owned public utility. Several options are offered above. Although there does not appear to be an immediate need for broader legislation of this type, in our opinion it is only a matter of time before the issues will have to be confronted. Should we leave that battle for another day?

In any event, although we have heard concerns about public utility condemnation of local public entity property, it appears to the staff that existing statutes governing the matter are satisfactory.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

## Exhibit

### CALIFORNIA ADAPTATION OF CONNECTICUT APPROACH

**Pub. Util. Code § 616 (amended). Telephone corporation**

SECTION 1. Section 616 of the Public Utilities Code is amended to read:

616. A (a) Except as provided in subdivision (b), a telephone corporation may condemn any property necessary for the construction and maintenance of its telephone line.

(b) A telephone corporation may not condemn property for the purpose of the installation or provision of service to an occupied building within the meaning of Article 2 (commencing with Section 7910).

**Comment.** Section 616 is amended in recognition of the supervening provisions of Sections 7910-7916 (access to occupied building by telephone corporation).

**Pub. Util. Code § 7901 (added). Article heading**

SEC 2. An article heading is added immediately preceding Section 7901 of Chapter 3 of Division 4 of the Public Utilities Code, to read:

Article 1. General Provisions

**Comment.** An article heading is added for Public Utilities Code Sections 7901-7907 to facilitate addition of a new article on access to an occupied building by a telephone corporation. See Sections 7910-7916.

**Pub. Util. Code § 7910-7916 (added). Access to occupied building by telephone corporation**

SEC. 3. Article 2 (commencing with Section 7910) is added to Chapter 3 of Division 4 of the Public Utilities Code, to read:

Article 2. Access to Occupied Building by Telephone Corporation

**Section 7910. "Occupied building" defined**

7910. As used in this article, "occupied building" means a building or part of a building that is rented, leased, hired out, arranged or designed to be occupied, or is occupied as the residence of three or more persons or families living independently of each other, as the place of business of three or more persons conducting business independently of each other, or by any combination of such persons and

families totaling three or more, and includes a trailer park, mobile manufactured home park, nursing home, hospital, and condominium association.

**Comment.** Section 7910 is drawn from Connecticut General Statutes Section 16-2471(a)(1). For other definitions relevant to this article, see Sections 20 (commission), 205 (person), 234 (telephone corporation).

**Section 7911. Limitations on owner of occupied building**

7911. No owner of an occupied building shall demand or accept payment in any form, except as provided in Section 7915, in exchange for permitting a telephone corporation on or within the owner's property or premises, or discriminate in rental charges or the provision of service between tenants who receive service and those who do not, or those who receive service from different providers, provided the owner shall not be required to bear any cost for the installation or provision of service.

**Comment.** Section 7911 is drawn from Connecticut General Statutes Section 16-2471(b).

**Section 7912. Installation of wiring**

7912. (a) An owner of an occupied building shall permit wiring to provide service by a telephone corporation in the building provided:

(1) A tenant of the building requests service from the telephone corporation.

(2) The entire cost of the wiring is assumed by the telephone corporation.

(3) The telephone corporation indemnifies and holds harmless the owner for any damages caused by the wiring.

(4) The telephone corporation complies with all rules and regulations of the commission pertaining to the wiring. The commission shall adopt regulations that set forth terms that may be included, and terms that shall not be included, in a contract entered into by the owner and the telephone corporation concerning the wiring. No telephone corporation shall present to an owner for review or for signature a contract that contains a term prohibited by regulations adopted pursuant to this paragraph.

(5) The owner may require the wiring to be installed when the owner is present and may approve or deny the location at which the wiring enters the building.

(b) Before completion of construction of an occupied building, an owner of a building in the process of construction shall permit rewiring to provide services in the building provided that all wiring other than that to be directly connected to the equipment of a customer is concealed within the walls of the building and the telephone corporation complies with all provisions of subdivision (a) and of Section 7915.

**Comment.** Section 7912 is drawn from Connecticut General Statutes Section 16-2471(c)-(d). For additional regulatory requirements that must be satisfied to obtain access to a building under this article, see Section 7914.

The types of conditions that might be authorized by regulation under subdivision (d)(4) in an access contract include such matters as:

(1) Insurance and indemnity requirements for the telecommunications carrier.

1 (2) Health and safety, legal compliance, and security and construction considerations that might  
2 arise from the proposed installation.

3 (3) Compliance with standard telecommunications construction access rules and regulations for  
4 buildings.

5 (4) Bonding requirements to insure proper installation and removal of facilities.

6 (5) Exclusion of non-complying carriers.

7 Cf. Conn. Reg. §. 16-247c-6.

8 **Section 7913. Limitations on telephone corporation**

9 7913. No telephone corporation may enter into an agreement with the owner or  
10 lessee of, or person controlling or managing, an occupied building served by the  
11 provider, or commit or permit an act, that would have the effect, directly or  
12 indirectly, of diminishing or interfering with existing rights of a tenant or other  
13 occupant of the building to use or avail itself of the services of other telephone  
14 corporations.

15 **Comment.** Section 7913 is drawn from Connecticut General Statutes Section 16-2471(e).

16 **Section 7914. Regulation by Public Utilities Commission of right to access**

17 7914. (a) The commission shall adopt regulations that prescribe the  
18 circumstances in which a telephone corporation is permitted access to an occupied  
19 building pursuant to this article. The regulations shall take into account the  
20 following, among other considerations:

21 (1) The number and type of telecommunications service providers already  
22 serving the building, and the extent to which joint use of existing facilities is  
23 feasible.

24 (2) The available remaining space in the building to accommodate additional  
25 telecommunications infrastructure.

26 (3) The portion of the building that the telephone corporation desires to access,  
27 and how intrusive the proposed access is on the building's layout and design.

28 (4) The financial and operational capabilities of the telephone corporation, to  
29 ensure that the facilities will be competently installed and completed in a timely  
30 manner.

31 (5) The relative hardships to the owner of the building of permitting access and  
32 to the telephone corporation of denying access.

33 (b) The commission shall adopt regulations that prescribe a dispute resolution  
34 mechanism if the telephone corporation and the owner of an occupied building are  
35 unable to agree on the terms of access sought by the telephone corporation.

36 **Comment.** Section 7914 has no analogue in Connecticut law. It is intended to limit the  
37 potential for multiple separate access proceedings by competitive telecommunications service  
38 providers, and ensure that the demanded access is otherwise necessary, and to address the  
39 possibility of a disagreement between the telephone corporation and property owner over whether  
40 the access sought by the telephone corporation is required under this article.

1 **7915. Compensation**

2 7915. (a) The commission shall adopt regulations requiring a telephone  
3 corporation, on application by the owner of an occupied building and approval by  
4 the commission, to reasonably compensate the owner for any taking of property  
5 associated with the installation of wiring and ancillary facilities for the provision  
6 of service. The regulations may include, without limitation:

7 (1) A procedure under which an owner may petition the commission for  
8 additional compensation.

9 (2) Authorization for an owner and telephone corporation to negotiate a  
10 settlement agreement regarding the amount of compensation, which agreement  
11 shall be subject to the commission's approval.

12 (3) Establishment of criteria for determining any additional compensation that  
13 may be due.

14 (4) Establishment of a schedule of compensation under specified circumstances.

15 (5) Establishment of fees for an application under this section.

16 (b) Nothing in this section precludes a telephone corporation from installing  
17 equipment or facilities in an occupied building before the commission's  
18 determination of reasonable compensation.

19 (c) Any determination by the commission under this section regarding the  
20 amount of compensation to which an owner is entitled or approval of a settlement  
21 agreement is subject to judicial review.

22 **Comment.** Section 7915 is drawn from Connecticut General Statutes Section 16-2471(f)-(h).  
23 Cf. Conn. Reg. § 16-247d-1 et seq.

24 **Section 7916. Civil penalty**

25 7916. Any person that the commission determines, after notice and opportunity  
26 for a hearing, has failed to comply with a provision of this article shall pay to the  
27 state a civil penalty of not more than one thousand dollars for each day following  
28 the issuance of a final order by the commission that the person fails to comply  
29 with the provision.

30 **Comment.** Section 7916 is drawn from Connecticut General Statutes Section 16-2471(i) and  
31 broadened to apply to all parties, including a telephone corporation.

## CONNECTICUT REGULATIONS

### FILING FEES, BONDING REQUIREMENTS AND TELECOMMUNICATIONS COMPANY REQUESTS FOR EXPANDED AUTHORITY

1 **Sec. 16-247c-6. Contracts for access and wiring between telecommunications providers and**  
2 **owners of occupied buildings**

3 (a) In contracts pertaining to access and wiring between telecommunications  
4 providers and owners of occupied buildings, the following terms shall not be  
5 included:

6 (1) Any term that unreasonably restricts the ability of a telecommunications  
7 provider to enter an occupied building to restore service to a tenant in the event of  
8 a service interruption.

9 (2) Any term that interferes with the ability of the owner of an occupied building  
10 to guarantee building safety and security and which unreasonably interferes with  
11 the operation of existing tenants.

12 (3) Any term that grants an exclusive license to any telecommunications  
13 provider.

14 (4) Any term that precludes any telecommunications provider from negotiating  
15 with the owner of an occupied building at a tenant's request pursuant to subsection  
16 (c) of section 16-247l of the Connecticut general statutes.

17 (5) Any term that has the effect, directly or indirectly, of diminishing or  
18 interfering with the right of tenants to use or receive telecommunications service  
19 from other telecommunications providers.

20 (6) Any term that discriminates in favor of any one telecommunications service  
21 provider with respect to the provision of access or compensation requested.

22 (b) In contracts pertaining to access and wiring between telecommunications  
23 providers and owners of occupied buildings, the following terms may be included:

24 (1) Any term that requires a telecommunications provider to follow reasonable  
25 procedures before entering an occupied building to restore service in the case of a  
26 service interruption, such as contacting the occupied building's security officer  
27 prior to entering the occupied building.

28 (2) Any term that reasonably limits the ability of a telecommunications provider  
29 to enter an occupied building to install or upgrade service, so long as such  
30 limitation(s) are related to building safety and security.

31 (3) Any term that establishes liquidated damages in the event that a  
32 telecommunications provider fails to complete an installation and, after an  
33 opportunity to cure, the telecommunications provider fails to remove any and all  
34 wiring installed by the provider or otherwise fails to restore the occupied building  
35 to its preinstallation condition.



1 (4) Any term that limits the application or operation of indemnification  
2 provisions in situations of gross negligence or willful misconduct on the part of the  
3 owner of an occupied building.

4 (5) Any term that exempts a building owner from liability to telecommunications  
5 providers with respect to interruptions in building services, damage to wiring or  
6 equipment, or failures of wiring or equipment unless such interruptions, damage or  
7 failure result from the gross negligence or willful misconduct of the building  
8 owner.

9 (6) Any term that requires the telecommunications provider to supply the owner  
10 of an occupied building with detailed plans and specifications for all wiring,  
11 equipment and construction work for approval by owner. The terms of approval  
12 shall specify that such approval shall not be unreasonably withheld.

13 (7) Any term that requires the owner of an occupied building to provide, if  
14 reasonably available, building and riser conduit or cabling for the use of the  
15 telecommunications provider, at a rate of compensation agreed to by the parties  
16 and in compliance with the provisions of subsection (f) 16-247l of the Connecticut  
17 general statutes and Section 16-247d-7 of the Regulations of Connecticut State  
18 Agencies.

19 (8) Any term that requires the telecommunications provider to construct  
20 additional building and riser conduit, provided that the entire cost of such wiring is  
21 assumed by the telecommunications provider pursuant to Subsection (c) 16-247l  
22 of the Connecticut general statutes.

23 (9) Any term that requires, upon voluntary termination of telecommunications  
24 service by a tenant, a telecommunications provider to give the owner of the  
25 occupied building the opportunity to acquire the wiring at the replacement cost  
26 before removing installed inside wiring.

## CONNECTICUT REGULATIONS

### COMPENSATION TO OWNERS OF OCCUPIED BUILDINGS

1   **Sec. 16-247d-1. Rights of owners to just compensation**

2    The owners of occupied buildings may apply to the Department of Public Utility  
3    Control for compensation for any taking of property associated with the  
4    installation of wiring and ancillary facilities by a telecommunications provider for  
5    the provision of telecommunications services to the occupied building, in  
6    accordance with the criteria outlined in Section 16-247d-7.

7   **Sec. 16-247d-2. Notice to owners regarding intent to install telecommunications facilities**

8    The telecommunications provider seeking permission to install facilities in an  
9    occupied building shall notify the owner of the building not fewer than thirty days  
10   before the proposed date on which installation is to commence. The  
11   telecommunications provider shall include in this notice its proposed plan of  
12   installation for the telecommunications service. Said notice shall be sent by  
13   certified mail, return receipt requested.

14   **Sec. 16-247d-3. Notice to department, telecommunications provider and OCC regarding**  
15    **intent to seek compensation**

16   Any owner of an occupied building who wishes to petition for compensation  
17   shall file an application with the department no later than thirty days following  
18   receipt of the Notice of intent to install telecommunications facilities, required  
19   under section 16-247d-2. The owner also shall send a copy of said application to  
20   the telecommunications provider seeking to install facilities and to the Office of  
21   Consumer Counsel. This application shall include the amount of compensation  
22   being sought and the basis for such claim. Failure of the owner to petition the  
23   department within the time limit specified under this section shall be deemed a  
24   waiver by the owner of the right to seek compensation for said installation.

25   **Sec. 16-247d-4. Application fee**

26   Any application submitted under Section 16-247d-3 shall be accompanied by an  
27   application fee of \$50.00.

28   **Sec. 16-247d-5. Authorization for negotiations**

29   Upon the filing of the application authorized under Section 16-247d-3, the owner  
30   of an occupied building and the telecommunications provider shall attempt to  
31   reach a mutually acceptable agreement regarding the amount of reasonable  
32   compensation due the owner as a result of the installation of telecommunications  
33   facilities in the occupied building. Upon request of either the owner or the

1 telecommunications provider, the Office of Consumer Counsel may participate in  
2 such negotiations.

3 **Sec. 16-247d-6. Department proceedings**

4 (a) Any proposed agreement between the owner of an occupied building and the  
5 telecommunications provider shall be submitted to the department within sixty  
6 days of the date of the application submitted under Section 16-247d-3 for approval  
7 by the department. Such agreement shall contain the criteria considered, as  
8 outlined in Section 16-247d-7, upon which the amount of compensation was  
9 calculated. The department shall render a final decision either approving or  
10 denying said proposed agreement within ninety days of the receipt of the  
11 agreement by the department. The department may hold a public hearing on the  
12 proposed agreement before rendering its decision.

13 (b) If the owner and the telecommunications provider are unable to reach an  
14 agreement within the sixty days provided under Section 16-247d-6 (a), or if the  
15 department has denied the agreement submitted by the owner and the  
16 telecommunications provider, the department shall commence proceedings for a  
17 hearing to determine the appropriate compensation. The telecommunications  
18 provider, the owner and the Office of Consumer Counsel shall be designated as  
19 parties to such proceeding. The department shall complete such investigation and  
20 render a decision not later than ninety days after initiation of the proceeding.

21 (c) Nothing in Section 16-247d-6 shall be deemed to impair or delay the right of  
22 the telecommunications provider to install, maintain or remove  
23 telecommunications facilities, or to provide service to an individual unit in the  
24 subject premises, during the pendency of these proceedings.

25 **Sec. 16-247d-7. Criteria**

26 In its determination of an appropriate award of compensation due the owner, the  
27 department shall consider the following:

- 28 (1) The location and amount of space occupied by the installation;
- 29 (2) Any evidence that the owner has a specific alternative use for any space  
30 which would be occupied by the telecommunications facilities, the loss of which  
31 will result in a specific quantifiable loss to the owner;
- 32 (3) The value of the applicant's property before the installation of  
33 telecommunications facilities, and the value of the property subsequent to the  
34 installation of telecommunications facilities and the method or methods used to  
35 determine such values;
- 36 (4) Whether the installation of the telecommunications facilities will interfere  
37 with the use and occupancy of the building, which interference would cause a  
38 decrease in the rental or resale value of the building; and
- 39 (5) Any actual costs incurred by the property owner directly related to the  
40 installation of the telecommunications facilities.

1   **Sec. 16-247d-8. Appeal**

2       Any determination made by the department under Section 16-247d-6 of these  
3 regulations may be appealed by an aggrieved party in accordance with the  
4 provision contained in Section 4-183 of the General Statutes of Connecticut.